C-570-971
Administrative Review
POR: 4/6/2011 – 12/31/2011
**Public Document**
AD/CVD Office I

July 28, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

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## I. SUMMARY

The Department of Commerce (the Department) conducted an administrative review of the countervailing duty (CVD) order on multilayered wood flooring (wood flooring) from the People's Republic of China (PRC).[1] The period of review (POR) is April 6, 2011, through December 31, 2011. We 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 voluntary respondent, Fine Furniture (Shanghai) Limited (Fine Furniture), received countervailable subsidies during the POR. We are applying rates to the other firms subject to this review based on the CVD rates calculated for the respondents individually examined. The Department also rescinds the review of one company, Changzhou Hawd Flooring Co., Ltd. (Changzhou Hawd), which certified that it had no shipments of subject merchandise to the United States during the POR.

## II. BACKGROUND

On January 27, 2014, the Department published the *Preliminary Results* in this administrative review.[2] On January 28, 2014, Dongtai Fuan Universal Dynamics, LLC (Dongtai) and Hunchun Forest Wolf Wooden Industry Co., Ltd. (Hunchun), two producer/exporters of the subject merchandise from the PRC, requested the Department correct what Dongtai and Hunchun

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[1] *See Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Order*, 76 FR 76693 (December 8, 2011) (*Order*); *see also Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders*, 77 FR 5484 (February 3, 2012) (*Amended Order*).
[2] *See Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2011*, 79 FR 4330 (January 27, 2014) (*Preliminary Results*).

characterized as "certain typographical errors" made in the *Preliminary Results*.[3] Specifically, Dongtai requests the Department change the non-selected company, Dontai Fuan Universal Dynamics, LLC, to be "Dongtai Fuan Universal Dynamics, LLC," and Hunchun requests the Department change the non-selected company, Hunchun Forest Wolf Industry Co., Ltd., to be "Hunchun Forest Wolf Wooden Industry Co., Ltd."[4] On February 26, 2014, Samling Elegant Living Trading (Labuan) Limited (Samling), a producer/exporter of the subject merchandise from the PRC, submitted a request that the Department change the non-selected company, Sampling Elegant Living Trading (Labuan) Limited, to be "Samling Elegant Living Trading (Labuan) Limited."[5]

Fine Furniture, Armstrong, and Lizhong, each submitted case briefs concerning case-specific issues on February 26, 2014,[6] to which the Coalition for American Hardwood Parity[7] (hereinafter, Petitioner) filed a rebuttal brief on March 4, 2014.[8]

On April 22, 2014, we issued a third supplemental questionnaire to Fine Furniture, to which it responded on April 29, 2014.[9] Since affirmative and rebuttal briefs had already been submitted at the time we issued Fine Furniture's third supplemental questionnaire, we provided interested parties an opportunity to comment on the supplemental questionnaire issued by the Department, as well Fine Furniture's response thereof.[10] On May 5, 2014, Fine Furniture submitted comments.[11] No other comments were received.

[3] *See* Letter from Dongtai and Hunchun, "Multilayered Wood Flooring from the People's Republic of China: Correction to Typographical Errors in CVD Preliminary Results" (January 28, 2014) (Request for Correction).
[4] *See* Request for Correction at 1.
[5] *See* Letter from Samling Elegant Living Trading (Labuan) Limited, *et al*, "Samling Group's Letter Brief in the First Administrative Review of Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China" (February 26, 2014) (Samling Request).
[6] *See* Letter from Fine Furniture, "Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China: Case Brief for Consideration Prior to the Final Results" (February 26, 2014) (FFCB); Letter from Armstrong, "Armstrong Wood Products (Kunshan) Co., Ltd.'s Case Brief in the First Administrative Review of the Countervailing Duty Order On Multilayered Wood Flooring from the People's Republic of China" (February 26, 2014) (ACB); and Letter from Lizhong, "Multilayered Wood Flooring from the People's Republic of China: Shanghai Lizhong Wood Products Co., Ltd./The Lizhong Wood Industry Limited Company of Shanghai/Linyi Youyou Wood Co., Ltd.'s Case Brief" (February 26, 2014) (LCB).
[7] 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.
[8] *See* Letter from Petitioner, "Multilayered Wood Flooring from the People's Republic of China" (March 4, 2014) (PRB).
[9] *See* Letter from Fine Furniture, "Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China: Third Supplemental Questionnaire Response of Fine Furniture (Shanghai) Limited" (April 29, 2014) (FF3SR). We note that certain parts of the FF3SR were submitted in error, which were corrected in the Letter from Fine Furniture, "Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China: Correction to Third Supplemental Questionnaire Response of Fine Furniture (Shanghai) Limited" (April 30, 2014) (Corrected FF3SR).
[10] *See* Memorandum to the File, "Briefing Schedule Pursuant to Supplemental Questionnaire" (April 25, 2014).
[11] *See* Letter from Fine Furniture, "Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from the People's Republic of China: Case Brief Regarding Third Supplemental Questionnaire Response of Fine Furniture (Shanghai) Limited" (May 5, 2014).

On May 6, 2014, we extended the time limit for issuing these final results, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(h)(2).[12]

The "Analysis of Programs" and "Subsidy Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Additionally, we analyzed the comments submitted by interested parties in their case briefs and rebuttal briefs in the "Analysis of Comments" section below, which contains the Department's responses to the issues raised in these briefs. Based on the comments received, we made certain modifications to the *Preliminary Results*, which are discussed below under each program. We recommend that you approve the positions we have described in this memorandum. Below is a complete list of the issues in this review for which we received comments from the parties:

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| **Comment 1** | Application of CVDs to Imports from Non-Market Economy (NME) Countries |
| **Comment 2** | Simultaneous Application of CVD and Antidumping Duty (AD) NME Measures |
| **Comment 3** | Countervailability of the Provision of Electricity for Less Than Adequate Remuneration (LTAR) |
| **Comment 4** | Selection of Benchmarks for the Electricity for LTAR Program |
| **Comment 5** | Whether the Department Should Adjust Calculated Benefits and Apportion Those Benefits to the POR |
| **Comment 6** | Correcting Typographical Errors in Non-Selected Company Names |

## III. SCOPE OF THE ORDER

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)[13] 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

[12] *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 Deadline for Final Results of Countervailing Duty Administrative Review; 2011" (May 6, 2014).

[13] 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.

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 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.

## IV. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

On March 28, 2013, we received a timely filed no-shipment certification from Changzhou Hawd. We submitted no-shipment inquiries to U.S. Customs and Border Protection (CBP) for this company on January 2, 2014. We did not receive any information from CBP to contradict the company's claim, or any comments from interested parties. As such, pursuant to 19 CFR 351.213(d)(3), we are now rescinding the administrative review of this company.

## V. SUBSIDY VALUATION INFORMATION

### A. Period of Review

The POR is April 6, 2011, through December 31, 2011. Because the POR spans less than one calendar year, for the purposes of these final results, we amended our methodology as employed in the *Preliminary Results* for Fine Furniture and Armstrong in order to analyze data on an annual basis, *i.e.*, for the entire calendar year 2011. This methodology was employed in the *Preliminary Results* for Lizhong. However, the duties calculated will be applied to entries during the POR, *i.e.*, from April 6, 2011, through December 31, 2011.[14]

### B. 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.[15] Accordingly, we have only measured subsidies from the beginning of the AUL, *i.e.*, January 1, 2002.

### C. Attribution of Subsidies

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

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[14] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744, 21745 (April 11, 2012); *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206, 77207 (December 12, 2011) (*Citric Acid First Administrative Review*); *Dynamic Random Access Memory Semiconductors From the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 76 FR 2336 (January 13, 2011), and accompanying Issues and Decision Memorandum (IDM) at Comment 2; and *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of the 2001-2002 Countervailing Duty Administrative Review*, 69 FR 51063 (August 17, 2004) (*PET Film First Administrative Review*), and accompanying IDM at Comment 1.

[15] *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.

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. As described in 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.[16]

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) 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.[17]

1. Armstrong

Armstrong was founded in 2003 as "Yingbin Wood Industry (Kunshan) Co., Ltd.," a foreign-invested enterprise (FIE)[18] under the ownership of Macau-based Hoi Leong Investments and Holdings Company, Limited (Hoi Leong).[19] 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,[20] which led to the 2007 name change to Armstrong Wood Products (Kunshan) Co., Ltd,[21] and ultimately resulted in joint-ownership of Armstrong by ACHL and Hoi Leong.[22]

[16] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).
[17] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[18] *See* Letter from Armstrong, "Countervailing Duty Questionnaire Response Administrative Review – Armstrong Wood Products (Kunshan) Co., Ltd." (August 7, 2013) (AQR) at III-5 and III-6.
[19] *See* AQR at III-6; *see also* Letter from Armstrong, "Second Countervailing Duty Supplemental Questionnaire Response Administrative Review – Armstrong Wood Products (Kunshan) Co., Ltd." (December 13, 2013) (A2SR) at 1.
[20] *See* AQR at III-6 and A2SR at 1-2.
[21] *See* AQR at III-6.
[22] *See* AQR at III-3 and III-6, and A2SR at 1-2; *see also* Letter from Armstrong, "Countervailing Duty Supplemental Questionnaire Response Administrative Review – Armstrong Wood Products (Kunshan) Co., Ltd." (September 27, 2013) (A1SR) at 1.

During the POR, Hoi Leong's shares of Armstrong were acquired by ACHL,[23] leaving ACHL as the sole owner of Armstrong.[24] 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.[25] Accordingly, Armstrong responded on behalf of itself in this proceeding, maintaining no cross-owned affiliates in the PRC,[26] and thus, we attributed subsidies received by Armstrong to its own sales.[27]

2. Fine Furniture

Fine Furniture was founded in 2000,[28] is a "productive" FIE,[29] 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.[30] For Fine Furniture, we are attributing subsidies it received to its sales, in accordance with 19 CFR 351.525(b)(6).

