C-570-944
Administrative Review
POR: 1/1/2012 – 12/31/2012
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August 25, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

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Summary

The Department of Commerce (Department) is conducting an administrative review of the countervailing duty (CVD) order on certain oil country tubular goods (OCTG) from the People's Republic of China (PRC). The period of review (POR) is January 1, 2012, through December 31, 2012. We find that Wuxi Seamless Oil Pipe Co., Ltd. (WSP) and Jiangsu Chengde Steel Tube Share Co., Ltd. (Jiangsu Chengde) received countervailable subsidies during the POR. The Petitioner is United States Steel Corporation (U.S. Steel).

The "Subsidies Valuation Information" and "Analysis of Programs" sections below describe the subsidy programs and the methodologies used to calculate benefits from the programs under review. We have analyzed the comments submitted by parties in the case and rebuttal briefs in the "Analysis of Comments" section below. This section also contains the Department's responses to the issues raised in the briefs. We recommend that you approve the positions in this memorandum.

Background

The Department issued its *Preliminary Results* for this administrative review on February 18, 2014.[1] After we issued our post-preliminary analysis on July 15, 2014,[2] we received affirmative

[1] *See Certain Oil Country Tubular Goods from the People's Republic of China: Partial Rescission and Preliminary Results of Countervailing Duty Administrative Review; 2012*, 79 FR 10475 (February 25, 2014) (*Preliminary Results*).

comments from WSP and the Government of the PRC (GOC) on July 23, 2014.[3] We received rebuttal comments from U.S. Steel on July 29, 2014.[4] On August 1, 2014, we conducted a hearing in this proceeding, which was attended by counsel for U.S. Steel, WSP, and the GOC.[5]

Comments Received

The following is a complete list of the issues in this administrative review for which we received affirmative and rebuttal comments from parties:

A. Application of the CVD Law

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

B. New Subsidy Allegation Programs

Comment 3: Application of AFA for WSP's Failure to Respond to Questionnaires Regarding New Subsidy Allegation Programs and Uncreditworthiness
Comment 4: Whether the Department Should Have Investigated the Program "Preferential Financial Support to Bazhou Seamless"

C. Provision of Electricity for LTAR

Comment 5: Whether the Provision of Electricity for LTAR is Countervailable

D. Provision of Steel Rounds for LTAR

Comment 6: Whether Majority State-Owned Producers of Steel Rounds are "Authorities"
Comment 7: Relevance of CCP Affiliations to Whether a Company is a GOC "Authority"
Comment 8: Sufficiency of Record Information for "Authorities" Analysis
Comment 9: Whether the Provision of Steel Rounds for LTAR is Specific
Comment 10: Benchmark Issues

E. Policy Lending

Comment 11: Whether Loans to the Respondents Are Specific

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[2] *See* Memorandum from Thomas Gilgunn, Acting Director to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Post-Preliminary Analysis of Countervailing Duty Administrative Review: Certain Oil Country Tubular Goods from the People's Republic of China ("PRC") (July 15, 2014) (Post-Preliminary Analysis).
[3] *See* Letter from WSP to the Department, Certain Oil Country Tubular Goods from the People's Republic of China: Case Brief" (July 23, 2014) (WCB); *see also* Letter from the GOC to the Department, "Oil Country Tubular Goods from China; 3rd Administrative Review GOC Case Brief" (July 23, 2014) (GCB).
[4] *See* Letter from U.S. Steel to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China" (July 29, 2014) (PRB).
[5] *See* "Public Hearing in the matter of Countervailing Duty Administrative Review of Certain Oil Country Tubular Goods from the People's Republic of China" (August 1, 2014) (Hearing Transcript).

Comment 12: Whether a Financial Contribution Exists and SOCBs are Authorities
Comment 13: Use of an In-Country or External Loan Benchmark
Comment 14: Whether the Department Should Have Accepted WSP's Untimely-Filed Loans
Comment 15: The Appropriate AFA Rate for WSP's Policy Loans

Scope of the Order

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

The merchandise covered by the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:

7304.29.1010, 7304.29.1020, 7304.29.1030, 7304.29.1040, 7304.29.1050, 7304.29.1060, 7304.29.1080, 7304.29.2010, 7304.29.2020, 7304.29.2030, 7304.29.2040, 7304.29.2050, 7304.29.2060, 7304.29.2080, 7304.29.3110, 7304.29.3120, 7304.29.3130, 7304.29.3140, 7304.29.3150, 7304.29.3160, 7304.29.3180, 7304.29.4110, 7304.29.4120, 7304.29.4130, 7304.29.4140, 7304.29.4150, 7304.29.4160, 7304.29.4180, 7304.29.5015, 7304.29.5030, 7304.29.5045, 7304.29.5060, 7304.29.5075, 7304.29.6115, 7304.29.6130, 7304.29.6145, 7304.29.6160, 7304.29.6175, 7305.20.2000, 7305.20.4000, 7305.20.6000, 7305.20.8000, 7306.29.1030, 7306.29.1090, 7306.29.2000, 7306.29.3100, 7306.29.4100, 7306.29.6010, 7306.29.6050, 7306.29.8110, and 7306.29.8150.

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

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

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

Subsidies Valuation Information

Allocation Period

The average useful life period (AUL) in this proceeding, as described in 19 CFR 351.524(d)(2), is 15 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised.[6] No party in this proceeding has disputed this allocation period.

Consistent with other PRC CVD determinations, we continue to find that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law, and have adopted December 11, 2001, the date on which the PRC became a member of the World Trade Organization, as that date.

Attribution of Subsidies

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

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

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[7]

[6] *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.
[7] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

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

The U.S. Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[8]

a. Jiangsu Chengde

Jiangsu Chengde was founded in 1998 as a joint stock limited company. In 2005, it was converted into a privately-owned company whose ownership was divided between a number of individuals.[9] The company reported several affiliates but claimed that none were cross-owned within the meaning of 19 CFR 351.525(b)(6) and that none were involved in the production or sale of subject merchandise during the POR.[10] Accordingly, Jiangsu Chengde responded on behalf of itself in this proceeding.[11]

Therefore, for the final results, we have attributed subsidies to Jiangsu Chengde solely to Jiangsu Chengde's sales.

b. WSP

WSP was established on November 17, 1999, in Jiangsu Province, PRC, as a "productive" foreign-invested enterprise (FIE).[12] WSP's ownership structure has changed multiple times since its establishment, most recently in 2006, when it became wholly-owned by the British Virgin Islands incorporated "First Space Holdings Limited" (First Space) which, in turn, is wholly-owned by the Cayman Islands incorporated "WSP Holdings Ltd."[13] (WSP Holdings). WSP Holdings is publicly-traded on the New York Stock Exchange under the ticker symbol "WH."[14]

[8] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[9] *See* Letter from Jiangsu Chengde to the Department, "Oil Country Tubular Goods from the People's Republic of China, Second Administrative Review (C-570-944): Initial Questionnaire Response" (July 8, 2013) (CQR) at 7.
[10] *Id.*, at 2-3.
[11] Jiangsu Chengde noted that the Department also did not find cross-ownership among Jiangsu Chengde's affiliated companies in the previous administrative review. *Id.*, at 6; *see also Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2011*, 78 FR 9368 (February 8, 2013) and accompanying Decision Memorandum at 7, unchanged in *Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 49475 (August 14, 2013)
[12] *See* Letter from WSP to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China: Countervailing Duty Questionnaire Response" (June 24, 2013) at "Countervailing Duty Questionnaire Response of Wuxi Seamless Oil Pipe Co., Ltd." (WQR) at 5-6.
[13] *Id.*
[14] *Id.*

WSP filed a response on behalf of itself, as well as four separate responses on behalf of the following affiliated companies: Liaoyang Seamless Oil Pipes Co. Ltd. (Liaoyang),[15] a producer of subject merchandise; Songyuan Seamless Oil Pipes Co. Ltd. (Songyuan),[16] a producer of subject merchandise; Mengfeng Special Steel Co. Ltd. (Mengfeng),[17] an input supplier, and Bazhou Seamless Oil Pipes Co. Ltd. (Bazhou),[18] a producer of subject merchandise. WSP also informed us that it sold Chaoyang Seamless Oil Steel Casting Pipes Co., Ltd. ("Chaoyang"), for which it responded in the 2011 review, to an unrelated third party on December 31, 2011.[19] Therefore, we have not analyzed subsidies to Chaoyang in this review.

WSP wholly-owns Songyuan, Bazhou, and Mengfeng. WSP's direct parent company, First Space, owns 70 percent of Liaoyang.[20] We find that these companies (hereinafter, "the WSP Companies") are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of direct or common ownership.[21] Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by WSP, Liaoyang, Songyuan, and Bazhou, to the combined sales of WSP, Liaoyang, Songyuan, and Bazhou (exclusive of inter-company sales). Furthermore, since Mengfeng produces and provides inputs to cross-owned affiliates that are primarily dedicated to the downstream product, pursuant to 19 CFR 351.525(6)(iv), we attributed subsidies received by Mengfeng to the combined sales of WSP, Liaoyang, Songyuan, Mengfeng, and Bazhou (exclusive of inter-company sales).

Loan Benchmarks and Discount Rates

The Department is examining loans and certain non-recurring, allocable subsidies.[22] The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

a. Short-Term RMB Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a benchmark.[23]

[15] *See* Letter from WSP to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China: Countervailing Duty Questionnaire Response" (June 24, 2013) at "Section III Countervailing Duty Questionnaire Response of Wuxi Seamless Oil Pipe Co., Ltd., Liaoyang Seamless Oil Pipes Co., Ltd." (LQR).
[16] *See* Letter from WSP to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China: Countervailing Duty Questionnaire Response" (June 24, 2013) at "Section III Countervailing Duty Questionnaire Response of Wuxi Seamless Oil Pipe Co., Ltd., Songyuan Seamless Oil Pipes Co., Ltd.." (SQR).
[17] *See* Letter from WSP to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China: Countervailing Duty Questionnaire Response" (June 24, 2013) at "Section III Countervailing Duty Questionnaire Response of Wuxi Seamless Oil Pipe Co., Ltd., Mengfeng Special Steel Co., Ltd." (MQR).
[18] *See* Letter from WSP to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China: Countervailing Duty Questionnaire Response" (June 24, 2013) at "Section III Countervailing Duty Questionnaire Response of Wuxi Seamless Oil Pipe Co., Ltd., Bazhou Seamless Oil Pipes Co., Ltd." (BQR).
[19] *See* WQR at 3.
[20] *Id*.
[21] *Id.*
[22] *See* 19 CFR 351.524(b)(1).
[23] *See* 19 CFR 351.505(a)(3)(i).