Fine Furniture identified Great Wood as a supplier of kiln-dried lumber, cut-to-size lumber, and face veneer for furniture and flooring.[31] 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.[32] 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.[33] Thus, Fine Furniture requested that the Department make an adjustment to the calculated subsidy rate to account for the mark-up

[23] *Id*.
[24] *See* A1SR at 1.
[25] *See* AQR at III-2 and III-3.
[26] *Id*., at III-3 through III-8.
[27] *See* Memorandum to the File, "Final Results Calculation Memorandum for Armstrong Wood Products (Kunshan) Co., Ltd." (May 27, 2014) (Armstrong Calculation Memorandum).
[28] *See* 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) at 8.
[29] *Id*., at 9.
[30] *Id*., at 4 and 6.
[31] *Id*., at 4 and 9.
[32] *Id*., at 6 and 9.
[33] *Id*., at 24-25 and Exhibit 17.

between the export value from the PRC and the entered value of subject merchandise into the United States,[34] as the Department did in the *Investigation Final*.[35]

Citing *Coated Paper from the PRC*, Fine Furniture states that the adjustment is appropriate because:[36] 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.[37]

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 *Investigation Final*.[38] Since the information submitted by Fine Furniture supports its claim and the information also permits an accurate calculation of the adjustment, we granted the entered value adjustment.[39]

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).[40] 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.[41] Youyou was established in 2009 as a DOE by two of the individuals with ownership in Lizhong.[42] As such, these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of common ownership.[43]

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[34] *Id*., at 25.
[35] *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 IDM, "B. Attribution of Subsidies" at 6-8.
[36] *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.
[37] *See* FFQR at 24-25.
[38] *Id*., at 24; *see also Investigation Final* and accompanying IDM at 7-8.
[39] Due to the proprietary nature of the adjusted values, *see* Memorandum to the File, "Final Results Calculation Memorandum for Fine Furniture (Shanghai) Limited" (May 27, 2014) (Fine Furniture Calculation Memorandum).
[40] *See* 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) at III-2.
[41] *Id*., at III-7 and Exhibit 1.
[42] *Id*.
[43] *Id*.

Lizhong identified Youyou as a producer of wood products, such as veneer, core and unfinished multilayered wood flooring.[44] 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).

### D. Loan Benchmarks and Discount Rates

The Department is examining non-recurring, allocable subsidies.[45] 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.[46] 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."[47] As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate.

For the reasons explained in *CFS from the PRC*,[48] 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.[49] 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*,[50] and then updated in *Thermal Paper from the PRC*,[51] the methodology used to calculate the external benchmark. Under that methodology, we first

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[44] *Id.*, at III-7.
[45] *See* 19 CFR 351.524(b)(1).
[46] *See* 19 CFR 351.505(a)(3)(i).
[47] *See* 19 CFR 351.505(a)(3)(ii).
[48] *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.
[49] *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."
[50] *See CFS from the PRC*, and accompanying IDM at Comment 10.
[51] *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.

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.[52] Beginning with 2010, however, the PRC is in the upper-middle income category.[53] 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[54] reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group. This contrary result for a single year does not lead the Department to reject the strength of governance as a determinant of interest rates. Therefore, we 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. 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 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 antidumping duty (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.[55] Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.[56]

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[52] *See* World Bank Country Classification, http://econ.worldbank.org/; *see also* Memorandum to the File, "Interest Rate Benchmark Memorandum" (December 6, 2013) (Interest Rate Benchmark Memorandum).
[53] *Id.*
[54] *See* Interest Rate Benchmark Memorandum.
[55] 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.
[56] 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, which were aberrantly high. *See* Interest Rate Benchmark Memorandum.

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.[57]

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 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.[58]

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.[59] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.[60]

3. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we 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.

## VI. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, including parties' comments addressed below, we determine the following:

### A. Programs Found To Be Countervailable

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

In the *Investigation Final*, we determined that this program conferred a countervailable subsidy.[61] No new information has been provided on the record of the instant review that

[57] *See* Interest Rate Benchmark Memorandum for the resulting inflation-adjusted benchmark lending rates.
[58] *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.
[59] *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.
[60] *See* Interest Rate Benchmark Memorandum for the resulting inflation-adjusted benchmark lending rates.
[61] *See Investigation Final* and accompanying IDM, "Income Tax Subsidies for FIEs Based on Geographic Location" at 11.

warrants re-considering the determination from the *Investigation Final*. Therefore, we continue to 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 Government of the PRC (the GOC), and it provides a benefit to the recipient in the amount of the tax savings.[62] We further find that the tax 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.[63] 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).

As discussed above, we amended the period for which we calculated Fine Furniture's benefit for this program from that employed in the *Preliminary Results*. Accordingly, to calculate the countervailable subsidy, we divided the benefits received by Fine Furniture in 2011 by its sales during 2011, in accordance with 19 CFR 351.525(b)(6)(i). On this basis, we find that the FF Companies received a countervailable subsidy of 0.12 percent *ad valorem* under this program during 2011.[64]

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

In the *Investigation Final*, we determined that this program conferred a countervailable subsidy.[65] No new information has been provided on the record of the instant review that warrants re-reconsidering the determination from the *Investigation Final*. Therefore, we continue to 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.[66] 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.[67]

As explained in the *Investigation Final*,[68] 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

[62] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[63] *See* FFQR at 13-14 and Exhibits 8a and 8b; *see also* 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) at 15 and Exhibit 2.
[64] *See* Fine Furniture Calculation Memorandum.
[65] *See Investigation Final* and accompanying IDM, "VAT and Tariff Exemptions on Imported Equipment" at 12-13.
[66] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).
[67] *See CFS from the PRC* and accompanying IDM at Comment 16.
[68] *See Investigation Final* and accompanying IDM at 13.

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.[69] 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.

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.[70] 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.

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). This was the case for all of Great Wood's VAT and tariff exemptions. However, for Fine Furniture, 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 2011.

As discussed above, we amended the period for which we calculated Fine Furniture's benefit for this program from that employed in the *Preliminary Results*. Accordingly, to calculate the countervailable subsidy for the VAT and tariff exemptions received by Fine Furniture which passed the "0.5 percent test" and resulted in an allocable benefit to 2011, we divided these allocated benefits by Fine Furniture's sales during 2011, in accordance with 19 CFR 351.525(b)(6)(i). On this basis, we determine that the FF Companies received a countervailable subsidy of 0.42 percent *ad valorem* during 2011.[71]

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

In the underlying investigation, the petition contained information that the GOC provided electricity for LTAR and that the subsidy was regionally specific, pursuant to section 771(5A)(D)(iv) of the Act.[72] It was on this basis that the Department initiated its investigation of this subsidy program.[73] In the *Investigation Final*, we determined that this program conferred a

[69] *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).
[70] *See* FFQR at 16-19 and Exhibits 11a and 11b.
[71] *See* Fine Furniture Calculation Memorandum.
[72] *See* Petition for the Imposition of Antidumping and Countervailing Duties: Mulitlayered {sic} Wood Flooring from the People's Republic of China, "Volume III: Information on Countervailing Duty Allegations" (October 21, 2010), at "Electricity for Less Than Adequate Remuneration" at 20-23. Included at Attachment I of Final Results Reference Memo.
[73] *See Multilayered Wood Flooring from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 75 FR 70719 (November 18, 2010) (*Initiation Notice*), and accompanying "Countervailing Duty Investigation Initiation Checklist: Multilayered Wood Flooring from the People's Republic of China" (November 18, 2010) (Initiation Checklist) at "Electricity for LTAR" at 10-11. Included at Attachment II of the Final Results Reference Memo.

countervailable subsidy.[74] Specifically, we found that the GOC did not provide the requested original price proposals for 2006 and 2008 for each province in which a mandatory respondent or any reported "cross-owned" company was located, and that because the requested price proposals are part of the GOC's electricity price adjustment process, the documents were necessary for the Department's analysis of the program.[75] Therefore, as adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act, the Department determined that the GOC's provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act and was specific within the meaning of section 771(5A) of the Act.[76] No new information has been provided on the record of the instant review that warrants re-considering the determination from the *Investigation Final*. Therefore, we continue to 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.

With respect to the specificity of the subsidy, the information on the administrative record in the investigation pertained to the regional specificity of this program.[77] This is consistent with the Department's determination in *Wire Strand from the PRC*,[78] that this subsidy program is regionally specific "within the meaning of" section "771(5A)(D)(iv) of the Act."[79] Accordingly, consistent with the facts available on the record of the underlying investigation, the *Investigation Final*, and the Department's determination in *Wire Strand from the PRC*, we determine that the GOC's provision of electricity is "limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy," in accordance with section 771(5A)(D)(iv) of the Act.

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.[80] 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," *et cetera*) and voltage class of the respondents (*e.g.*, 1-10 kilovolts (kv)), as well as the respondents' "base charge" (maximum demand and/or transformer capacity).[81] We then compared what the respondents paid for

[74] *See Investigation Final* and accompanying IDM, "GOC – Electricity" at 2-3, and "Provision of Electricity for LTAR" at 13-14.
[75] *Id.*
[76] *Id.*
[77] *See, e.g.*, Final Results Reference Memo at Attachment II - Initiation Checklist at "Electricity for LTAR" at 10-11.
[78] *See Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) (*Wire Strand from the PRC*), and accompanying IDM at "Federal Provision of Electricity for LTAR" at 9.
[79] *Id.*, at 9 and Comment L "Federal Provision of Electricity for LTAR," at 33.
[80] For Armstrong, s*ee* AQR III-14, III-15, and Exhibits 8-9; *see also* A1SR 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* 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) at 17-18 and Exhibits 23-24.
[81] *See* Memorandum to the File, "Electricity Rate Benchmark Memorandum" (January 16, 2014) (Electricity Rate Benchmark Memorandum).

electricity during the POR to our benchmark prices. Based on this comparison, we find that electricity was provided for LTAR.

As discussed in Comment 5 below, we have amended the benefit calculation for Armstrong's and Fine Furniture's electricity consumption to reflect the full 2011 calendar year.[82] On this basis, we find that Armstrong received a countervailable subsidy of 0.98 percent *ad valorem*, the FF Companies received a countervailable subsidy of 0.67 percent *ad valorem*, and Lizhong received a countervailable subsidy of 0.47 percent *ad valorem* under this program during 2011.[83]

4. 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.[84] In its supplemental questionnaire responses, the GOC affirmed and re-affirmed that this program is limited, by law or in fact, to any enterprise or group of enterprises, or to any industry or group of industries.[85] 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."[86] 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.[87] Lizhong reported receiving funds under this program from the GOC during the POR.[88]

We 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.*[89]

[82] We note that in the *Preliminary Results*, we calculated Lizhong's benefits under this program on a calendar year basis, thus no changes in this regard were necessary for Lizhong.
[83] *See* Armstrong Calculation Memorandum; *see also* Fine Furniture Calculation Memorandum; and Lizhong Calculation Memorandum.
[84] *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) at 15.
[85] *See* G2SR at 19; *see also* 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) at 1-2.
[86] *See* G3SR at 1.
[87] *See* G2SR at 15-19.
[88] *See* L1SR at 8-9.
[89] *See* G2SR at Exhibit SQ-3.

To calculate the countervailable subsidy, we divided the grant amount received during 2011 by Lizhong's total sales during 2011. On this basis, we find that Lizhong received a countervailable subsidy of 0.10 percent *ad valorem* under this program during 2011.[90]

5. Minhang District Pujiang Town Enterprise Support

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.[91] 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.[92] Lizhong reported receiving funds under this program from the GOC during the POR,[93] which the GOC confirms took the form of a grant from the Pujiang Town government.[94]

We 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, it is limited to enterprises engaged in industrial business that have paid above a minimum level of tax.[95]

To calculate the countervailable subsidy, we divided the grant amount received during 2011 by Lizhong's total sales during 2011. On this basis, we find that Lizhong received a countervailable subsidy of 0.07 percent *ad valorem* under this program during 2011.[96]

6. 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.[97] 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.[98] During the POR, the GOC reports that 40 projects,

[90] *See* Lizhong Calculation Memorandum.
[91] *See* G2SR at 26.
[92] *Id*., at 28-32.
[93] *See* L1SR at 8-9.
[94] *See* G3SR at 3.
[95] *See* G2SR at 30-31.
[96] *See* Lizhong Calculation Memorandum.
[97] *See* G2SR at 35-38.
[98] *Id*., at 39-40.

including Lizhong's resin research project, received funding under this program.[99] Moreover, Lizhong confirmed the receipt of funds under this program during the POR.[100]

We 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 2011 by Lizhong's total sales during 2011. On this basis, we find that Lizhong received a countervailable subsidy of 0.03 percent *ad valorem* under this program during 2011.[101]

## B. Programs Found to Be Not Countervailable

### 1. 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.[102] The GOC submits that the goal of the program is to 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.[103]

We find that this program is not specific and, thus, not countervailable. In particular, 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.

Based on the record information, we find that under this program: 1) an applicant automatically receives assistance if the eligibility criteria as listed in the administering document are met; 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

[99] *See* G3SR at 5 and Exhibit SQ-6.
[100] *See* L1SR at 9.
[101] *See* Lizhong Calculation Memorandum.
[102] *See* G2SR at 1-2.
[103] *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) at 1-8.

have any discretion that goes beyond the criteria laid out in the administering document.[104] As such, we find that this program is not *de jure* specific within the meaning of section 771(5A)(D)(ii) of the Act.

Next, consistent with the Department's practice, we examined whether, despite no apparent specificity as a matter of law, there are reasons to believe that a subsidy may be specific as a matter of fact.[105] The GOC provided responses to the Department's questions pertaining to actual usage of the assistance provided under the program.[106] Based on the information provided, we 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 find this program to be not countervailable.

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

1. Two Free, Three Half Program

2. Certification of National Inspection-Free on Products and Reputation of Well Known Firm – Jiashan County

3. International Market Development Fund Grants for Small and Medium Enterprises

4. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands

5. Local Income Tax Exemption and Reductions for "Productive" FIEs

6. Provision of Electricity at LTAR for FIEs and "Technologically Advanced" Enterprises by Jiangsu Province

## VII. ANALYSIS OF COMMENTS

**Comment 1** Application of CVDs to Imports from NME Countries

Armstrong and Fine Furniture argue that the Department cannot apply CVDs to the PRC while also using an NME methodology to calculate ADs on the same merchandise because the simultaneous application violates United States law, and is inconsistent with the United States' World Trade Organization (WTO) obligations.[107] In support of this argument, Armstrong and Fine Furniture submit that in its decision in *GPX CAFC (2011)*,[108] the United States Court of Appeals for the Federal Circuit (CAFC or Federal Circuit) stated that "countervailing duties cannot be applied to goods from NME countries."[109] In response to this decision, Armstrong and Fine Furniture contend that the President of the United States signed a law, effective March 13,

[104] *See* G2SR at 7 and Exhibit SQ-1.
[105] *See* section 771(5A)(D)(iii) of the Act.
[106] *See* G2SR at 9-10.
[107] *See* ACB at 9 and FFCB at 2.
[108] *See GPX International Tire Corp. v. United States*, 666 F.3d 732 (Fed. Cir. 2011) (*GPX CAFC (2011)*).
[109] *See GPX CAFC (2011)*, 666 F.3d at 744-45.

2012, "to apply the countervailing duty provisions of the Tariff Act of 1930 to nonmarket economy countries, and for other purposes,"[110] which both Armstrong and Fine Furniture argue violates the *ex post facto* clause of the United States Constitution (Constitution), due process guaranteed by the Fifth Amendment of the Constitution, and equal protection of the laws also guaranteed by the Fifth Amendment of the Constitution.[111]

First, Armstrong and Fine Furniture argue that the retroactivity provision violates the *ex post facto* clause of Article I of the Constitution because it singles out a particular group, and then punishes conduct by that group that was not illegal or punishable at the time it was committed.[112] Armstrong and Fine Furniture maintain that, at the time the *Order* on wood flooring from the PRC was established,[113] application of the CVD law to the PRC was illegal because the Department used its NME methodology for determining AD margins on imports from the PRC.

Second, Armstrong and Fine Furniture contend that P.L.112-99 violates the right to due process under the Fifth Amendment of the Constitution. According to Fine Furniture, the due process clause prohibits laws that are "harsh and oppressive" or that are "arbitrary and irrational."[114] Fine Furniture alleges that the retroactivity provision of P.L.112-99 is harsh and oppressive because it imposes wholly new taxes that dramatically burden importers with no notice.

Third, Armstrong and Fine Furniture allege that the retroactivity provision irrationally discriminates against past importers, refusing to give them the same rights and opportunities given to future importers, thereby denying them equal protection of the laws guaranteed by the Fifth Amendment of the Constitution. Specifically, Fine Furniture argues that because of the imbalance of the effective date in P.L.112-99, investigations and reviews initiated after the date of enactment will be subject to the adjustment pursuant to section 777A(f) of the Act, while those investigations and reviews initiated before the date of enactment will not be subject to such an adjustment.

Finally, Armstrong submits that while the CIT affirmed the constitutionality of P.L.112-99 in *GPX CIT (2013)*,[115] this decision has been appealed to the CAFC.

Petitioner submits that the Department should maintain its current position regarding the application of CVDs on imports into the United States from the PRC, asserting that that P.L.112-99 is constitutional when applied on a retroactive basis.[116] Petitioner contends that the issues raised by Armstrong and Fine Furniture in this proceeding mirror those raised and rejected by the

[110] *See* Pub. L. No. 112-99, 26 Stat. 265-66 (2012) (P.L.112-99).
[111] *See* ACB at 10-12 and FFCB at 4-6.
[112] In support of this argument, Armstrong and Fine Furniture reference: *Landgraf v. USI Film Products*, 511 U.S. 244 (1994) (*Landgraf*); *Huaiyin Foreign Trade Corp. v. United States*, 322 F.3d 1369 (Fed. Cir. 2003) (*Huaiyin*).
[113] *See*, e.*g.*, *Order* and *Amended Order*.
[114] In support of its argument, Fine Furniture references: *United States v. Carlton*, 512 U.S. 26 (1994) (*Carlton*); *Pension Benefit Guar. Corp. v. R.A. Gray & Co*., 467 U.S. 717 (1984) (*Gray*).
[115] *See GPX International Tire Corp. v. United States*, 893 F. Supp. 2d 1296 (CIT 2013) (*GPX CIT (2013)*).
[116] *See* PRB at 1-4.

Department, in other proceedings, most recently in *Aluminum Extrusions from the PRC*.[117] According to Petitioner, the Department determined in *Aluminum Extrusions from the PRC* that P.L.112-99 does not violate the equal protection or due process clauses of the Fifth Amendment,[118] nor is it a prohibited *ex post facto* law.[119]

**Department's Position**:

We disagree with Armstrong and Fine Furniture, and affirm our position as stated in *Aluminum Extrusions from the PRC*. P.L.112-99 confirms that the Department has the authority to apply the CVD law to imports from NME countries, such as the PRC. Reliance upon *GPX CAFC (2011)* to contend that the Department lacks such authority is misplaced because that decision never became final and was in fact replaced by a subsequent decision, *GPX CAFC (2012)*.[120]

We disagree that P.L. 112-99 violates the Fifth Amendment's due process clause. Section 1 of P.L. 112-99 is not retroactive. Rather it confirms existing law by ensuring that the Department will continue to apply the CVD law to NME countries. Congress enacted the legislation to prevent the Federal Circuit's decision in *GPX CAFC (2011)* – a decision that would have changed existing law – from becoming final and taking effect.[121] In any event, even if section 1 of P.L. 112-99 were considered retroactive, it does not violate the due process clause. This is because the law has a rational basis, which is to correct a mistake and confirm the law in light of *GPX CAFC (2011)*.[122]

We further disagree that P.L. 112-99 is a prohibited *ex post facto* law. The *ex post facto* clause of the Constitution bars retroactive application of penal legislation, but, as just described, section 1 of P.L. 112-99 is not retroactive. Even if that section were considered retroactive, it is not penal because it merely confirms that the government can collect duties proportional to the harm caused by unfair foreign subsidization. In this regard, the CVD law is remedial in nature.[123]

Finally, we disagree the P.L. 112-99 violates equal protection of the law as guaranteed by the Fifth Amendment's due process clause. Section 1 of P.L. 112-99 imposes no new obligation on parties, but merely reaffirms the Department's authority to apply the CVD law to NME countries. Thus, section 1 does not single out one group of companies and deny them the "protections" of section 2. Rather, section 1 simply confirms that existing law, to which all companies were already subject, applies. Further, the distinction between section 1 and section 2

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[117] *See Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) (A*luminum Extrusions from the PRC*), and accompanying IDM at 51-54.
[118] *Id.*, and accompanying IDM at 52-53.
[119] *Id*., at 54; *see also GPX CIT (2013)*, 893 F. Supp. 2d at 1296, and *Guangdong Wireking Housewares and Hardware Co., Ltd. v. United States*, 900 F. Supp. 2d 1362 (CIT 2013).
[120] *See GPX International Tire Corp. v. United States*, 678 F.3d 1308, 1312 (Fed. Cir. 2012) (*GPX CAFC (2012)*)
[121] *See, e.g.*, 158 Cong. Rec. at H1167-68 (daily ed. March 6, 2012) (statements of Representatives Camp, Levin, Rohrbacher, and Boustany).
[122] *See, e.g., General Motors Corp. v Romein*, 503 U.S. 181, 191 (1992) (upholding retroactive legislation that corrected unexpected results of judicial opinion).
[123] *See Chaparral Steel Co. v. United States*, 901 F.2d 1097, 1103-04 (CAFC 1990); *Peer Bearing Co. v. United States*, 182 F. Supp. 2d 1285, 1310 (CIT 2001). The specific purpose of CVD law is to "offset" the harmful effects of foreign subsidies. *See* S. Rep. No. 1221, 92d Cong., 2d Sess. 8 (1972).

of the legislation serves a rational purpose. As evidenced by the legislative history, section 2 of P.L. 112-99 was adopted, in part, to bring the United States into compliance with its WTO obligations.[124] Given the statutory scheme for prospective implementation of adverse WTO decisions,[125] it was entirely rational for Congress to decline to upset the finality of already-completed administrative determinations or to impose new obligations in administrative proceedings already in progress by requiring the Department to make adjustments not necessary to bring the United States into compliance with its WTO obligations.