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."[24] 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*,[25] 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). 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. 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.[26]

We first developed in *CFS from the PRC*,[27] and more recently updated in *Thermal Paper from the PRC*,[28] the methodology used to calculate the external benchmark. Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. For 2001 through 2009, the PRC fell in the lower-middle income category.[29] Beginning with 2010, however, the PRC is in the upper-middle income category.[30] 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 - 2012. 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.

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[24] *See* 19 CFR 351.505(a)(3)(ii).

[25] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decisions Memorandum (IDM) at Comment 10; *see also* Memorandum to the File "Additional Documents for Preliminary Results," (February 18, 2014) (Additional Documents Memorandum) at Attachment I (Memorandum from David Neubacher, International Trade Analyst, to the File, "Consultations with Government Agencies," (October 17, 2007) at 2).

[26] *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."

[27] *See CFS from the PRC*, and accompanying IDM at Comment 10.

[28] *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 at 8-10.

[29] *See* World Bank Country Classification, http://econ.worldbank.org/.

[30] *Id.*

In each year from 2001-2009, and 2011-2012, the results of the regression-based analysis[31] reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group. This contrary result for a single year does not lead the Department to reject the strength of governance as a determinant of interest rates. Therefore, we have continued to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009, and 2011-2012. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010 – 2012, and "lower middle income" for 2001-2009. First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments.[32] Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.[33]

Because these rates are net of inflation, we adjusted the benchmark rates to include an inflation component before comparing them to the interest rates on loans issued to Jiangsu Chengde by SOCBs. *See* Interest Rate Benchmark Memorandum for the resulting inflation-adjusted benchmark lending rates.

b. Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.[34]

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[31] *See* Memorandum to All Interested Parties, "Interest Rate Benchmark Memorandum" (February 18, 2014) (Interest Rate Benchmark Memorandum).

[32] 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.

[33] For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country's real interest rate was 34.95 percent and 37.25 percent, respectively. *See* Interest Rate Benchmark Memorandum.

[34] *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 at 8.

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where 'n' equals or approximates the number of years of the term of the loan in question.[35] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component. *See* Interest Rate Benchmark Memorandum for the resulting inflation-adjusted benchmark lending rates.

c. Foreign Currency-Denominated Loans

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

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where "n" equals or approximates the number of years of the term of the loan in question. *See* Interest Rate Benchmark Memorandum for the resulting inflation-adjusted benchmark lending rates.

d. Discount Rates

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

e. Uncreditworthiness Benchmark

As discussed below, the Department is finding the WSP Companies uncreditworthy during the period 2009 through 2012. However, we have not utilized an uncreditworthy benchmark to calculate the benefit for loans received by the WSP Companies because we ultimately chose a rate for the WSP Companies' loans using AFA.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available," subject to section 782(d) of the Act, if necessary information is not on the record or if

[35] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*) and accompanying IDM at Comment 14.

an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

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

In deciding which facts to use as adverse facts available (AFA), section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.[36] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[37]

GOC – Whether Certain Steel Round Producers Are "Authorities"

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

For each producer that the GOC claimed was privately owned by individuals during the POR, we requested the following:[38]

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

- Identification of the owners, members of the board of directors, or managers of the producers who were also government or Chinese Communist Party (CCP) officials during the POR.

[36] *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998) (*SRAMS from Taiwan*).
[37] *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).
[38] *See* Letter from the Department to the Government of China, "Certain Oil Country Tubular Goods from the People's Republic of China: Countervailing Duty Questionnaire" (May 2, 2013) (InitQ) at Section II, Information Regarding Input Producers in the PRC Appendix, Section I.

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

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

For producers owned by other corporations (whether in whole or in part) or with less-than-majority state ownership during the POR, we requested information tracing the ownership of the producer back to the ultimate individual or state owners. Specifically, we requested the following information:[39]

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

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

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

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

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

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

- A statement regarding whether any of the shares held by government entities have any special rights, priorities, or privileges with regard to voting rights or other management or decision-making powers of the company; a statement regarding whether there are restrictions on conducting, or acting through, extraordinary meetings of shareholders; a statement regarding whether there are any restrictions on the shares held by private shareholders; and a

[39] *Id.*, at Section II.

discussion of the nature of the private shareholders' interests in the company (*e.g.*, operational, strategic, or investment-related).

The GOC did not provide a complete response to these questions for any producer in the above categories despite having two opportunities to do so. Specifically, in its initial questionnaire response, the GOC did not identify whether any individual owners, members of the board of directors (BOD), or senior managers during the POR were CCP officials or whether the companies in question had a CCP Committee during the POR. Instead, citing the PRC Civil Servant Law, Article 53, the GOC argued that civil servants are prohibited from holding positions in private enterprises or profit-making organizations and that therefore, none of the individuals, BOD members, or senior managers of the companies could be government or CCP officials during the POR.[40] However, with regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously determined that this particular law does not pertain to CCP officials.[41] Consequently, in our supplemental questionnaire to the GOC, we again requested this information. The GOC reported that it "does not hold the information of whether the individual owners, members of the board of directors (BOD) of the Company were government or CCP officials, or whether there was a CCP commission in the Company during the POR," and that "As for this information, please verify it with the Company."[42] First, we note that the GOC's first response is not congruous with its second, *i.e.*, the GOC's second response suggests that in fact individual owners, BOD members, and senior managers can be CCP officials. Second, we note that the GOC's responses in prior proceedings demonstrate that it is able to access the information requested by the Department.[43]

Further, while the GOC provided some information about the structure of the CCP, it did not provide information we requested regarding the roles played by CCP officials and CCP Committees in the management or operations of the steel round producers. Instead, the GOC argued that "{e}ven if an owner, a director, or a manager of a supplier is a member or representative of {the CCP, People's Congress, or Chinese People's Political Consultative Conferences}, this does not make the management and business operation of the company in which he/she serves subject to any intervention of the GOC."[44] The GOC concluded that "all the questions in this regard are not relevant to this investigation and the Department has no basis for requesting this information."[45]

With respect to the input producers with some direct corporate ownership or less-than-majority state ownership during the POR, in its initial questionnaire response, the GOC stated that it was "unable to trace all ownership back to the ultimate individual or state owners for each and every

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[40] *See* Letter from the GOC, "Oil Country Tubular Goods from China; 3rd CVD Administrative Review GOC Initial CVD Response" dated July 8, 2013 (GQR) at II-14.

[41] *See* Additional Documents Memorandum at Attachment II, at 16; *see also PC Strand from the PRC* and accompanying IDM at Comment 8 where the Department could not definitively determine "the extent of the ability of individual government or CCP officials to further such policies and initiatives within companies that they may own or manage."

[42] *See* Letter from the GOC, "Oil Country Tubular Goods from China; 3rd CVD Administrative Review GOC 1st Supplemental Response" dated January 6, 2014 (G1SR), at 5.

[43] *See, e.g.*, *High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*Steel Cylinders from the PRC*) and accompanying IDM at 4.

[44] *See* GQR at 23-24.

[45] *Id.*

input producer… in the limited time allowed for this questionnaire response."[46] However, the GOC's initial questionnaire response was submitted after the Department granted the GOC an extension.[47] The GOC did not request an additional extension. In our supplemental questionnaire, for which the GOC was granted another extension,[48] we again requested that the GOC trace ownership to the ultimate individual or state owners during the entire POR. The GOC stated it "is unable to trace the ownership of suppliers back to the ultimate individual or state owner during the POR as requested by the Department."[49] The GOC did not promptly notify the Department (despite requesting extensions) that it was not able to submit the required information in the requested form and manner, in accordance with section 782(c) of the Act. Nor did the GOC suggest an alternative form for submitting this information.[50] Notwithstanding, as noted above, the GOC has previously demonstrated that it is able to access the information requested by the Department.[51] In all, the GOC did not identify the ultimate owners of any of these steel round producers.

In summary, in the questionnaire responses described above, the GOC identified a number of steel round producers as having no state ownership or less-than-majority state ownership.[52] However, the Department cannot confirm the GOC's claim that these companies are not majority-owned by the state as the GOC did not trace the ownership of any of these producers to their eventual owners. Further, of the owners that the GOC identified as corporations, it did not identify which are state-owned entities, which also impeded the Department's analysis. Finally, the GOC did not identify the individual owners, BOD members, or senior managers of the producers who were CCP officials during the POR for any producer.

Regarding the GOC's objections to our questions about the role of CCP officials in the management and operations of the steel rounds producers, the Department notes that it is the prerogative of the Department, and not the GOC, to determine what information is relevant to the

[46] *See* GQR at 17-18.
[47] *See* Letter from the Department to GOC, "Administrative Review of Oil Country Tubular Goods from the People's Republic of China: Extension Request for Initial Questionnaire Response" dated June 5, 2013.
[48] *See* Letter from the Department to GOC, "Administrative Review of Oil Country Tubular Goods from the People's Republic of China: Extension Request for First Supplemental Questionnaire Response and New Subsidy Allegation Questionnaire Response," dated December 19, 2013.
[49] *See* G1SR at 5.
[50] Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."
[51] *See, e.g.*, *Steel Cylinders from the PRC*, and accompanying IDM at 4.
[52] *See* GQR at Exhibit 3.

Department's investigations and administrative reviews.[53] The Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in the PRC. In the CCP Attachment to our Public Bodies Memorandum, we explain how the Department has found that the government in China includes both the CCP and the state apparatus.[54] The Department then explored the variety of means by which the GOC and CCP may exercise control over enterprises.[55] The Department has noted that publicly available information indicates that Chinese law requires the establishment of CCP organizations, *i.e.*, primary organizations of party, in all companies, whether state, private, domestic, or foreign-invested that have three or more party members and that such organizations may wield a controlling influence in the company's affairs.[56] With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously determined that this particular law does not pertain to CCP officials.[57]

The GOC has also claimed that CCP officials cannot serve as employees in enterprises.[58] According to the GOC, the CCP treats the staff of its administrative organs in the same manner as the government treats civil servants. It cites the "Executive Opinion of the Central Organization Department of Central Committee of CPC on Modeling and Trial Implementation of the Provisional Regulations of State Civil Servants in CCP Organs" (ZHONG FA (1993) No. 8) as evidence of "the CCP's intent to model its personnel management system after law on civil servants, including restrictions on enterprise employment," concluding that "none of the individual owners, members of the board of directors… or senior managers of the Company can also be government or CCP officials during the POI{*sic*}." [59] The GOC's argument, however, is contradicted by the Department's finding in a past proceeding that CCP officials can, in fact, serve as owners, members of the board of directors, or senior managers of companies.[60] In short, the GOC's claims regarding the irrelevance of the CCP are wholly unsupported.