**Comment 2** Simultaneous Application of CVD and AD NME Measures

Fine Furniture contends that in the WTO AB Decision China CVD,[126] the WTO held that double counting will occur when CVDs are imposed in addition to ADs using the NME methodology unless the Department determines "whether and to what extent domestic subsidies have lowered the export price of a product, and ... whether the investigating authority has taken the necessary corrective steps to adjust its methodology to take account of this factual situation."[127] Further, Armstrong maintains that in the WTO AB Decision China CVD, it stated that:

> Under Article 19.3 of the {WTO} Agreement on Subsidies and Countervailing Measures {(SCM Agreement)}, the appropriateness of the amount of countervailing duties cannot be determined without having regard to {ADs} imposed on the same product to offset the same subsidization. The amount of a {CVD} cannot be 'appropriate' in situations where the duty represents the full amount of the subsidy and where the {ADs}, calculated at least to some extent on the basis of the same subsidization, are imposed concurrently to remove the same injury to the domestic industry.[128]

Accordingly, both Armstrong and Fine Furniture contend that the Department cannot apply both CVD and ADs to an NME such as the PRC without taking steps to address the potential for double counting,[129] an obligation of which has not yet been addressed. In support of this, Armstrong avers that P.L.112-99 requires the Department to adjust AD margins calculated pursuant to NME methodology if the same merchandise is subject to CVDs, and the Department can determine the extent to which countervailable subsidies have increased AD margins. Armstrong contends that the Department has not made the required adjustment to eliminate double counting, which is the Department's obligation under P.L.112-99.

Additionally, Armstrong asserts that double remedies will inevitably occur when the Department uses its NME AD methodology while concurrently applying CVDs in PRC cases because each remedy is designed to address the same underlying concern – price distortion resulting from government subsidies and influence. Armstrong claims that, unlike ME cases, the Department's

[124] *See*, *e.g.*, 158 Cong. Rec. at H1167-68, H1171 (daily ed. March 6, 2012) (Statements of Representatives Camp, Brady, and Jackson Lee).
[125] *See* 19 U.S.C.§§ 3533 and 3538.
[126] *See* United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/AB/R (March 11, 2011) (WTO AB Decision China CVD).
[127] *See* WTO AB Decision China CVD, para. 595, WT/DS379/AB/R.
[128] *Id*., at para. 582, WT/DS379/AB/R.
[129] In support of this argument, Armstrong references: *Chia Far Indus. Factory Co., Ltd. v. United States*, 343 F. Supp. 2d 1344, 1362 (CIT 2004).

NME AD methodology is designed to address the subsidization of foreign producers.[130] Armstrong contends that because NME prices are considered unreliable, normal value is based on a constructed price that relies upon surrogate values rather than a producer's actual sales price or costs,[131] and that in choosing these surrogate values, the Department is instructed to use unsubsidized values.[132] Armstrong argues that the export price in NME cases is compared to a subsidy-free normal value, and, as a result, "any resulting AD margin ... also captures the competitive advantage that subsidies may provide because the constructed NV is subsidy-free ... while the U.S. price presumably reflects the price-lowering benefits of the subsidy."[133]

Armstrong concludes that since CVDs are intended to equalize the competitive playing field by addressing price distortions resulting from government subsidies and influence, double counting occurs when the Department counteracts the same behavior twice through the concurrent application of both CVDs and ADs under the NME methodology.

Petitioner argues that Armstrong and Fine Furniture's assertion that the application of CVDs in addition to ADs, where the NME methodology is employed, constitutes double-counting should be rejected. Petitioner notes that, in *Aluminum Extrusions from the PRC*, the Department stated:

> When the Department makes both AD and CVD determinations with respect to a class or kind of merchandise from an NME, the law provides for any adjustments to be made to the AD margins calculated in the concurrent AD proceeding. Accordingly, there is no basis for the Department to adjust the final calculated CVD rates in this review, and we have not done so.[134]

Accordingly, Petitioner concludes that the facts of this review and the assertions raised by Armstrong and Fine Furniture do not provide any basis for the Department to reach a varying conclusion on these issues than it did in the *Aluminum Extrusions from the PRC*.

**Department's Position**:

We disagree with Armstrong and Fine Furniture. The Department can apply CVD measures in these final results while at the same time treating the PRC as an NME in the overlapping AD administrative reviews. Section 1 of P.L. 112-99 makes clear that the CVD law applies to products from NME countries and, therefore, applies in this CVD administrative review. Moreover, the law provides for any adjustments to be made to the AD margins calculated in the concurrent AD proceeding,[135] which codified section 2 of P.L. 112-99. Accordingly, there is no basis for the Department to adjust the final calculated CVD rates in this review, and we have not done so.

[130] *See Georgetown Steel Corporation v. United States*, 801 F.2d 1308, 1316 (Fed. Cir. 1986).
[131] *See* section 773(a) of the Act.
[132] *See* section 773(c) of the Act.
[133] *See GPX International Tire Corp. v. United States*, 715 F. Supp. 2d 1337 (CIT 2010) (*GPX CIT (2010)*).
[134] *See Aluminum Extrusions from the PRC*, and accompanying IDM at 54.
[135] *See* section 777A(f)(1) of the Act.

The legislative history for P.L. 112-99 makes clear that Congress had a rational basis for confirming the Department's authority to apply the CVD law to products from NME countries while ensuring that, for WTO compliance purposes, the Department could, going forward, make adjustments to AD duties to account for any overlap in AD and CVD remedies demonstrated to exist.[136] As stated above, given the statutory scheme for prospective implementation of adverse WTO decision,[137] it was entirely reasonable for Congress to decline to upset the finality of already completed administrative determinations or to impose new obligations in administrative proceedings already in progress by requiring the Department to make adjustments not necessary to bring the United States into compliance with its WTO obligations.

Regarding the reference to WTO AB Decision China CVD, that decision involved an "as applied" challenge to the eight AD and CVD determinations at issue in that case, and the Department's implementation applied only to those eight AD and CVD determinations.[138] Neither the WTO's decision nor the implementation applies to this review. The Federal Circuit has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.[139]

**Comment 3** Countervailability of the Provision of Electricity for LTAR Program

**Departmental Note:**

The following comments from Armstrong, Fine Furniture, and Lizhong, were submitted prior to the Federal Circuit's ruling in *Fine Furniture CAFC*,[140] which mooted their arguments that the Department could not apply AFA to companies that responded to the Department's questionnaires because the GOC did not provide information with respect to the provision of electricity for LTAR. The Federal Circuit held that the Department could, in fact, make such a determination. Notwithstanding the Federal Circuit's ruling in *Fine Furniture CAFC*, we addressed each interested party's comments below.

**Interested Party Comments:**

Fine Furniture submits that in the *Preliminary Results*, the Department did not make a finding of specificity regarding to the GOC's provision of electricity for LTAR, rather relying on its own finding of specificity in the *Investigation Final*, wherein, Fine Furniture contends, there was no analysis of whether the electricity program is a regionally specific program, an industry-specific program, or any other categorization of specificity. Furthermore, Fine Furniture avers that there was no analysis in the *Preliminary Results* that supports the finding of preferential electricity

[136] *See*, *e.g.*, 158 Cong. Rec. H1167 (daily ed. March 6, 2012) (statement of Representative Camp).
[137] *See* 19 U.S.C. §§3533 and 3538.
[138] *See Implementation of Determinations Under Section 129 of the Uruguay Rounds Agreement Act: Certain New Pneumatic Off the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 77 FR 52683 (August 30, 2012).
[139] *See Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-49 (CAFC 2005) and *NSK Ltd. v. United States*, 510 F.3d 1375, 1380 (CAFC 2007). *See also* Uruguay Round Agreements Act, Pub L. No. 103-465, 108 Stat. 4809 (1994).
[140] *Fine Furniture (Shanghai) Limited v. United States*, 748 F.3d 1365, 1373 (Fed. Cir. 2014) (*Fine Furniture CAFC*).

rates provided by the GOC in the regions in which Fine Furniture or its cross-owned companies are located. Fine Furniture argues that the Department's selection of electricity benchmarks in the *Preliminary Results* is therefore unlawful because they are derived from AFA, based on an incomplete set of electricity rates, and sourced from inconsistent provinces.[141]

In selecting the benchmark to measure benefits from the "Provision of Electricity for LTAR" program, Fine Furniture states that the Department "selected the highest non-seasonal provincial rates in the PRC for each user category and voltage class of the respondents."[142] Fine Furniture indicates that it is clear from the Department's reliance on the *Investigation Final* that the Department is using AFA to select the electricity benchmarks in this review, despite Fine Furniture's cooperation. Fine Furniture notes that the Department asked no follow up questions regarding its use of the electricity program, and, along with Armstrong, submits that according to section 776(a)(2) of the Act, the Department may only rely on facts available to calculate a countervailing duty levied against a party, if that party:

> (A) withholds information that has been requested by the administering authority or the Commission under this subtitle; (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and of section 1677m of this title; (C) significantly impedes a proceeding under this subtitle, or (D) provides such information buy the information cannot be verified as provided in section 1677m (i) of this title.

Armstrong, Fine Furniture, and Lizhong (collectively, Respondents) claim that the Department made no finding that Respondents or any of their cross-owned companies withheld or failed to provide information on time or in the requested format, impeded the review or provided information that could not be verified. Furthermore, Respondents state that the Department provided no evidence that the companies failed to cooperate by not acting to the best of their ability to comply with a request for information, as is required for the Department to use adverse inferences against a party.[143] As such, Respondents conclude that, without such a finding, the Department may not use facts available or adverse inferences to calculate its electricity subsidy rate.

Fine Furniture states that, by citing to the *Investigation Final*, the Department made a finding pertaining only to the GOC that "the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information as it did not respond by the deadline dates, nor did it explain why it was unable to provide the requested information."[144] However, Fine Furniture argues that a finding against the GOC is not grounds for penalties against Fine

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[141] In support of this argument, Fine Furniture references: *Royal Thai Government v. United States*, 534 F. Supp. 2d. 1373, 1376 (CIT 2008) (*Royal Thai*); *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370 (CAFC 2013) (*Yangzhou*).

[142] *See Preliminary Results*, and accompanying DM at 14; *see also* Electricity Rate Benchmark Memorandum at 1.