The information we requested regarding the ultimate owners of these producers and the role of CCP officials in the management and operations of these producers is necessary to our

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[53] *See Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010) (stating that "{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion" and that "Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin"); *NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided").

[54] *See* Additional Documents Memorandum at Attachment II (Public Bodies Memorandum)

[55] *Id*.

[56] *Id*.

[57] *Id*, at 16; *see also PC Strand from the PRC* and accompanying IDM at Comment 8.

[58] *See, e.g.*, GQR at II-14.

[59] *Id.*

[60] *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) (*PC Strand from the PRC*) and accompanying IDM at Comment 8 ("{i}n the instant investigation, the information on the record indicates that certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies.")

determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. Accordingly, we asked the GOC what efforts it took to obtain the information we requested. It replied that it "…relied upon capital verification reports, articles of association and business registrations to determine whether or not company owners, members of the board of directors or senior managers were or were not members of any of the above eight entities."[61] However, it is unclear whether these documents would include information regarding the CCP affiliations of owners, BOD members, or senior managers. The GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. As stated, the GOC's responses in prior proceedings demonstrate that it is able to access the information we requested in this review.[62]

We determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in issuing our preliminary results.[63] Moreover, we find that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available.[64] As AFA, we are finding that those non-SOE producers of steel rounds for which the GOC failed to provide ownership information or failed to identify whether the BOD members, owners, or senior managers were CCP officials, are "authorities" within the meaning of section 771(5)(B) of the Act.

According to the GOC, in *PC Strand from the PRC*, the Department determined that one steel round provider at issue in this administrative review was not an "authority."[65] This company is also a shareholder in another steel round provider at issue in this administrative review. We have relied upon AFA with respect to this company and treated it as an "authority" here for three reasons. First, the period of investigation of *PC Strand from the PRC* was 2008, while the POR of the instant review is 2012. In the intervening period, the ownership of this company may have changed. Indeed, the GOC's failure to identify this company's ultimate owners in this review leads to an inference that the ownership of this company has in fact changed. Second, in *PC Strand from the PRC*, we determined that although certain company officials were also CCP officials, there was not enough information on the record regarding the role that these officials play in directing the companies they own or manage to comply with government policies for us to find that the producer in question was an authority.[66] We explained that we would "continue to explore this issue in future segments of this proceeding and future CVD proceedings involving the PRC." Third, notwithstanding the issue of whether the ownership structure of this company has changed since 2008, it remains that this company's current ownership structure is comprised of another corporate entity and additional individual persons. As with all of the steel round providers with some direct corporate ownership, the GOC has not identified this entity's ultimate's owners, nor has the GOC addressed the Department's questions regarding CCP as they apply to these individual person shareholders. As noted, the steel round provider discussed

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[61] *See* GQR at II-27.
[62] *See, e.g.*, *Steel Cylinders from the PRC*, and accompanying IDM at 4.
[63] *See* sections 776(a)(1) and 776(a)(2)(A) of the Act.
[64] *See* section 776(b) of the Act.
[65] *See* GQR at II-16.
[66] *See PC Strand from the PRC*, and accompanying IDM at Comment 8. Our determination was not, as the GOC claims, that this company is not an "authority." We found only that there was not enough information on the record to fully analyze the extent of government control.

in *PC Strand from the PRC* is also a shareholder in another steel round provider at issue in this administrative review.[67] This other steel round provider's ownership structure is also comprised of other corporate entities and individual persons[68] and is, thus, subject to the same deficiencies. Therefore, we are adversely inferring that this company is an "authority."

For details on the calculation of the subsidy rate for the respondents, *see* below at "Programs Found to Be Countervailable - C., Provision of Steel Rounds for LTAR." Arguments raised by parties regarding our application of AFA for this program are addressed below at **Comments 6-10**.

WSP Companies – New Subsidy Allegation Programs

In the *Preliminary Results*, we applied AFA to WSP for certain programs because WSP failed to respond to our questionnaire regarding those programs.[69] The Department initiated on U.S. Steel's new subsidy allegations on December 3, 2013. We initiated an investigation into the following programs (collectively, the "NSA Programs"):

- Land and Land-Use Rights for Less Than the Normal "Land Grant Price" in Korla City
- Deferral of Payment for Land and Land-Use Rights in Korla City
- Tax Waivers and Reductions in Korla City
- Special Preferential Policies in Korla Zone
- Preferential Financial Support to Bazhou Seamless

The Department issued questionnaires to the GOC, Jiangsu Chengde, and WSP regarding these newly-alleged subsidies on December 6, 2013. The Department received timely-filed responses from the GOC and Jiangsu Chengde; however, WSP failed to respond or request an extension prior to the questionnaire response deadline.

Accordingly, we find that WSP failed to provide necessary information by the deadlines for submission of the information, as described by section 776(a)(2)(B) of the Act and has withheld necessary information that was requested of it, within the meaning of section 776(a)(2)(A) of the Act. WSP's failure to provide information has prevented us from being able to fully analyze whether the NSA Programs are countervailable and what benefit WSP and its cross-owned affiliates may have received from them. Therefore, the Department is relying on "facts otherwise available." Moreover, we find that WSP has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available. [70]

We find that information on the record of this review from the GOC is sufficient to demonstrate that WSP did not benefit from two of the newly-alleged programs under examination: "Land and Land-Use Rights for Less Than the Normal "Land Grant Price" in Korla City" and "Deferral of

[67] *See* GQR at II-16.
[68] *Id*.
[69] *See Preliminary Results* and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences – New Subsidy Allegation Programs."
[70] *See* section 776(b) of the Act.

Payment for Land and Land-Use Rights in Korla City."[71] For the other programs, because the WSP Companies failed to act to the best of their ability, we made the adverse inference that the WSP Companies benefitted from the program unless the record evidence made it clear that they could not have benefitted from that program because, for example, we have found the program to be not countervailable.[72] To calculate the program rates, we have generally used program-specific rates calculated for the cooperating respondents in the instant review or prior segments of the instant case, or calculated in prior PRC CVD cases.

In prior cases involving the application of AFA, for programs other than those involving income tax exemptions and reductions, we have first sought to apply, where available, the highest above *de minimis* subsidy rate calculated for an identical program from any segment of this proceeding.[73] However, the NSA Programs alleged in this instant review have not been analyzed in any prior case or segment. Therefore, we have applied, where available, the highest above *de minimis* subsidy rate calculated for a similar program from any segment of this proceeding. Absent an above *de minimis* subsidy rate calculated for the same or similar program in this proceeding, we have applied the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD proceeding. Absent an above *de minimis* subsidy rate calculated for the same or similar program in any PRC CVD proceeding, we applied the highest calculated subsidy rate for any program otherwise listed from any prior PRC CVD cases, so long as the WSP Companies conceivably could have used the program for which the rate was calculated.[74]

As alleged by U.S. Steel,[75] the NSA Programs are specific to WSP's cross-owned affiliate Bazhou. Furthermore, the NSA Letter specifies that many of these programs are only available to companies located in Korla City or in the Korla Zone, which are located in Xinjiang, a region in Western China.[76] Bazhou is the only cross-owned affiliate of WSP whose submissions to date indicate it is located in Korla City or the Korla Zone.[77] As U.S. Steel's allegations are limited to companies located in Korla City and/or the Korla Zone, or are limited specifically to Bazhou, Bazhou is the only cross-owned affiliate of WSP that conceivably could have used these

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[71] *See* Letter from the GOC to the Department, "Oil Country Tubular Goods from China; 3rd CVD Administrative Review, GOC Supplemental NSA Response (February 24, 2014) (GNSAR2) at Exhibit SN-1, a letter from the Bazhou Bureau of Land and Resources.

[72] *See, e.g., Certain Cold-Rolled Carbon Steel Flat Products From Korea; Final Affirmative CVD Determination*, 67 FR 62102 (October 3, 2002) and accompanying IDM at "Methodology and Background Information;" and *CFS from the PRC*, 72 FR at 60645, 46-47.

[73] *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 (April 11, 2012) and accompanying IDM at 2-5.

[74] *See Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC*), and IDM at "Application of Adverse Inferences: Non-Cooperative Companies" section; *see also Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available Rate" section, and *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009), and accompanying IDM at "SGOC Industrial Policy 2004-2009."

[75] *See* Letter from U.S. Steel to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China" (July 29, 2013) (NSA Letter).

[76] *Id.*, at 2.

[77] *See* BQR at 4.

programs, and we made the adverse inference that Bazhou used each of the programs described below.

For "Tax Waivers and Reductions in Korla City," U.S. Steel alleged that companies in the Korla Zone making "high technology products" receive waivers of "all income tax, transportation tax, and property tax" for a period of five years."[78] As AFA, we find that Bazhou availed itself of each of these benefits. In prior cases, to calculate the program rate for income tax programs pertaining to either the reduction or exemption of the income tax, we applied an adverse inference that the non-cooperative respondent paid no income tax during the period of review.[79] The standard income tax rate for corporations in the PRC is 25 percent. Thus, the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent. However, in this case, information provided by Bazhou in earlier questionnaire responses, such as Bazhou's tax return, indicate that it was in a tax loss position, so it could not have taken advantage of the income tax component of this program.[80] Regarding the transportation tax component of this program, we applied the highest non-*de minimis* subsidy rate for any tax program from any PRC CVD proceeding, other than income tax programs. The rate was 0.79 percent, from Value Added Tax and Duty Exemptions on Imported Equipment, in *Citric Acid from the PRC – 1st AR*.[81] We also applied a rate of 0.79 percent for the property tax component of this program, to yield a program rate of 1.58.

For the program "Special Preferential Policies in Korla Zone," U.S. Steel does not specify the form that these special preferential policies may take.[82] U.S. Steel explains that this assistance may take the form of "a direct transfer of funds, foregoing or not collecting revenue that is otherwise due, providing goods and services, purchasing goods, or otherwise." We have applied the highest non-*de minimis* subsidy rate for a similar group of programs in a segment of this proceeding . We find that the program "Subsidies Provided in the TBNA and the Tianjin Economic and Technological Development Area" from the *Investigation Final* is a similar program.[83] It consists of several sub-parts: "Science and Technology Fund" (a grant), "Accelerated Depreciation Program" (a tax program), and a land program. We summed the individual subsidy rates from the sub-parts of this program to yield a subsidy rate of 3.2 percent.

For the program "Preferential Financial Support to Bazhou Seamless," U.S. Steel alleged that Xinjiang provincial deputy party secretary and deputy governor Du Beiwei "enlisted various government departments and related financial institutions to support Bazhou Seamless. Although not specified, the support from financial institutions likely took the form of preferential

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[78] *See* NSA Letter at 12.

[79] *See, e.g., Aluminum Extrusions from the PRC* and accompanying IDM at 12; *see also Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying IDM at "Selection of the Adverse Facts Available Rate" and *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying IDM at 2.

[80] *See* BQR at Exhibit B5.

[81] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011).

[82] *See* NSA Letter at 14.

[83] *See Investigation Final*, and accompanying IDM at 19.

loans. It also may have included grants, loan guarantees, and other forms of financial support."[84] We are already analyzing all loans received by the WSP Companies under the program "Policy Loans," therefore we have not applied an AFA rate for the loan component of this program since we have already calculated a benefit for all loans reported by the company. With respect to the grant provision under this program, we applied the highest calculated non-*de minimis* rate from a grant program in any PRC CVD proceeding. This rate was 0.55 percent, from the program "Support Funds for Construction of Project Infrastructure Provided by Administration Commission of LETDZ" in *Wind Towers from the PRC*.[85]

On this basis, the AFA countervailable subsidy rate arising from the NSA Programs determined for Bazhou, and by extension, the WSP Companies, is 5.33 percent *ad valorem*. Arguments raised by parties regarding our application of AFA for these programs are addressed below at **Comment 3**.

WSP Companies – Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources.

In making this determination, according to 19 CFR 351.505(a)(4)(i)(A)-(D), the Department may examine, *inter alia*, the following four types of information: 1) receipt by the firm of comparable commercial long-term loans; 2) present and past indicators of the firm's financial health; 3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and 4) evidence of the firm's future financial position. Under 19 CFR 351.505(a)(4)(i)(A), the Department looks to whether the company has received commercial long-term loans in assessing the company's creditworthiness. According to 19 CFR 351.505(a)(4)(ii), for companies not owned by the government, the Department normally considers a company's receipt of a long-term loan from a commercial source to be dispositive of its creditworthiness.

In response to U.S. Steel's allegation, on December 3, 2013, we initiated an investigation into the creditworthiness of the WSP Companies for the period 2009-2012. On January 15, 2014, we issued a questionnaire to WSP requesting information pertaining to the criteria described above. However, WSP did not respond to our questionnaire by the deadline.

We find that WSP has failed to provide necessary information by the deadlines for submission of the information, as described by section 776(a)(2)(B) of the Act and has withheld necessary information that was requested of it, within the meaning of section 776(a)(2)(A) of the Act. Therefore, the Department is relying on "facts otherwise available" for our preliminary results. Moreover, we find that WSP has failed to cooperate by not acting to the best of its ability to

[84] *See* NSA Letter at 15.

[85] *See Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2013) (*Wind Towers from the PRC*) and accompanying IDM at 22-23.

comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available.[86] As AFA, we find that the WSP Companies were uncreditworthy during the period 2009-2012. We did not calculate a benefit for loans received by the WSP Companies using an uncreditworthy benchmark because we selected a rate for this program using AFA, as described below under "Use of Facts Otherwise Available and Adverse Inferences – Policy Loans." Arguments raised by parties regarding our application of AFA are addressed below at **Comments 3 and 15**.

WSP Companies – Provision of Electricity for LTAR

In our initial questionnaire to WSP, we asked WSP to provide information regarding the electricity user category and voltage class for itself and each of its cross-owned affiliates. In its response, WSP informed us that each of the WSP Companies are "bulk power users."[87] However, the electricity bills of the WSP Companies did not support this claim.[88] Therefore, we again asked WSP to provide a corrected user category and voltage class for WSP and each of its cross-owned affiliates.[89] WSP submitted this information for Mengfeng, Bazhou, and former cross-owned affiliate Chaoyang. However, WSP omitted user category and voltage class information for Liaoyang, Songyuan, and WSP itself.[90]

Without this information, we cannot select appropriate electricity rate benchmarks for these companies. Because WSP has failed to provide this information after having been informed of the deficiency and being provided with another opportunity to provide this information, we find that it is necessary to rely on the facts otherwise available, within the meaning of section 776(a)(2)(A) of the Act. Further, we find that WSP has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available.[91] As AFA, we are applying the highest rate previously calculated for this program in any segment of the proceeding which is the 5.34 percent *ad valorem* rate calculated in the 2011 administrative review.[92] This rate is a rate calculated for the WSP Companies in the previous review, and includes all cross-owned companies. Therefore, we will not separately calculate and include the rates for Mengfeng and Bazhou in the AFA rate for this program since the 5.34 rate was calculated and applied to all WSP Companies.

WSP Companies – Policy Loans

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[86] *See* section 776(b) of the Act.
[87] *See* WQR at 14.
[88] *See* Letter from WSP to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China: Supplemental Countervailing Duty Questionnaire Response" (November 1, 2013) (WSP1SQR) at 11 and Exhibit 1-31 where the User category for each business entity affiliated with WSP was classified as other than "bulk power user."
[89] *See* Letter from the Department to WSP, "Countervailing Duty Administrative Review: Certain Oil Country Tubular Goods from the People's Republic of China" (September 27, 2013) (WSP 1st Supp) at 8.
[90] *See* W2SR at Exhibit S1-31.
[91] *See* section 776(b) of the Act.
[92] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review;* 2011, 78 FR 49475 (August 14, 2013) (*2011 Administrative Review*) and accompanying IDM at 19.

We applied AFA to WSP for the program "Policy Loans" in our post-preliminary analysis.[93] In our initial questionnaire to WSP, we asked WSP to "report all financing to your company that was outstanding during the POR, regardless of whether you consider the financing to be provided under this program"[94] (emphasis in original). We went on to clarify that WSP should "report all forms of financing outstanding during the POR, not only traditional loans" (emphasis in original).[95] In the WQR, WSP replied that it had provided "{a} list of all loans that were outstanding during the POR."[96] However, as explained in the *Preliminary Results*, the loan tables submitted by the WSP Companies in their initial responses were largely unusable, and contained numerous omissions, transpositions, and errors.[97]

In our first supplemental questionnaire, we asked WSP to "{p}lease confirm that WSP and its cross-owned affiliates have reported all forms of bank financing."[98] We also asked WSP to "report each payment of principal and/or interest made during the POR individually on a separate row"[99] and to contact the Department if WSP did not understand these instructions.[100] We also highlighted the flaws in the loan tables the WSP Companies provided in the WQR and asked WSP to correct them. In the W1SR, WSP confirmed that it had reported all forms of bank financing and did not indicate that these instructions were unclear.[101] Although WSP claimed it corrected the errors in its loan tables that were described in the Department's first supplemental questionnaire, various errors were still present in the revised version WSP submitted. These included errors and omissions regarding loans received by its cross-owned affiliate Bazhou.[102]

Moreover, the record indicates that WSP had not, in fact, reported all loans outstanding during the POR as it had repeatedly claimed. For example, in our second supplemental questionnaire, we reiterated our instructions that WSP report all forms of financing, and asked WSP to explain why it had not reported bank acceptance notes appearing in its financial statements.[103] Responding in its W2SR, WSP acknowledged that it had not reported outstanding bank acceptance notes despite its earlier confirmation that it had reported all forms of financing outstanding during the POR.[104] WSP revised its loan information to include unreported bank acceptance notes.[105]

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[93] *See* Post-Preliminary Analysis at 3.
[94] *See* InitQ at III-10.
[95] *Id.*
[96] *See* WQR at 16.
[97] *See Preliminary Results*, and accompanying IDM at 20-21.
[98] *See* WSP 1st Supp at 13.
[99] *Id.*
[100] *Id.*
[101] *See* Letter from WSP to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China: Supplemental Countervailing Duty Response" (November 1, 2013) (W1SR) at 18.
[102] We applied AFA for the information missing from these loans in the *Preliminary Results* of this review. The *Preliminary Results* also provide additional details regarding the types of errors present in WSP's earlier submissions of loan information. *See Preliminary Results*, and accompanying IDM at 20-21.
[103] *See* Letter from the Department to WSP, "Countervailing Duty Administrative Review: Certain Oil Country Tubular Goods from the People's Republic of China" (November 8, 2013) (WSP 2nd Supp) at 5.
[104] *See* Letter from WSP to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China: Second Supplemental Countervailing Duty Questionnaire Responses" (December 6, 2013) (W2SR) at 19.
[105] *See* W2SR at 19.

In our fourth supplemental questionnaire, we asked WSP to explain certain discrepancies between the loans it reported in the prior year's administrative review and this year's administrative review.[106] We specifically stated in that supplemental questionnaire that we were not requesting information regarding additional loans at that stage of the proceeding, because, as described above, WSP has had several prior opportunities to provide this information.[107] We also informed WSP that if it attempted to submit information regarding additional loans, its response may be rejected.[108]

Responding in its W4SR, WSP acknowledged that, due to "a misunderstanding of the instructions," it had reported only short-term loans that were outstanding as of December 31, 2012 in its four[109] prior submissions of its loan tables, and had omitted a number of other short-term loans that were outstanding during the POR.[110] In a separate filing on April 21, 2014, WSP filed a fifth version of its loan tables containing previously-unreported loans, arguing that the Department should accept these new loans as "corrections."[111]

However, we disagree with WSP that the new loans it provided in its April 21 Letter are accurately characterized as corrections. Rather than being corrections to information such as the duration and terms or principal and interest paid on previously-reported loans, WSP reported entirely new financing that it had not provided in response to several previous requests for this information.[112] Therefore, on May 15, 2014, we rejected the April 21 Letter and its accompanying loan table, pursuant to 19 CFR 351.301(c)(2) and 351.104(a)(2)(ii)(A), because it contained untimely-filed new factual information and offered WSP the opportunity to resubmit

[106] *See* Letter from the Department to WSP, "Countervailing Duty Administrative Review: Certain Oil Country Tubular Goods from the People's Republic of China" (March 26, 2014) (WSP 4th Supp) at 5; *see also* Memorandum from Christian Marsh to Paul Piquado, "Post-Preliminary Analysis of Countervailing Duty Administrative Review: Certain Oil Country Tubular Goods from the People's Republic of China ("PRC")" (July 15, 2014) (Post-Preliminary Analysis) at 4 (footnote 28).