[143] In support of this argument, Respondents reference: *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333 (CAFC 2011) (*Zhejiang Dunan*); *Nippon Steel Corporation v. United States*, 337 F.3d 1373 (CAFC 2003) (*Nippon Steel*); *East Sea Seafoods LLC v. United States*, 703 F. Supp. 2d 1336, 1354 n.15 (CIT 2010) (*East Seafoods*); and *Certain Frozen Warmwater Shrimp From Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 50933 (August 29, 2008), and accompanying IDM at Comment 13.

[144] *See Preliminary Results*, and accompanying DM at 14.

Furniture, citing *Tianjin* wherein the CIT stated that it "cannot accept a construction of {section 776(b) of the Act} under which the party who suffers the effect of the adverse inference is not the party who failed to cooperate."[145] Accordingly, Respondents assert that by using AFA, in its financial contribution, specificity and benefit determinations, the Department caused the companies to suffer the effect of the adverse inference in the form of a subsidy rate that was purposely higher than it would have been without the use of AFA. For these final results, Respondents maintain that the Department must not use AFA under the confines of section 776(a) of the Act.

Fine Furniture and Armstrong point to *SKF*,[146] in which the CIT addressed the issue of whether the Department could apply adverse inferences to a cooperating respondent. Armstrong explains that in *SKF*, the Department applied adverse inferences to a respondent after an unaffiliated supplier refused to provide cost of production data requested by the Department during an administrative review. Armstrong notes that in *SKF*, the CIT concluded that "allowing an interested party's failure to cooperate to affect adversely the … margin of another interested party who is a party to the proceeding, about whom Commerce did not make a finding of non-cooperation, violates the Department's obligation to treat fairly every participant in an administrative proceeding. As is any government agency, Commerce is under a duty to accord fairness to the parties that appear before it."[147]

Armstrong contends that the Department abused its discretion by applying adverse inferences to the company based solely on a conclusion that (1) the GOC failed to provide requested information in the original investigation; (2) the GOC provided no additional information in the current administrative review.[148] Armstrong asserts that, based on these findings, the Department applied an electricity benchmark that was the "highest non-seasonal provincial rate(s) in the PRC for each user category…"[149] The company notes, however, that the Department neglected to find that Armstrong failed to cooperate during the instant review.

Petitioner argues that the Department used the correct benchmark to calculate subsidies provided under electricity for LTAR program, referencing an appeal brought by Fine Furniture before the CIT as a result of the underlying investigation. Petitioner claims that the CIT determined that "because Commerce's decision to apply AFA in calculating the LTAR subsidy is consistent with the statute and regulation, and because the court does not substitute or displace Commerce's judgment with regard to the weight or credibility of the evidence, the use of AFA in setting the LTAR subsidy is affirmed."[150] Petitioner therefore concludes that since no further information was presented by the GOC in this proceeding, there is no basis for the Department to alter its methodology.

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[145] *See Tianjin Magnesium Int'l Co., Ltd. v. United States*, Slip. Op 2011-17 at 9, 2011 Ct. Intl. Trade LEXIS 16 (August 10, 2011) (*Tianjin*).
[146] *See SKF USA Inc. v. United States*, 675 F. Supp. 2d 1264 (CIT 2009) (*SKF*).
[147] *See SKF*, 675 F. Supp. 2d at 1276; *see also Rhone Poulenc, Inc. v United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).
[148] *See Preliminary Results* and accompanying DM at 4.
[149] *Id.*
[150] *See Fine Furniture (Shanghai) Limited v. United States*, 865 F. Supp. 2d. 1254, 1263 (CIT 2012) (*Fine Furniture CIT*).

Respondents argue that the Department should use an average of all electricity rates within the same user category and voltage class as a benchmark rather than the highest rates on the record to remove adverse inferences, in that if the 2009 rates were the rates in effect during the POR, then the Department should use an average of the relevant 2009 rates as the "neutral" benchmark. In support of this, Fine Furniture notes that in *Tianjin*, the CIT remanded to the Department to "either find that TMI failed to cooperate to the best of its ability and assign it an AFA rate or calculate a neutral facts available rate for TMI."[151] In doing so, Respondents conclude that this "neutral" benchmark would not penalize a cooperating respondent, for failures by the GOC.[152]

Petitioner claims that Respondents' argument that the Department should use "neutral" rather than "adverse" facts available for calculating the amount of subsidies under this program is incorrect. According to Petitioner, Respondents' reliance on *Tianjin* is misplaced because, in that case, the court remanded an AD investigation to the Department to "either find that TMI failed to cooperate to the best of its ability and assign it an AFA rate, or calculate a neutral facts available rate for TMI."[153] Petitioner submits that it agrees with Fine Furniture that the "Department acts within its discretion under {section 776(a) of the Act} when it applies neutral facts available."[154] However, Petitioner contends that CVD proceedings require "both the respondent and the foreign government to submit factual information."[155] Therefore, Petitioner submits that the Department should not alter its benchmark, because the GOC did not provide any new information, and the CIT has ruled that the application of AFA in the underlying investigation was proper.

**Department's Position:**

Respondents' characterization of the *Preliminary Results* is inaccurate. For clarity, in the *Investigation Final*, we applied facts available for the "Electricity for LTAR" program because the GOC did not provide a complete response to the Department's January 3, 2011 questionnaire regarding the alleged program.[156] Specifically, the Department requested that the GOC provide the original provincial price proposals for 2006 and 2008 for each province in which a mandatory respondent or any reported "cross-owned" company is located.[157] Because the

[151] *See Tianjin*, Slip. Op 2011-17 at 7.
[152] In support of this argument, Respondents reference: *Huvis Corp. v. United States*, 570 F.3d 1347, 1352 (Fed. Cir. 2009); *Ad Hoc Shrimp Trade Action Comm. v. United States*, 675 F. Supp. 2d 1287, 1305-06 (CIT 2009); *Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), accompanying IDM at Comment 6; *Tianjin*, Ct. No. 09-00535, Final Results of Redetermination Pursuant to Court Remand, ECF No. 63 (May 11, 2011) (CIT 2011), available at http://enforcement.trade.gov/remands/index.html; *Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70267 (November 25, 2013) and accompanying Decision Memorandum (DM) at 6; and the *SAA*.
[153] *See* FFCB at 14-15.
[154] *Id.*, at 14.
[155] *See Fine Furniture CIT*, 865 F. Supp. 2d at 1259, citing to *Essar Steel v. United States*, 721 F Supp. 2d, 1285, 1297 (2010) (*Essar Steel*).
[156] *See Investigation Final*, and accompanying IDM at "GOC – Electricity" at 2-3.
[157] *Id*.

requested price proposals were part of the GOC's electricity price adjustment process,[158] the documents were necessary for the Department's analysis of the program. In the GOC's initial questionnaire response in the *Investigation Final*, the GOC stated that the proposals were drafted by the provincial governments and submitted to the NDRC.[159] The GOC further stated it was unable to provide the internal working documents from the NDRC with its response. On February 18, 2011, the Department issued a supplemental questionnaire and reiterated its request for this information. In response, the GOC stated, the "GOC maintains its position that the requested original provincial proposals are internal working documents for NDRC's review and cannot be provided."[160]

Consequently, we determined that the GOC withheld necessary information that was requested of it and, thus, we relied on "facts available" under sections 776(a)(1), 776(a)(2)(A), and 776(a)(2)(B) of the Act. Moreover, we determined that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information as it did not respond by the deadline dates, nor did it explain to the Department's satisfaction why it was unable to provide the requested information. Consequently, we applied an adverse inference in the application of facts available under section 776(b) of the Act. In drawing this adverse inference, we found that the GOC's provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act and was 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 under sections 776(b)(2) and 776(b)(4) of the Act. The benchmark rates we selected were derived from information on the record of the *Investigation Final* and were the highest applicable electricity rates for the user categories reported by the mandatory respondents.[161]

Fine Furniture notes that the Department did not explain in the *Investigation Final* the basis on which the Department found this subsidy program to be specific and points out that the Department did not provide clarity on this point in the *Preliminary Results*. We agree that the Department referred generally to the specificity provision in the statute in the *Investigation Final*, primarily because the GOC failed to provide any information with regard to this program in response to the Department's questionnaires. However, as noted above, the petition in the investigation specifically contained information that the subsidy program was regionally specific, in accordance with section 771(5A)(D)(iv) of the Act. Thus, the facts otherwise available on the administrative record of the investigation supported an adverse inference that the subsidy program was limited to a given region. This is consistent with the Department's determination in *Wire Strand from the PRC*[162] that this subsidy program is regionally specific.[163]

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[158] *See, e.g., Certain Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010), and accompanying IDM at Comment 8, wherein the Department quoted the GOC as reporting that these price proposals "are part of the price setting process within China for electricity."
[159] *See Investigation Final*, and accompanying IDM at "GOC – Electricity" at 2-3.
[160] *Id*.
[161] *Id*.
[162] *See Wire Strand from the PRC*, and accompanying IDM at "Federal Provision of Electricity for LTAR" at 9.
[163] *Id.*, at 9 and Comment L "Federal Provision of Electricity for LTAR," at 33.

We continue to rely on our findings in the *Investigation Final* that "the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act."[164] For purposes of these final results, we also continue to find that the subsidy program is specific, but as clarification we determine that the GOC's provision of electricity is "limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy," in accordance with section 771(5A)(D)(iv) of the Act.

This result was reached based on actions of the GOC in this review, while relying on our prior finding that the program was countervailable in the *Investigation Final*. Specifically, in this administrative review, we the following in our initial questionnaire of June 17, 2013, and requested that the GOC respond:

> The Department found this program to be countervailable in the investigation.
>
> We do not intend to reevaluate the countervailability of this program. *However, if there were any changes to the operation of the program during the POR, please explain the changes and answer all relevant questions in the* ***Electricity Appendix***.
>
> Also, please provide all electricity rate schedules in effect during the POR for all provinces and municipalities within the PRC. (emphasis added)

In response to our request, the GOC stated:

> The GOC reiterates that there is no program as described above, or that {it} was 'investigated' in the original investigation. For the purposes of showing cooperation, the GOC confirms that there were no changes to the operation of the 'program' during the POR. The GOC hereby provides all electricity rate schedules in effect during the POR for all provinces and municipalities at Exhibits G-1 through G-3. Specifically, Exhibit G-1 provides that schedules for all provinces and municipalities that were in effect from 2009 through June 2011, at which time there were changes implemented for some of the provinces and municipalities. Exhibit G-2 provides the schedules for all provinces and municipalities including those that were subject to rate changes effective in June 2011 through November 2011. And Exhibit G-3 provides the schedules for all provinces and municipalities effective in December 2011.[165]

Based on the above response, in our first supplemental questionnaire to the GOC of September 6, 2013, we stated:

> We note that the GOC did not provide a **complete** response to the **Electricity Appendix** as included in the Department's initial questionnaire of June 17, 2013. The GOC did provide all electricity rate schedules in effect during the POR for all provinces and municipalities within the PRC. Please now respond to the rest of the **Electricity Appendix** as included in the Department's initial questionnaire of June 17, 2013. (emphasis in original)

[164] *See Investigation Final*, and accompanying IDM at "GOC – Electricity" at 3.
[165] *See* GQR at 4-5.