[107] *See* WSP 4th Supp at 4.

[108] *Id.*

[109] In addition to the questionnaires described above, WSP also provided a revised loan table correcting information regarding certain loans received by its cross-owned affiliate Liaoyang following a telephone conversation with a Department official. *See* Letter from WSP to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China: Corrections to Supplemental Countervailing Duty Questionnaire Response" (November 8, 2013).

[110] *See* Letter from WSP to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China: Fourth Supplemental Countervailing Duty Questionnaire Responses" (April 21, 2014) at 8.

[111] *See* Letter from WSP to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China: Loan Corrections" (April 21, 2014) (April 21 Letter).

[112] *See* "Post-Preliminary Analysis of Countervailing Duty Administrative Review: Certain Oil Country Tubular Goods from the People's Republic of China ("PRC")" at 3-8. The Department rejected WSP's characterization of a "misunderstanding" in reporting its loans and rejected WSP's "corrected" loans. We stated, in part, "Rather than being corrections to information such as the duration or terms, or principal or interest paid on previously-reported loans, WSP reported entirely new financing that it had not provided in response to several previous requests for this information." We found that WSP had significantly underreported its loans.

its filing without this information.[113] WSP refiled this submission without the untimely information on May 19, 2014.[114]

WSP's claim that it misunderstood the Department's instructions to provide all financing outstanding during the POR is contradicted by WSP's statement in its first questionnaire response that it had provided "{a} list of all loans that were outstanding during the POR."[115] Additionally, as explained above and in the *Preliminary Results*,[116] WSP had at least three opportunities to submit accurate information regarding the financing it received during the POR, but it did not do so. Instead, WSP has repeatedly provided and certified materially inaccurate and/or incomplete information regarding its use of this program and did not provide the information we requested by the deadlines for submitting that information.

Therefore, because necessary information is not available on the record,[117] and because WSP failed to provide this information by the deadlines for its submission,[118] we are applying facts otherwise available regarding WSP's use of this program. WSP's failure to provide timely and accurate information prevented us from being able to analyze the benefit it received under this program, and significantly hindered the progress of this proceeding. Also, because WSP failed to cooperate by not acting to the best of its ability to comply with numerous requests for information regarding this program, we are applying an adverse inference in our selection of the facts otherwise available. As adverse facts available, we selected a rate for this program using the hierarchy described below.

In prior cases involving the use of adverse facts available, for programs other than those involving income tax exemptions and reductions, we first sought to apply, where available, the highest above *de minimis* subsidy rate calculated for an identical program from any segment of this proceeding.[119] However, the highest above-*de minimis* rate for a lending program in this proceeding is 2.65, which is the rate that was calculated for the WSP Companies in the *2011 Administrative Review*.[120] Insofar as the rate for the WSP Companies' policy lending in the *Preliminary Results* of this review was 12.37, substituting a lower rate would undermine Congress's intent "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[121] Similarly, there is no higher above *de minimis* subsidy rate calculated for a similar program from any segment of this proceeding.

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[113] Even if the Department had accepted this untimely information as requested by WSP, we would have been precluded from using it to calculate a subsidy rate for this program by the numerous omissions also contained in this submission. Specifically, the Department's loan template requests information regarding the principal balances to which each interest payments applies and the number of days covered by each interest payment, but WSP simply left these columns blank for each of the new loans it reported."

[114] *See* Letter from WSP to the Department, "Certain Oil Country Tubular Goods From the People's Republic of China: Loan Information" (May 19, 2014).

[115] *See* WQR at 16.

[116] *See Preliminary Results*, and accompanying Decision Memorandum at 20-21.

[117] *See* section 776(a)(1).

[118] *See* section 776(a)(2)(B) of the Act.

[119] *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 (April 11, 2012) and accompanying IDM at 2-5.

[120] *See 2011 Administrative Review* and accompanying IDM at 18.

[121] *See* SAA at 870.

Next, we sought the highest non-*de minimis* rate calculated for the same or similar program (based on the treatment of the benefit) in another PRC proceeding. However, the highest calculated rate for a similar program in another PRC CVD proceeding is 10.54, from *Coated Paper from the PRC*.[122] This too would afford WSP "a more favorable result by failing to cooperate than if it had cooperated fully."[123] Therefore, we applied the highest calculated subsidy rate for any program in any prior PRC CVD proceeding, so long as the WSP Companies conceivably could have used the program for which the rate was calculated.[124]

Therefore, as adverse facts available, we applied a program rate of 44.84 percent for policy loans received by the WSP Companies. The Department calculated this rate for the program involving the provision of hot-rolled steel for LTAR in *Welded Pipe from the PRC*.[125] We determine that this is an appropriate AFA rate for reasons described below and at **Comment 15**.

GOC – WSP Technology Grant

WSP reported receiving various grants.[126] In our second supplemental questionnaire to WSP, we asked WSP to respond to the relevant appendices from our initial questionnaire for these programs.[127] WSP responded to the questionnaire appendices for some programs but for one program it describes as a "technology award," WSP stated that it "maintains no reference documents and only knows that these grants are related to technology awards," and it did not respond to any of our questions for this program.[128] In our fourth supplemental questionnaire, we asked WSP to respond to the questionnaire appendices for this program for the second time.[129] In its reply, WSP responded to the appendices, but only with respect to the export credit insurance reimbursement program described below under "Analysis of Programs," and not with respect to the technology grant.[130]

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[122] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010), and accompanying Ministerial Error Memorandum at "Revised Net Subsidy Rate for the Gold Companies." This document is proprietary in nature. However, the public version states the revised subsidy rates which include, *infra*, the policy lending rate (for the Policy Loans to Coated Paper Producers and Related Pulp Producers from State-Owned Commercial Banks and Government Policy Banks program).

[123] *See* SAA at 870.

[124] *See Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and IDM at "Application of Adverse Inferences: Non-Cooperative Companies" section; *see also Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying IDM at "Selection of the Adverse Facts Available Rate" section, and *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009), and accompanying IDM at "SGOC Industrial Policy 2004-2009."

[125] *See Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*Welded Pipe from the PRC*) and accompanying IDM at "A. Hot-rolled Steel for Less Than Adequate Remuneration."

[126] *See* W1SR at Exhibits S1-10 S1-14, S1-20, and Exhibit S1-23.

[127] *See* WSP 2nd Supp at 4.

[128] *See* W2SR at 4.

[129] *See* WSP 4th Supp at 4.

[130] *See* W4SR at 2.

Similarly, in our first supplemental questionnaire to the GOC, we requested that it provide responses to our Standard Questions Appendix and Grant and Allocation Appendix for each of the grant programs received by WSP and described at Exhibit S1-10 of the W1SR.[131] The GOC did not respond to the Standard Questions Appendix and Grant and Allocation Appendix for the WSP technology grant described above. In our second supplemental questionnaire to the GOC, we again asked the GOC to respond to Standard Questions Appendix and Grant and Allocation Appendix for this program.[132] In its response, the GOC did not provide sufficient information for us to analyze whether benefits under this program are specific.[133] First, the GOC did not provide the requested laws and/or implementing decrees for this program.[134] Second, the GOC did not provide a description of the program, beyond observing that WSP received multiple disbursements of funds for differing reasons.[135] Third, the GOC did not provide a full description of the application process or the eligibility criteria.[136] Fourth, the GOC did not provide information regarding the distribution of benefits under this program, so we are unable to analyze whether the program is *de facto* specific to an industry or group of enterprises.[137]

The GOC informed us that "{i}f the enterprise engages in activities that are provided in this program (*e.g.*, receive a scientific-technical progress award, or get a patent, *etc*.), it will receive the above-mentioned appropriation. An enterprise can receive the benefit under this program as long as it meets the requirements."[138] However, without a complete response, we have no basis for analyzing the "activities that are provided in this program," the eligibility criteria for the program, the distribution of program benefits and, ultimately, whether benefits under this program are specific whether in law or in fact.

Therefore, because necessary information is not available on the record,[139] and because the GOC withheld information requested by the Department,[140] we are applying facts otherwise available for this program. Furthermore, as the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information regarding this program, we are applying an adverse inference in our selection of the facts otherwise available. As AFA, we find this program to be specific in accordance with section 771(5A) of the Act. Additional discussion regarding this program is below under "I. Programs Found to be Countervailable, E. WSP Technology Grants."

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[131] *See* Letter from the Department to the GOC, "First Supplemental Questionnaire to the Government of the People's Republic of China: Certain Oil Country Tubular Goods from the People's Republic of China" (December 6, 2013) at 15-16.
[132] *See* Letter from the Department to the GOC, "Second Supplemental Questionnaire to the Government of the People's Republic of China: Certain Oil Country Tubular Goods from the People's Republic of China" (April 17, 2014) at 5.
[133] *See* Letter from the GOC to the Department, "Oil Country Tubular Goods from China; 3rd CVD Administrative Review GOC 2nd Supplemental Response" (May 15, 2014) ("G2SR") at 9-19.
[134] *See* G2SR at 11 and at Exhibit SS-5. Our standard questions appendix requests "translated copies of the laws and regulations relating to the program." The GOC modified this to read "{p}rovide translated copies of the documents relating to the program" when it reprinted our question in its response.
[135] *Id.*, at 9-10.
[136] *Id.*, at 11.
[137] *Id.*, at 14-15 and G3SR at 1.
[138] *Id.*, at 11.
[139] *See* section 776(a)(1) of the Act.
[140] *See* section 776(a)(2)(A) of the Act.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[141] Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[142] The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[143]

The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[144] With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.[145]

In the absence of reliable record evidence concerning the alleged programs due to the WSP Companies' failure to cooperate to the best of their ability, the Department reviewed the information concerning PRC subsidy programs in other cases. The relevance of these rates is that they are actual calculated CVD rates for PRC programs, from which the WSP Companies could actually receive a benefit. Due to the WSP Companies' failure to cooperate and the resulting lack of reliable record information, the Department has corroborated the rates it selected to use as AFA to the extent practicable. We discuss corroboration of the Policy Loan rate for the WSP Companies in more detail below at **Comment 14**.