To this, the GOC stated:

> The GOC clarifies that there were no material changes during the POR from both factual and legal points of view to the operation of the alleged "program" as was "determined" in the investigation by the Department because no such "program" exists. The GOC strongly opposes investigation of this alleged "program".[166]

Thus, the only information submitted by the GOC in this proceeding were the electricity rate schedules in Exhibits G-1 through G-3 of the GQR.

In the instant review, as shown above, the GOC could have provided the provincial electricity information it failed to provide in the *Investigation Final*, but it elected not to do so. Moreover, the GOC clarified that there were "no material changes during the POR" regarding the program. Accordingly, in our *Preliminary Results*, we based our finding of countervailability on the determination made by the Department in the *Investigation Final* together with the statements made by the GOC in this review. In the *Investigation Final*, the Department concluded that the use of AFA was warranted. The GOC provided no evidence to contradict that determination, and has elected to not provide the provincial price proposals as requested in the Electricity Appendix. Accordingly, we continue to find facts available based on an adverse inference.

In response to Fine Furniture's arguments that the Department should not continue to apply an adverse inference because Fine Furniture cannot control the GOC and its responses, the Federal Circuit addressed this issue in *Fine Furniture CAFC*:[167]

> Fine Furniture is a company within the country of China, benefitting directly from subsidies the {GOC} may be providing, even if not intending to use such subsidy for anticompetitive purposes. Therefore, a remedy that collaterally reaches Fine Furniture has the potential to encourage the {GOC} to cooperate so as not to hurt its overall industry. Unlike in *SKF*, Commerce in this case did not choose the adverse rate to punish the cooperating plaintiff, but rather to provide a remedy for the {GOC's} failure to cooperate. (citations omitted)

Additionally, the Federal Circuit noted that:

> {t}he purpose of {section 776}(b), according to the {*SAA*},[168] which 'shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the URAA,' 19 U.S.C. 3512(d), is to encourage future cooperation by 'ensur{ing} that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.' Additionally, by authorizing Commerce to provide a reasonable estimate based on the best facts available, accompanied by a reasonable adverse inference used in place of missing

[166] *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) at 7.
[167] *See Fine Furniture CAFC*, 748 F.3d 1365, 1373 (referencing *SKF*).
[168] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994) (*SAA*).

information, this statute provides a mechanism for remedying sales at less than fair value to aid in the protection of U.S. industry…[169]

Thus, we disagree with Respondents' arguments, as well as its contention that *Tianjin* and *SKF* are applicable, as the Federal Circuit's ruling in *Fine Furniture CAFC* affirms our approach as employed in the *Preliminary Results*.

Accordingly, we compared the highest electricity rates for the appropriate user category to respondents' electricity prices absent any evidence that these rates are not applicable.[170] Beginning in *Wire Strand from the PRC*,[171] we applied the highest transmitter capacity rate (*i.e.*, Basic Electricity Tariff and/or Maximum Demand Tariff) and highest electricity rates on record (*i.e.*, three-tiered or consolidated rates dependent on the respondent's user category) as a basis for comparison for this program. Moreover, we relied on the highest rates for both the transmitter capacity and electricity rates, regardless of province, as a benchmark for comparison.[172] Therefore, we continue to use the highest electricity rates in each respective tariff category as our benchmark, comparing these rates to those the respective respondent companies paid during 2011, thereby using the actual usage information supplied by the respondent companies, with the adverse inference relating solely to the GOC for its continued failure to provide sufficient answers to the Department's Electricity Appendix.

**Comment 4** Selection of Benchmarks for the Electricity for LTAR Program

*A. Selection of Overall Benchmarks and Selection of Fine Furniture's Benchmark*

Fine Furniture disputes certain benchmarks used by the Department in its benefit calculation for the Electricity for LTAR program. Specifically, Fine Furniture contends that the selection of electricity benchmarks from different provinces (*e.g.*, using the highest tiered rates from Zhejiang with a transformer capacity rate from Guizhou province to compare to its tiered rates and transformer capacity in Shanghai) to apply to the same electricity charges is inconsistent with the purpose and function of benchmarks within the CVD law. Fine Furniture also contests the Department's reliance on the benchmarks from *Wind Towers from the PRC*,[173] alleging that without the complete set of electricity rates on the record, it cannot present arguments in favor of another benchmark based on the 2009 schedules.

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[169] *Fine Furniture CAFC*, 748 F.3d at 1373.

[170] *See, e.g., Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013) (*Hardwood Plywood from the PRC*), and accompanying IDM at "Provision of Electricity for LTAR;" *Drill Pipe From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 47275 (August 5, 2013) (*Drill Pipe First Administrative Review*), and accompanying IDM at "Provision of Electricity for LTAR;" *Coated Paper from the PRC*, and accompanying IDM at "Provision of Electricity."

[171] *See Wire Strand from the PRC*, and accompanying IDM at "Federal Provision of Electricity for LTAR."

[172] *Id*.; *see also Hardwood Plywood from the PRC*, and accompanying IDM at "Provision of Electricity for LTAR;" *Drill Pipe First Administrative Review*, and accompanying IDM at "Provision of Electricity for LTAR;" *Coated Paper from the PRC*, and accompanying IDM at "Provision of Electricity."

[173] *See Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from the PRC*), and accompanying IDM. We note that we placed these electricity rate schedules on the record of the instant review. *See* Electricity Rate Benchmark Memorandum at Attachments 1 and 2.

Fine Furniture argues that the purpose of the benchmark is to determine what a "normal" company would pay absent subsidies, noting that the Department's regulations stipulate that benchmarks should represent the "price for the good or service resulting from actual transactions in the country in question" and that "such a price could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions."[174] Fine Furniture alleges that the benchmarks used in the *Preliminary Results* run contrary to the description of a benchmark in the Department's regulations because the "normal" electricity rates applied to Fine Furniture are a combination of rates from different provinces. Accordingly, Fine Furniture contends that, because electricity rates in the PRC are set based on the province in which the company is located, it is impossible for a company to ever be charged basic electricity tariff fees by one province and three-part electricity usage fees by another province.[175]

Moreover, Fine Furniture notes that, in litigation involving the *Investigation Final*, the Department recognized that the basic electricity tariff is not a separate subsidy program, but rather part of the larger electricity program.[176] Fine Furniture therefore contends that because the basic electricity tariff and the three-part electricity rates are part of the same electricity program and are both part of a single monthly payment made by Fine Furniture to its electricity provider, its rates should be compared to benchmarks derived from the same province.

Lizhong claims that the benchmarks employed in the *Preliminary Results* are not in accordance with the Department's regulations and practice.[177] That is, the Department's benchmarks are not "comparable" to the "commercial activity" experienced by Lizhong and Youyou. Therefore, Lizhong requests that the Department should revise its calculations for these final results, as follows.

*B. Selection of Benchmark for Lizhong*

Lizhong states that in the *Preliminary Results*, the Department selected the "1-10 {kilovolt (kv)}" electricity rates for large industrial users from Zhejiang province for the "peak, normal, and valley" time frames. Moreover, Lizhong alleges that the Zhejiang province "peak" usage is actually an even higher, "critical peak" rate, covering only two hours of the day. Thus, Lizhong avers that the Zhejiang province "peak" and is not comparable to "peak" charges in other provinces, including Shanghai where Lizhong is located.

Lizhong bases its contention on a footnote contained within an attachment to the Electricity Rate Benchmark Memorandum we placed on the record concomitant to the *Preliminary Results*.[178] Lizhong asserts that, as reported by the GOC in this review, Shanghai's "peak" period covers many more hours of the day than Zhejiang's "critical peak" period.[179] Lizhong contends that a large amount of Lizhong's electricity usage is in the "peak" period, and it is not reasonable to

[174] *See* 19 CFR 351.511(a)(2)(i).
[175] In support of this argument, Fine Furniture references: *Royal Thai*, 534 F. Supp. 2d. at 1377; *Yangzhou*, 716 F.3d 1370.
[176] *See Fine Furniture CIT*, 865 F. Supp. 2d at 1265.
[177] *See e.g.*, 19 CFR 351.505(a)(2) and 19 CFR 351.511(a)(2)(ii).
[178] Electricity Rate Benchmark Memorandum at Attachment 2, page two, footnote 2.
[179] *See* GQR at Exhibit G-III, Appendix 2, at points 3,4,7, and 8.

find that Lizhong incurred such a large percentage of electricity costs in a two hour time frame. Lizhong therefore concludes that the Department should instead use the "normal" period electricity benchmark from Zhejiang province as the comparison benchmark for Lizhong's "peak" period electricity consumption.

*C. Selection of Benchmark for Youyou*

Next, Lizhong claims that the benchmark rate employed in its cross-owned affiliate's, Youyou, electricity benefit calculation is not comparable to Youyou's commercial activity. Lizhong explains that the Department selected the "Normal Industry and Commerce, 1-10 kv" rate under the "Normal" time category for Zhejiang province. However, Youyou operates under the "general business and industry" category with a voltage class of 1-10 kv electricity usage,[180] which includes usage rates for different time periods (*i.e.*, peak, normal, and valley), but on a consolidated basis.[181] Therefore, Lizhong claims that by selecting a benchmark that only covers the "normal" time frame, it failed to account for other time periods that may impact the overall price Youyou actually paid (which is a consolidated price comprised of peak, normal, and valley consumption). Lizhong argues that the Department should instead select a single, similarly "consolidated" benchmark that covers all time periods as a more accurate comparison to Youyou's electricity consumption charges. Specifically, Lizhong suggests that the Department use the 1-10kv usage category from Guizhou Province. According to Lizhong, this rate is more comparable as it "charges one consolidated electricity rate for all time categories."[182]

*D. Power Ratio Adjustment*

Finally, Lizhong states that the Department should adjust the benchmark it used for Lizhong for large industrial users to reflect the power ratio adjustment made to Lizhong's purchase since its electricity supplier adjusts it electricity charges according to Lizhong's consumption of reactive and active power.[183]

**Department's Position:**

*A. Selection of Overall Benchmarks and Selection of Fine Furniture's Benchmark*

As discussed in the *Investigation Final*, information the GOC submitted therein showed that the Shanghai Price Bureau of the National Development and Reform Commission mandated a merger of the industrial and commercial user categories in June 2008.[184] This information explained why after June 2008, the user categories for Shanghai were not consistent with those in other provinces such as Zhejiang, which continued to have separate categories for "Large Industrial Users" and "General Industrial and Commercial Electricity and Other Electricity" during the POR.[185] Because the GOC did not submit any information in this proceeding to call

[180] *Id*., at Exhibit 23.
[181] *See* L1SR at Exhibit 24.2, note 1.
[182] *See* Electricity Rate Benchmark Memorandum at Attachment 2.
[183] *See* L1SR at Exhibit 24.1.
[184] *See Investigation Final*, and accompanying IDM at 45.
[185] *Id*.

this finding into question, we continue to find that the "Large Industrial User" category provides the appropriate benchmark for calculating a benefit from Fine Furniture's purchases of electricity during the POR.

Regarding Fine Furniture's argument against using the rates as employed in *Wind Towers from the PRC*, we disagree. We are using the rates the Department placed on the record of *Wind Towers from the PRC* here because, as we discovered in *Wind Towers from the PRC*, the electricity schedules the GOC submitted in the GQR in this proceeding came into effect after our POR, in 2012. The rates we are using in this review were verified in *Wind Towers from the PRC* to have been in effect from late 2009 through the end of 2011, and, moreover, in placing these rate schedules on the record we stated clearly that they were the "highest provincial electricity rates" in the user rate categories corresponding to each respondent company's usage.[186] Thus, Fine Furniture was not prejudiced in its ability to comment or argue with respect to these benchmarks.

With regard to Fine Furniture's argument that benchmarks should be derived from a single province because all charges are part of the same program, we disagree. As discussed in Comment 3 above, due to the GOC's failure in the underlying investigation to provide any information about this subsidy program, the Department applied AFA in the *Investigation Final* in selecting Fine Furniture's benchmarks.[187]

For purposes of this administrative review, the GOC declined to provide any information on this subsidy program, including providing no response to the Department's Electricity Appendix. Accordingly, we continue to find that the use of an adverse inference in selecting the benchmark for calculating a benefit from this program is warranted, in accordance with sections 776(a) and (b) of the Act. As stated in the *SAA*:

> section 776(b) {of the Act} permits Commerce and the Commission to draw an adverse inference where a party has not cooperated in a proceeding. A party is uncooperative if it has not acted to the best of its ability to comply with requests for necessary information. Where a party has not cooperated, Commerce and the Commission may employ adverse inferences about the information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.

While the basic tariff and the tiered usage rates both appear in the same monthly payment, they represent two different components of the cost of providing the electricity, which require separate benchmarks in accordance with our benchmarking approach. If the Department selected the highest benchmark for the basic tariff from one province and, as Fine Furniture argues, then selected the tiered usage rates from that same province, if those tiered usage rates were low, then the GOC would benefit from its failure to respond. The same would be true if the tariff rate was low, while the tiered usage rates were high in the same province. Accordingly, to be assured that the GOC does not obtain a more favorable result by failing to cooperate, it is the Department's practice to determine a benchmark price from whichever province has the highest value for each

[186] *See* Electricity Rate Benchmark Memorandum at 1.
[187] *See Investigation Final* and accompanying IDM, "GOC – Electricity" at 2-3, and "Provision of Electricity for LTAR" at 13-14.

of these components and not to limit our selection only to the same province for both amounts. Thus, we selected the highest benchmark rates on the record for each.

*B. Selection of Benchmark for Lizhong*

While Lizhong claims that the "critical peak" rates for Zhejiang province are not comparable to the "peak" rates in Shanghai, we disagree. As in other cases in which we have examined the GOC's provision of electricity for LTAR,[188] the benchmarks on this record for Zhejiang province include three different electricity rates, a demand-based "valley, normal, and peak" pricing structure. In the instant review, the English translation of the Zhejiang province benchmark chart[189] uses the labels "peak, peak, and sharp" on one page and "valley, peak, sharp" on the other page as the headings for the three different time categories, and a reference that "Large industrial electricity, normal industrial &commercial electricity break downs to six periods, critical peak (19:00-21:00), peak (8:00-11:00,13:00-19:00; 21:00-22:00),valley (11:00-13:00, 22:00-8:00 of the following day)."[190] Based on past practice and our understanding of the PRC's multi-tiered electricity system, we consistently interpreted these labels, including slightly varied translations thereof, to be a three-tiered "valley, normal, and peak" pricing structure and selected the highest rate from the "sharp" category for Lizhong's "peak" electricity use.[191] Moreover, we note that apart from the reference to a "critical peak" period, there is no evidence on the record to demonstrate that this is a higher rate than "peak." Thus, it appears that Lizhong's arguments are a result of translation differences and do not impact the comparability of the benchmarks used in the calculations.

We disagree with Lizhong. We note that benchmarks need not be identical, but need to be "comparable."[192] We maintain that the benchmarks we selected are comparable to Lizhong's consumption in that they follow a three-tiered system with prices that increase during high-demand times and are the best available benchmarks on the record. The fact that the exact hours of the day and number of hours assigned to each period may not perfectly align, (although as we have noted, we are unsure about the hourly breakdown of certain benchmarks), does not render our benchmarks incomparable for these purposes. In addition, as explained above, in the *Investigation Final*, the Department determined that the GOC had not acted to the best of its ability, and therefore it was appropriate to determine a benchmark using AFA, in accordance with sections 776(a) and (b) of the Act.[193] No evidence on the current administrative record contradicts this determination. If we were to select the "normal" rate for Lizhong's "peak" consumption, the rate used by the Department would no longer be consistent with the adverse

[188] *See, e.g.*, *Hardwood Plywood from the PRC*, and accompanying IDM at "Provision of Electricity for LTAR;" *Drill Pipe First Administrative Review*, and accompanying IDM at "Provision of Electricity for LTAR;" *Wind Towers from the PRC*, and accompanying IDM at "Provision of Electricity for LTAR;" *Wire Strand from the PRC*, and accompanying IDM at "Federal Provision of Electricity for LTAR;" and *Coated Paper from the PRC*, and accompanying IDM at "Provision of Electricity."
[189] *See* Attachment 2 of the Electricity Benchmark Memorandum.
[190] We note that this is the only reference to time periods in the rate schedule for Zhejiang province. In addition, Lizhong did not provide any support to substantiate its claim that this "two hour" benchmark is unduly distortive.
[191] The "sharp" category rate was also used as the "peak" benchmark rate in *Wind Towers from the PRC*. As such, we recommend not adjusting or changing Lizhong's user rate category.
[192] *See* 19 CFR 351.511(2)(i).
[193] *See Investigation Final* and accompanying IDM, "GOC – Electricity" at 2-3.

inference applied in the *Investigation Final*. The "peak" or "sharp" category appears to be the highest price for the same usage category as Lizhong's peak usage. Accordingly, we are continuing to use the "sharp" rates as the benchmark for Lizhong's "peak" electricity consumption.

*C. Selection of Benchmark for Youyou*

We agree, in part, with Lizhong's argument that a "consolidated" benchmark could be comparable to Youyou's electricity consumption, but we do not agree with its assertion that we use prices from Guizhou province. The fact that the rates for "electricity for non-industry and ordinary industry" and "electricity for commerce" in Guizhou province match what Youyou paid is irrelevant to this analysis. The GOC provided no information on the record that contradicts the Department's determination in the *Investigation Final* with respect to the facts pertaining to this subsidy program or the necessity of selecting the highest benchmark prices on the record as benchmarks. Accordingly, we maintain our position that Zhejiang prices are appropriate in this instance. However, we amended our benchmark for Youyou for these final results by employing a simple average of the three tiered rates – "peak, normal, and valley – from Zhejiang Province as the benchmark, as it provides a more similar comparison to the "consolidated" pricing Youyou was charged during 2011.

*D. Power Ratio Adjustment*

We disagree with Lizhong's request that the Department adjust its benchmark to reflect the reactive power adjustment it reported, because doing so would be inconsistent with past practice.[194] Moreover, Lizhong's reference to *Steel Cylinders from the PRC* is misplaced,[195] as the statement regarding an "apples-to-apples" comparison to which Lizhong cites was made in a discussion regarding the inclusion of VAT and import duties in the benchmark for inputs other than electricity, where the components of the input's delivered price are fairly standardized and clear. That comparison is not germane to the electricity for LTAR program at issue here, where the GOC's initial and continued refusal to provide certain data regarding price determination precludes us from doing a full analysis. Thus, as we stated in *Wind Towers from the PRC*,[196] we will not include any adjustment fees or discounts in the benchmark because such adjustments are not appropriate given that the GOC failed to act to the best of its ability in providing to the Department the requested information concerning the provision of electricity in the PRC in the *Investigation Final* and has not provided information on the current record to call into question the Department's earlier AFA determination.

[194] *See, e.g., Wind Towers from the PRC*, and accompanying IDM at "Provision of Electricity for LTAR."
[195] *See High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*Steel Cylinders from the PRC*).
[196] *See Wind Towers from the PRC*, and accompanying IDM at "Provision of Electricity for LTAR."

**Comment 5** Whether the Department Should Adjust Calculated Benefits and Apportion Those Benefits to the POR

Fine Furniture submits that in calculating a countervailable subsidy rate, the Department's regulations require that the numerator and the denominator reflect the same period.[197] Fine Furniture states that 19 CFR 351.525(a) prescribes a subsidy rate to be calculated "by dividing the amount of the benefit allocated to the period of investigation or review by the sales value during the same period of the product or products to which the Secretary attributes the subsidy under paragraph (b) of this section." However, Fine Furniture contends that in the *Preliminary Results*, the Department attributed a full year's benefit to a less than nine-month POR for Fine Furniture's benefits received under the "VAT and Tariff Exemptions on Imported Equipment" and "Income Tax Subsidies for FIEs Based on Geographic Location" programs, as well as attributing a benefit from the full month of April for the "Provision of Electricity for LTAR" program to a POR that reflects only a portion of April 2011. Fine Furniture concludes that to remedy and account for this shorter than normal POR, the Department must adjust its calculation of benefits from all three of these programs for these final results.