Analysis of Programs

Based upon our analysis of responses to our questionnaires from parties, we find the following:

[141] *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 6.
[142] *See* SAA at 870.
[143] *Id*.
[144] *Id*., at 869-870.
[145] *See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

I. Programs Found To Be Countervailable

A. Policy Loans

As described above under "Use of Facts Otherwise Available and Adverse Inferences," we have applied a total adverse inference for the benefit received by the WSP Companies under this program. Jiangsu Chengde also reported loans from SOCBs that were outstanding during the POR.[146]

In the *Investigation Final*,[147] the Department determined that the GOC had a policy in place to encourage the development of OCTG production through policy lending. Because no information has been provided on the record of the instant review that would cause us to reach a different determination from the *Investigation Final*, we find that the GOC's policy lending program continues.

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

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

On this basis, we find that Jiangsu Chengde received a countervailable subsidy of 0.73 percent *ad valorem* under this program.[148]

B. Provision of Electricity for LTAR

In the *Investigation Final*, we determined that this program conferred a countervailable subsidy.[149] Because no information has been provided on the record of the instant review that would cause us to reach a different determination from the *Investigation Final*, we find that the GOC's provision of electricity is a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act, and that it is specific.

To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on Jiangsu Chengde's reported

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[146] *See* CQR at 20 and Exhibit K-1.
[147] *See Investigation Final*, and accompanying IDM at 12 and Comments 20-21.
[148] *See* Memorandum to Nancy Decker, Program Manager, "Final Results Calculation Memorandum for Jiangsu Chengde Steel Tube Share Co., Ltd. (Chengde Final Calc Memo), dated concurrently with this memorandum.
[149] *See Investigation Final* and accompanying IDM at 5-6 and 22-23.

consumption volumes and rates paid.[150] 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") and voltage class of the respondents (*e.g.*, 1-10kv), as well as the respondents' "base charge" (either maximum demand or transformer capacity). We then compared what the respondents paid for electricity during the POR to our benchmark prices. Based on this comparison, we find that electricity was provided to Jiangsu Chengde for LTAR. To calculate the subsidy, we divided the benefit amount by the appropriate sales denominator for each respondent as described above under "Attribution of Subsidies."

On this basis, we find that Jiangsu Chengde received a countervailable subsidy of 0.34 percent *ad valorem* under this program.[151] As described above under "Use of Facts Otherwise Available and Adverse Inferences," we have applied an AFA rate of 5.34 percent for the WSP Companies under this program.

C. Provision of Steel Rounds for LTAR

In the *Investigation Final*, we determined that this program conferred a countervailable subsidy.[152] As no information has been provided on the record of the instant review that would cause us to reach a different determination from the *Investigation Final*, we find that the GOC's provision of steel rounds is specific under section 771(5A)(D)(iii)(I) of the Act. Also, no evidence has been submitted in this review that would cause us to revisit our finding in the *Investigation Final* that domestic prices in the PRC cannot be used as benchmarks due to the government's extensive involvement in the Chinese steel rounds market.[153]

We find that steel round producers that are majority owned by the government are "authorities" within the meaning of section 771(5)(B) of the Act, for the reasons described in the Public Bodies Memorandum.[154] Further, as described above under "Use of Facts Otherwise Available and Adverse Inferences: GOC – Whether Certain Steel Round Producers Are 'Authorities,'" we are relying on AFA to find that a number of other steel round producers are also "authorities" within the meaning of section 771(5)(B) of the Act. Because these producers are authorities, we find that WSP and Jiangsu Chengde received a financial contribution in the form of the provision of a good, within the meaning of section 771(5)(D)(iii) of the Act.

To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act, we followed the methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for steel rounds. The potential benchmarks listed in this regulation, in order of preference are:

> (1) market prices from actual transactions within the country under investigation for the government-provided good (*e.g.*, actual sales, actual imports, or competitively run

[150] *See* CQR at 17-18 and Exhibit I-1.
[151] *See* Chengde Final Calc Memo.
[152] *See Investigation Final*, and accompanying IDM at 3-4 and 13-15.
[153] *Id.*
[154] *See* Public Bodies Memorandum.

> government auctions) ("tier one" benchmarks); (2) world market prices that would be available to purchasers in the country under investigation ("tier two" benchmarks); or (3) prices consistent with market principles based on an assessment by the Department of the government-set price ("tier three" benchmarks).[155]

As explained above, consistent with the *Investigation Final*, we determine that domestic prices in the PRC cannot serve as viable, "tier one" benchmark prices. Instead, we are relying on "tier two prices," *i.e.*, world market prices. Parties to this proceeding have placed various usable benchmarks on the record of the proceeding. However, some of these benchmarks are country-specific free-on-board prices that allow us to more accurately adjust the benchmarks to reflect the price that a firm actually would pay if it imported the product. Therefore, we have relied upon these benchmarks for calculating the adequacy of remuneration for this program.

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

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under "tier two," the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. In the *Investigation Final*, the Department excluded surcharges for shipping flat racks.[156] We observed that "these charges are not necessarily reflective of what a firm would pay to import the product, in accordance with 19 CFR 351.511(a)(2)(iv)."[157] The Department continued to exclude surcharges for flat racks in the subsequent investigation of *Seamless Pipe from the PRC*.[158] There is no evidence on the record of this review that would lead us to depart from these earlier determinations.

Therefore, we used Maersk Line quotes for ocean freight during the POR submitted by Jiangsu Chengde.[159] Jiangsu Chengde's quotes correspond to steel shipments to Shanghai, PRC from Odessa, Ukraine, Santos, Brazil, and Gemlik, Turkey in a standard 20 foot container. We also added inland freight in the PRC based on information supplied by Jiangsu Chengde[160] and the WSP Companies,[161] import duties as reported by the GOC in the *Investigation Final*,[162] and the value added tax (VAT) applicable to imports of steel rounds into the PRC.[163]

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[155] *See* 19 CFR 351.511(a)(2).
[156] *See Investigation Final* and accompanying IDM at 85.
[157] *Id.*
[158] *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010) (*Seamless Pipe from the PRC*) and accompanying IDM at 71-72.
[159] *See* CQR at Exhibit J-3.
[160] *Id.*
[161] *See* WQR at Exhibit 18.
[162] *See* Additional Documents Memorandum at Attachment III.
[163] *Id*.

WSP, Liaoyang, and Jiangsu Chengde reported purchasing steel rounds during the POR and identified the producers of the inputs they purchased. We compared these adjusted benchmark prices to the respondents' actual purchase prices, including taxes and delivery charges. Based on this comparison, we find that steel rounds were provided for LTAR.

On this basis, we find that the WSP Companies received a countervailable subsidy of 3.64 percent *ad valorem*, and Jiangsu Chengde received a countervailable subsidy of 0.42 percent *ad valorem* under this program.[164]

D. Export Credit Insurance Reimbursements from the Wuxi New District Administration Committee

Pursuant to Article 19 of the Administrative Measures of Wuxi City to Increase Policy Support Funds for Business Undertakings (No. 2011-305), companies in Wuxi City that purchase export credit insurance are eligible to be reimbursed for up to 30 percent of the cost of the insurance. WSP reported receiving funds under this program from the Administration Committee of the Wuxi New District during 2012.[165] The GOC reported that the "Export Credit Insurance is a type of insurance insured by an export enterprise to guarantee the safety of foreign exchange collection. The insurance can transfer the uncertain and unpredictable risk of foreign exchange collection into a small amount of fixed insurance premium; consequently guarantee the stable operation of the export enterprise."[166]

We find that reimbursements of export credit insurance expenses under this program are countervailable subsidies. They constitute a financial contribution under section 771(5)(D)(i) of the Act as they are a direct transfer of funds. These reimbursements are also specific pursuant to section 771(5A)(A) and (B) of the Act in that they are contingent on export performance. WSP informed us that it does not receive ongoing benefits under this program and must separately apply for each grant. We therefore find that WSP receives a non-recurring benefit from this program, within the meaning of 19 CFR 351.524(b). We used the formula found at 19 CFR 351.524(d)(1) to allocate the benefit from this grant over the AUL period, which, for this proceeding, is 15 years. As such, we find that WSP received a countervailable subsidy of 0.11 percent *ad valorem* under this program.[167]

E. Refunds of Real Estate Tax and Land-Use Tax for Companies Located in the Yadahong Industrial Concentration District of Songyuan City

According to WSP, companies located in the Yadahong Industrial Concentration District of Ninjiang District of Songyuan City in Liaoning Province received refunds of the real estate and land-use taxes paid pursuant to a decision by the Songyuan City government. Songyuan reported receiving refunds of these taxes on January 21, 2012. The GOC reported that the "{o}bjective

[164] *See* Memorandum to Nancy Decker, Program Manager, "Final Results Calculation Memorandum for Wuxi Seamless Oil Pipe Co., Ltd." (WSP Final Calc Memo) and Chengde Final Calc Memo.
[165] *See* G1SR at Exhibit SE-22.
[166] *See* G2SR at 6. The Department notes that the GOC did not provide the requested statistical information (*e.g.*, total number of companies approved for assistance) indicating that it did not have this information. *Id*. at 7.
[167] *See* WSP Final Calc Memo.

for this program is to support the development of enterprises that are located in the Yadahong Industrial Concentration District[168]. This measure, provided by the local government and issued in 2011, was targeted toward enterprises in the Concentration District that had paid the property tax and urban land use tax between 2007 to 2010. The GOC reported that this program provided relief for enterprises in the district, supported developing enterprises, and helped counter the financial crisis. If the enterprise was located within the Yadahong Industrial Concentration District, in the initial stage of development or in the process of establishment or undertaking a pilot production, the enterprise could get a full refund of the property tax and urban land use tax it paid from 2007 to 2011. An enterprise could get a benefit under this program as long as it met the requirements."[169]

We find that these tax refunds are a financial contribution as they constitute revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. Furthermore, the refunds are specific within the meaning of section 771(5A)(D)(iv) as they are limited to enterprises located within a designated geographical region (the Yadahong Industrial Concentration District) within the jurisdiction of the authority providing the refunds; namely, the Songyuan City government. WSP received a benefit from the refunds in the amount of the revenue forgone by the GOC. Accordingly, we find that this program is a countervailable subsidy.