Fine Furniture avers that the Department can remedy its errors in calculating Fine Furniture's benefits received under the "VAT and Tariff Exemptions on Imported Equipment" and "Income Tax Subsidies for FIEs Based on Geographic Location" programs through a mathematical adjustment by truncating the benefit to comport with the total number of days reflected in the POR – 73.97 percent of the total number of days in 2011. Fine Furniture suggests that to adjust the benefit to reflect the same period, for the allocable VAT and tariff exemptions under the "VAT and Tariff Exemptions on Imported Equipment" program, the Department should multiply the total benefit for 2002, 2003, 2004, and 2005 allocated to the POR by 73.97 percent, as well as adjusting the tax benefits received under "Income Tax Subsidies for FIEs Based on Geographic Location" program by 73.97 percent. Regarding the "Provision of Electricity for LTAR" program, Fine Furniture asserts that the Department failed to account for the five days in April 2011, that were outside the POR, and that a similar mathematical adjustment as discussed above can remedy this error. If these mathematical adjustments are not made, Fine Furniture concludes that the resulting subsidy percentages would continue to be inflated.

In response to the Department's third supplemental questionnaire to the FF Companies, Fine Furniture again submits that the Department's regulations and practice require that the numerator (benefit) and denominator (sales value) reflect the same period.[198] Moreover, Fine Furniture contends that the Department should use 2011 sales data from the FF3SR in the calculation of Fine Furniture's subsidy rate for the "Income Tax Subsidies for Foreign-Invested Enterprises Based on Geographic Location" and the "Value Added Tax and Tariff Exemptions on Imported Equipment" programs, and should use POR usage and sales data for the "Provision of Electricity for Less than Adequate Remuneration" program. In support of this argument, Fine Furniture states that since both the income tax program and the VAT/tariff program represent subsidies received by Fine Furniture are broadly applicable to the entire year, as the benefit was granted

[197] *See* FFCB at 20-24, citing *Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 62 FR 32297, 32302 (June 13, 1997); *see also Mannesmann-Sumerbank Bom Endustrisi T.A.S. v. United States*, 86 F. Supp. 2d 1266, 1277 (CIT 1999).
[198] *See* 19 CFR 351.525(a).

once and applied equally to Fine Furniture's sales activity over the entirety of 2011. However, Fine Furniture contends that unlike these two programs, Fine Furniture uses electricity in different amounts depending on the particular month of the year and any benefit therefrom varies based on the actual consumption of electricity within each different month.

Fine Furniture submits that the benefit under the electricity program is higher during months when the FF Companies use more electricity and lower when the FF Companies use less electricity. Because of this, Fine Furniture asserts, the Department should not calculate the program benefit by dividing the 2011 benefit by the 2011 sales, as it would factor in the electricity benefit gained in January, February, and March 2011, which are not part of the POR. Additionally, Fine Furniture asserts that these three winter months use more electricity than "average," and factoring in electricity usage for a season that is not part of the POR would inflate the benefit received by Fine Furniture, contrary to the Department's obligation to calculate countervailing duties as accurately as possible. Fine Furniture concludes that where a program's usage fluctuates monthly, and the Department has data on a monthly basis, the most accurate calculation is for the Department to use POR-specific benefit and sales data.[199]

**Department's Position:**

We agree with Fine Furniture that the method under which we calculated its subsidy rates in the *Preliminary Results* was inconsistent with the Department's regulations and past practice, but disagree with its recommendation from its briefs. Specifically, we attributed a full year's benefit to a less than nine-month POR for Fine Furniture's allocated benefits received under the "VAT and Tariff Exemptions on Imported Equipment" and 2011 benefits received under "Income Tax Subsidies for FIEs Based on Geographic Location" programs. Additionally, we attributed a benefit from the full month of April, 2011, for the "Provision of Electricity for LTAR" program to a POR that reflects only a portion of April, 2011. While we were correct in using the benefits received in 2011 (or allocated to 2011) under the "VAT and Tariff Exemptions on Imported Equipment" and "Income Tax Subsidies for FIEs Based on Geographic Location" programs, we did not subsequently attribute the benefit to the corresponding calendar year. Additionally, we did not do the same for the electricity for LTAR program, which was inconsistent with our practice in calculating benefits for LTAR programs.[200] We therefore modify our calculations to be consistent with our regulations and practice.

After the *Preliminary Results*, we sought further information from Fine Furniture to ensure that any calculations conducted for these final results were based on the entire calendar years' worth of data.[201] This approach is consistent with the provisions of 19 CFR 351.509(c), under which the Department will normally allocate the benefit from a tax exemption to the year in which the benefit is considered to have been received. In *PET Film First Administrative Review*, we stated the following:

[199] Fine Furniture also avers that the Department must make a slight downward adjustment to the benefit for April 2011 to account for the five days in April that were outside of the POR.
[200] *See, e.g., Citric Acid First Administrative Review*, 76 FR at 77206 – 77208, and accompanying IDM at "Provision of Sulfuric Acid for LTAR" at 19-20.
[201] *See* FF3SR.

> {s}ubsidies provided by a government are sometimes provided only once a year, such as tax breaks, provided at only certain times, or provided unevenly during a year. Accordingly, the Department's regulations allocate most types of subsidies over a 12-month period. *See* 19 CFR 351.504 and 19 CFR 351.524(d)(2).[202]

The POR in *PET Film First Administrative Review* was October 22, 2001, through December 31, 2002, and the respondent received a tax exemption in 2001.[203] Regarding the benefit from this exemption, we stated the following:

> Pursuant to 19 CFR 351.509(b), the Department will normally consider a tax benefit as having been received on the date on which the firm filed its tax return. Further, 19 CFR 351.509(c) provides that the Department will normally allocate the benefit of a tax exemption to the year in which the benefit is considered to have been received. As explained in Comment 1 above, the Department is basing the POR on calendar years. Therefore, the Department allocated the amount of benefits from tax returns filed in 2001 to calendar year 2001 and allocated the amount of benefits from tax returns filed in 2002 to calendar year 2002.[204]

Fine Furniture's contention is similar to that of *PET Film First Administrative Review* case. Fine Furniture received countervailable benefits under two programs during the POR, and had benefits from another program which allocated to the POR. Under 19 CFR 351.509(c), Fine Furniture received the benefit from the tax exemption on the date in 2011 when it filed its 2010 annual tax return. As we stated in *PET Film First Administrative Review*, however, the Department's regulations allocate most types of subsidies, including tax programs, over a 12-month period. Therefore, in *PET Film First Administrative Review*, we allocated the benefit from the respondent's tax return filed in 2001 to the calendar year 2001, even though the POR was not the entire calendar year.

Consistent with *PET Film First Administrative Review*, we find that it is appropriate to allocate the benefit from countervailable subsidies Fine Furniture received in 2011 over the calendar year 2011, rather than making an adjustment for the less-than-full-year POR. In addition, 19 CFR 351.512(c) states that in the case of the provision of a good or service, the Secretary will normally allocate the benefit to the *year* (emphasis added) in which the benefit is considered to have been received. By doing this, our numerator and denominator match, and our calculations meet the requirements of 19 CFR 351.525(a).

Accordingly, to determine Fine Furniture's subsidy rate for these final results, we have divided the full amount of the benefit for both the "Income Tax Subsidies for FIEs Based on Geographic Location" and "Provision of Electricity for LTAR" by Fine Furniture's 2011 calendar year sales, and divided the allocated benefit received under the "VAT and Tariff Exemptions on Imported Equipment" program by Fine Furniture's 2011 calendar year sales. As this fulfills the

[202] *See PET Film First Administrative Review*, and accompanying IDM at Comment 1.
[203] *Id.*, and accompanying IDM at Comment 2.
[204] *Id*.

requirement of 19 CFR 351.525(a) and matches our past practice, we updated both Armstrong and Fine Furniture's calculations.[205]

**Comment 6** Correcting Typographical Errors in Non-Selected Company Names

As mentioned above, Dongtai, Hunchun, and Samling (collectively, the Requestors), producers/exporters of the subject merchandise from the PRC, request that the Department correct what they characterize as certain typographical errors made in the *Preliminary Results*. Specifically, the Requestors specifically request that the Department change the following non-selected company names, as listed in the *Preliminary Results*:[206] "Dontai Fuan Universal Dynamics, LLC" to be "Dongtai Fuan Universal Dynamics LLC";[207] "Hunchun Forest Wolf Industry Co., Ltd." to be "Hunchun Forest Wolf Wooden Industry Co., Ltd.";[208] and "Sampling Elegant Living Trading (Labuan) Limited" to be "Samling Elegant Living Trading (Labuan) Limited".[209]

In support of its request, Dongtai submits that in the *Investigation Final*, "Dongtai Fuan Universal Dynamics LLC" was *not* listed as a company that failed to respond to the Department's quantity and value questionnaire (Q&V), stating that it filed a Q&V response with the Department on December 16, 2010.[210] As such, Dongtai argues that the intent to name Dongtai in this review was based on the fact that this company participated in the original investigation and the named company contains a typographical error as a result of a misspelling of Dongtai's name in Petitioner's request for review.[211] Accordingly, Dongtai requests that the Department correct Dongtai's name for these final results to avoid any confusion going forward.[212]

Similarly, in support of its request, Hunchun submits that the error in the *Preliminary Results* stems from Petitioner's request for review, wherein it purports that Petitioner relied on the spelling of Hunchun as listed on the cover letter to the December 16, 2010, Q&V response Hunchun submitted to the Department, wherein Hunchun inadvertently left the word "Wooden" out of the company's name.[213] As was the case with Dongtai, Hunchun avers that "Hunchun Forest Wolf Wooden Industry Co., Ltd." was *not* listed as a company that failed to respond to the Department's Q&V, thereby signaling that the Department was aware that the two spellings of the company were one in the same.[214] Thus, for these final results, Hunchun requests that the Department add the word "Wooden" to Hunchun's name as listed in the *Preliminary Results*.

[205] *See* Armstrong Calculation Memorandum and Fine Furniture Calculation Memorandum.
[206] *See Preliminary Results*, 79 FR at 4331 - 4332.
[207] *See* Request for Correction at 2.
[208] *Id*., at 2-3.
[209] *See* Samling Request at 2.
[210] *See* Request for Correction at 2.
[211] *Id*.
[212] *Id*.
[213] *Id*.
[214] *Id*., at 2-3.

In support of its request, Samling simply states that "there is no 'p' in the name 'Samling' and this error should be corrected in the Final Results to refer to the company's actual name: Samling Elegant Living Trading (Labuan) Limited."[215]

No party to this proceeding, including Petitioner, objected to these above-discussed requests.[216]

**Department's Position:**

We agree with the Requestors' respective requests. Accordingly, we amended in the accompanying *Federal Register* the names of the companies that were incorrectly listed in the *Preliminary Results.*[217]

## VIII. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final results in the *Federal Register*.

Agree ✓ Disagree _____

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

28 July 2014
Date

[215] *See* Samling Request at 2.
[216] *See* ACB, FFCB, LCB, and PRB.
[217] *See Preliminary Results*, 79 FR at 4331 - 4332.