We analyzed these tax benefits as providing recurring benefits, insofar as receipt of benefits was automatic. Additionally, per 19 CFR 351.524(c)(1), the Department generally treats direct tax exemptions and deductions as providing recurring benefits. Therefore, we calculated the subsidy rate by allocating the amount of the benefit to the year in which the tax refunds were received. Upon doing so, we observed that the benefit to Songyuan during the POR from the land-use tax refund was not measurable (*i.e.*, less than 0.005 percent). However, the benefit to Songyuan from the real estate tax refund was greater than 0.005 percent. Therefore, we find that Songyuan's countervailable subsidy rate for this program during the POR was 0.01 percent *ad valorem*.[170]

F. WSP Technology Grants

According to the GOC, this program is operated by the Economic Development Bureau of the Wuxi New District in Wuxi City.[171] Companies may receive benefits if they engage in certain approved activities, such as receiving a patent or receiving an award for scientific progress.[172] However, as described above, the GOC did not provide any additional information regarding the eligible approved activities or the application criteria and application process. The GOC also did not provide the laws or implementing decrees for this program that would allow the Department to ascertain whether this program is *de jure* specific. Furthermore, the GOC did not provide program usage information that would allow the Department to ascertain whether this program is *de facto* specific to certain enterprises. WSP first reported receiving benefits under this program

[168] *See* G2SR at 20-21 and exhibits SS-5, SS-6, and SS-7.
[169] *Id*.
[170] *See* WSP Final Calc Memo.
[171] *See* G2SR at 10.
[172] *Id*.

in its W1SR.[173] In its W2SR, WSP informed us that it "maintains no reference documents" for this program "and only knows that these grants are related to technology award."[174] It did not respond to the questionnaire appendices for this program. We asked for this information a second time[175], but WSP provided responses regarding "Export Credit Insurance Reimbursements from the Wuxi New District Administration Committee" instead in its W4SR.[176]

We find that grants under this program are a financial contribution within the meaning of section 771(5)(D)(i) in that they are a direct transfer of funds from the GOC. Additionally, as described above under "Use of Facts Otherwise Available and Adverse Inferences," the GOC failed to cooperate to the best of its ability to answer our requests for information regarding this program, and it did not provide sufficient information regarding award criteria and eligibility to enable us to determine whether this program is specific. Therefore, as AFA, we find this program to be specific within the meaning of section 771(5A) of the Act. Finally, a benefit is conferred within the meaning of section 771(5)(E) of the Act in the amount of the grants disbursed.

Neither WSP nor the GOC provided us with sufficient information to ascertain whether this program provides recurring or non-recurring benefits. However, under 19 CFR 351.525(b)(2), the Department will normally allocate non-recurring benefits provided under a particular subsidy program to the year in which the benefits were received if the total amount approved under the subsidy program is less than 0.5 percent of relevant sales of the firm in question in the year in which the subsidy was approved. Since WSP did not provide information regarding the year of approval for this grant, we have instead used the amount and year of receipt for this analysis. However, insofar as the benefit to WSP here is less than 0.5 percent of relevant sales, we would allocate the benefit for this grant to the year of receipt (in this case, the POR) regardless of whether the grant is recurring or non-recurring. Accordingly, we divided the sum of the grant disbursements under this program in the POR by the relevant sales total of the WSP Companies during the POR. On this basis, we find that WSP received a countervailable subsidy of 0.02 percent *ad valorem* for this program.[177]

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

A. Subsidies in the Wuxi New District ("WND")

In its W2SR, WSP informed us that it rents property in the WND from an affiliated company, Wuxi Longhua Steel Pipe Co., Ltd. ("Wuxi Longhua"). Also, the WSP 20-F states the following:

"*Based on a building lease agreement dated June 19, 2006 and subsequently amended, WSP China has rented from Wuxi Longhua a piece of land and certain buildings located in Wuxi, China for production and storing purposes, for which we paid $805,000, $844,000 and $119,000*

[173] *See* W1SR at Exhibit S1-10.
[174] *See* W2SR at 3.
[175] *See* WSP 4th Supp at 4.
[176] *See* W4SR at 2.
[177] *See* WSP Final Calc Memo.

in 2010, 2011 and 2012, respectively. The lease initially expired on August 31, 2009, and has been renewed for one-year terms, with the latest expiration date being December 31, 2013."[178]

Therefore, in our fourth supplemental questionnaire to WSP, we asked WSP to provide information about this land leasing arrangement, as Wuxi Longhua may have transferred a subsidy to WSP within the meaning of 19 CFR 351.525(b)(6)(v). However, in the W4SR, WSP informed us that "WSP only leased the building from Wuxi Longhua in 2012 and not the land."[179] WSP provided the leasing contract between WSP and Wuxi Longhua, which supports WSP's claim.[180] As a result, we did not investigate this leasing arrangement further because U.S. Steel's new subsidy allegation in the previous administrative review was regarding leased land, and WSP leased only a building during the POR of the instant review.

B. Other Grants

The WSP Companies reported receiving grants under programs other than those described above. These include:

- Patent Allowances
- Grants to Liaoyang for Technology Upgrades
- Special Fund for Upgrading Technology in the Xinjiang Uygur Autonomous Region
- Famous Brands

We find that for each of these grants, there was either no measurable benefit (*i.e.*, less than 0.005 percent) to the WSP Companies, or no benefits from these programs to allocate to the POR of the instant review. Therefore, we did not analyze them further and did not included them in our calculations.

Additionally, we find that the following programs were not used by the respondents during the POR:

C. Land and Land-Use Rights for Less Than the Normal "Land Grant Price" in Korla City
D. Deferral of Payment for Land and Land-Use Rights in Korla City
E. "Bail-Out" Loans from SOCBs
F. Export Incentive Payments Characterized as "VAT Rebates"
G. Preferential Tax Program for FIEs Recognized as High or New Technology Enterprises
H. Jiangsu Province Famous Brands
I. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs
J. "Two Free/Three Half" Program
K. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
L. State Key Technology Project Fund
M. Subsidies Provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area – *Science and Technology Fund*

[178] *See* WSP 20-F at 76.
[179] *See* W4SR at 8-9.
[180] *Id.*, at Exhibit S4-10-1.

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

Analysis of Comments

A. Application of the CVD Law

Comment 1: Whether the Department Retroactively Applied Countervailing Duties

GOC's Arguments[181]

[181] *See* GCB, at 4-13.

- The WTO Appellate Body[182] and the CAFC[183] have found that that the Department cannot simultaneously apply the CVD law and the NME methodology for calculating AD duties.
- P. L. 112-99, which authorizes simultaneous application of CVDs and the NME AD methodology violates the Constitution's Fifth Amendment guarantee of due process because it is arbitrary and irrational.[184] Specifically,
  - The Department's treatment of the PRC as an NME means that prices there are not meaningful measures of value, and without meaningful values, there is no rational way to determine whether a benefit exists or to accurately determine CVDs.
  - P.L. 112-99 applies the CVD law to the PRC five years prior to enactment, *i.e.*, five years before it was legal to apply the CVD law to the PRC.
  - This retroactive application is exacerbated by the Department's previous explicit and public commitment not to apply the CVD law to NMEs.[185]
- P.L. 112-99 violates the *Ex Post Facto* clause of the Constitution because it is penal.[186] Specifically,
  - The costs imposed are not related to the harm done by imports, but instead are the full amount of the CVD duties assessed on Chinese OCTG.
  - The CVDs are collected by the U.S. government rather than the harmed individual.
  - P.L. 112-99 is meant to address harm to the public rather than harm to individuals.
- P.L. 112-99 violates the Constitution's guarantee of equal protection of the laws under the Fifth Amendment's due process clause. Specifically,
  - P.L. 112-99 creates a distinct class of merchandise (imports for which no adjustment is made under section 777A(f) of the Act) and this results in imbalanced treatment of OCTG from the PRC relative to future CVD investigations and reviews.
- For these reasons, the Department should find that it cannot identify and measure subsidies in the PRC, and terminate this review, or find that the PRC no longer warrants treatment as an NME under for AD purposes.
- Retroactive application of P.L. 112-99 violates Article X of the GATT.

U.S. Steel's Rebuttal[187]

- The GOC's has repeated the arguments raised in the *2011 Administrative Review* and before the CIT. Both the Court, in *GPX CIT (2013),*[188] and the Department have rejected them resoundingly.
- Application of P.L. 112-99 does not violate Article X of the GATT because:
  - The instant proceeding is governed by U.S. law rather the WTO agreements;
  - There is no WTO Dispute Settlement Body finding that the application of CVD violates Article X of the GATT.

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[182] *See* Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011).
[183] *See GPX Int'l Tire Corp. v. United States*, 666 F.3d 732 (Fed. Cir. 2011) (*GPX CAFC (2011)*).
[184] In support, the GOC cites *Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 733 (1984) (*Gray*).
[185] *See CVD Preamble*, at 65361.
[186] In support, the GOC cites *United States v. Carlton*, 512 U.S. 26, 30-31 (1994), and *Gray*, at 733. *See* GCB at 5.
[187] *See* PRB, at 1-4.
[188] *See GPX Int'l Tire Corp. v. United States*, 893 F. Supp. 2d 1296, at 1334 (CIT 2013) (*GPX CIT (2013)*).

Department's Position:

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

We disagree that P.L. 112-99 violates the Fifth Amendment's due process clause. Section 1 of P.L. 112-99 is not retroactive. Rather it 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.[189] 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)*.[190]

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.[191]

Finally, we disagree the P.L. 112-99 violates equal protection of the law as guaranteed by the Fifth Amendment's due process clause. Section 1 of P.L. 112-99 imposes no new obligation on parties, but merely reaffirms the Department's authority to apply the CVD law to NME countries. Thus, section 1 does not single out one group of companies and deny them the "protections" of section 2. Rather, section 1 simply confirms that existing law, to which all companies were already subject, applies. Further, the distinction between section 1 and section 2 of the legislation serves a rational purpose. As evidenced by the legislative history, section 2 of P.L. 112-99 was adopted, in part, to bring the United States into compliance with its WTO obligations.[192] Given the statutory scheme for prospective implementation of adverse WTO decisions,[193] 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.

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[189] *See*, *e.g.*, 158 Cong. Rec. at H1167-68 (daily ed. March 6, 2012) (statements of Representatives Camp, Levin, Rohrbacher, and Boustany).

[190] *See*, *e.g.*, *General Motors Corp. v Romein*, 503 U.S. 181, 191 (1992) (upholding retroactive legislation that corrected unexpected results of judicial opinion).

[191] *See Chaparral* at 1103–04; *Peer Bearing* at 1310. The specific purpose of CVD law is to "offset" the harmful effects of foreign subsidies. *See* S. Rep. No. 1221, 92d Cong., 2d Sess. 8 (1972).

[192] *See*, *e.g.*, 158 Cong. Rec. at H1167-68, H1171 (daily ed. March 6, 2012) (Statements of Representatives Camp, Brady, and Jackson Lee).

[193] *See* 19 U.S.C. 3533, 3538.

With respect to the GOC's argument that retroactive application of P.L. 112-99 violates Article X of the GATT, we again note the Department's position that P.L. 112-99 is not retroactive but rather it confirms existing law. Further, we agree with U.S. Steel that there is currently no finding by the WTO Dispute Settlement Body that the application of the CVD law in this case (or in any other case) is in violation of Article X of the GATT. Accordingly, our determination here is fully consistent with our obligations under the GATT and SCM Agreement.

Comment 2: Simultaneous Application of CVD and AD NME Measures

GOC's Arguments[194]

- P.L. 112-99 requires an adjustment to address double counting. In its simultaneous application of CVD and AD NME measures, the Department has made no attempts to identify or avoid imposing double remedies.
- No adjustment was made in the AD administrative reviews that overlapped this CVD's POR as both AD administrative review were rescinded.[195] Thus, to avoid double counting, these CVD *Preliminary Results* must be revised.
- Such a revision is also necessary to comply with WTO AB Decision 379.[196]
- P.L. 112-99 was intended to bring the United States into compliance with WTO AB Decision 379.

U.S. Steel's Rebuttal[197]

- P.L. 112-99 is clear that any adjustment for an alleged double remedy must be made in the context of an AD proceeding, not a CVD proceeding.
- Such an adjustment is only permitted if the subsidy is demonstrated to have reduced the price of imports, and no such showing has been made in this review.
- WTO Appellate Body reports are without effect under U.S. law until they have been adopted under procedures described in the URAA. In any case, WTO AB Decision 379 was an "as applied" finding and, consequently, has no controlling force or effect even under WTO dispute settlement rules.

Department's Position

As in the *2011 Administrative Review*, we disagree with the GOC and determine that 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

[194] *See* GCB, at 13-16.
[195] *See Oil Country Tubular Goods From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 4125 (January 18, 2013) (requested and then withdrawn by U.S. Steel and WSP) and *Certain Oil Country Tubular Goods From the People's Republic of China: Rescission of Antidumping Duty Administrative Review*; 2012-201378 78 FR 73828 (requested and then withdrawn by U.S. Steel).
[196] *See United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* , WT/DS379/AB/R (March 11, 2011) (WTO AB Decision 379).
[197] *See* PRB, at 4-7.

CVD administrative review. The CAFC has stated that the "clear implication of this new provision is that the pre-existing statute did not contain a prohibition against double-counting."[198] The CAFC concluded "that the statute prior to the enactment of the new legislation did not impose a restriction on Commerce's imposition of countervailing duties on goods imported by {sic} NME countries to account for double counting."[199]

Moreover P.L. 112-99 provides for a process by which an adjustment can be made for any alleged double-remedy, and is clear that any such adjustment must be made in the context of the AD calculation and not the CVD calculation.[200] Thus, if parties wish to request an adjustment for any alleged double-counting, they may request an AD review, and then submit a request within that proceeding. Here, while the AD administrative reviews covering the CVD POR were initiated after the effective date of P.L. 122-99, those reviews were rescinded as the GOC has noted. The Department is bound by this statutory provision, and cannot depart from it to provide any adjustments in any other proceeding. Thus, no dumping margins were calculated and no adjustment could be made.

Moreover, the legislative history for P.L. 112-99 makes clear that Congress had a rational basis for confirming the Department's authority to apply the CVD law to products from NME countries while ensuring that, for WTO compliance purposes, the Department could, going forward, make adjustments to AD duties to account for any overlap in AD and CVD remedies demonstrated to exist.[201] As stated above, given the statutory scheme for prospective implementation of adverse WTO decision,[202] 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.

B. New Subsidy Allegation Programs

Comment 3: Application of AFA for WSP's Failure to Respond to Questionnaires Regarding New Subsidy Allegation Programs and Uncreditworthiness

As described above under "Use of Facts Otherwise Available and Adverse Inferences, WSP Companies – New Subsidy Allegation Programs," the Department is applying AFA to WSP for certain programs due to WSP's failure to submit timely responses to our new subsidy allegation questionnaire and third supplemental questionnaire.

WSP's Arguments:[203]

[198] *See GPX Int'l Tire Corp. v. United States*, 678 F.3d 1308, 1312 (Fed. Cir. 2012) 1312.
[199] *Id*.
[200] 19 U.S.C. § 1677f-l(f)(1) (2012).
[201] *See*, *e.g.*, 158 Cong. Rec. H1167 (daily ed. March 6, 2012) (statement of Representative Camp).
[202] *See* 19 U.S.C. 3533, 3538.
[203] *See* WCB at 2-9.

- WSP argues that the Department abused its discretion when it refused to grant WSP's requests for out-of-time extensions to submit its responses to the Department's new subsidy allegation questionnaire and third supplemental questionnaire, and instead applied an "overly punitive" AFA rate.
- It argues that its failure to respond to these questionnaires was not intentional or due to an unwillingness to cooperate. Indeed, WSP claims it has been "a fully cooperative and engaged respondent."
- Rather, WSP claims that its failure to respond resulted from an unexpected and unannounced change in the Department's practice for issuing questionnaires. Previously, according to WSP, it "{has} been the Department's practice for many years" to communicate via telephone or direct email to counsel for a party that a questionnaire to that party had been issued.
- WSP emphasizes that the Department notified counsel for WSP that the first two questionnaires in this proceeding had been issued first with a telephone call, and then by sending a copy of the questionnaire directly to counsel for WSP via e-mail. However, for the two questionnaires to which WSP failed to respond, WSP claims "the Department did not communicate this issuance of the supplemental questionnaire by telephone or by e-mail." Instead, the Department only uploaded these questionnaires to the IA ACCESS system.
- WSP suggests that it is "incongruous and curious" that the Department "abruptly decided to cease {such notifications}" after learning that one of the attorneys acting as counsel for WSP was out on maternity leave.
- WSP also observes that the Department notified parties that it would no longer send courtesy copies of questionnaires to counsel on April 23, 2014, which is months after the two supplemental questionnaires at issue in this proceeding were released.
- In WSP's opinion, accepting WSP's out-of-time extension request would have presented "a minimal burden" for the Department, as the request "only came several weeks after the issuance of the questionnaires and before the issuance of the preliminary results.
- According to WSP, it would be more appropriate for the Department to not apply AFA to WSP, and instead rely entirely on information submitted by the GOC with respect to the NSA programs. Based on the GOC's submissions, WSP argues that the Department should only calculate a rate for the program "Tax Waivers and Reductions in Korla City."
- If the Department does not rely on the GOC's information for the NSA programs, WSP observes that all of the NSA programs pertain only to Bazhou, and argues that the Department should adjust the AFA rate to account for the proportion of Bazhou's sales relative to the sales of the WSP Companies as a whole.

GOC's Arguments:[204]

- The GOC argues that the Department "self-blinded itself from information that would more accurately calculate WSP's CVD margin." Accordingly, it assigns blame to the Department, rather than WSP, for the resulting gap in record information.

[204] *See* GCB at 34-35.

- At the time of WSP's out-of-time extension request, there were months remaining before the final results of this review were due, yet the Department did not address whether sufficient time remained to permit WSP to file late responses.

U.S. Steel's Rebuttal:[205]

- U.S. Steel points to the Department's March 10, 2014 response to WSP's request for an out-of-time extension and argue that lead counsel for WSP did receive timely email notification of the release of the questionnaires at issue "on the very day that they were issued by the Department," contrary to WSP's claim that the Department did not communicate to WSP that the questionnaires had been released.
- U.S. Steel also emphasizes that counsel for WSP accessed the initial new subsidy questionnaire issued to the GOC on the same day the Department issued its new subsidy questionnaire to WSP. They observe that the questionnaire specifically asked the GOC about new subsidies provided to WSP's cross-owned affiliate Bazhou. They argue that "any diligent interested party acting to the best of its ability" would have attempted to determine whether the Department had issued questions about those same programs to WSP.
- U.S. Steel argues that lead counsel for WSP repeatedly used IA ACCESS to file responses and access documents throughout this proceeding. In particular, lead counsel for WSP used IA ACCESS to file a submission on December 6, 2013, the date on which the Department issued its new subsidy allegation questionnaire to WSP.
- U.S. Steel alleges that by adopting WSP's suggestion that the Department should rely solely on information from the GOC regarding the NSA programs, the Department would remove the incentive for respondents to cooperate with the Department's requests for information in future CVD proceedings.
- U.S. Steel also argues that the Department should not adjust the AFA rate for the NSA programs to correspond to the size of Bazhou's sales in relation to the total sales of the WSP Companies. According to U.S. Steel, in the absence of information from WSP, there is no basis to believe that the actual level of subsidies provided to Bazhou would bear any relationship to the company's sales during the period of review. U.S. Steel observes that by their nature, countervailable subsidies are non-commercial and may in some instances exceed the value of a recipient's sales.

Department's Position

After careful consideration of the information on the record and comments from parties following the issuance of the *Preliminary Results* and post-preliminary analysis, we find that there is adequate evidence on the record from the GOC to confirm that WSP's cross-owned affiliate Bazhou did not benefit from two of the NSA programs being investigated: "Land and Land-Use Rights for Less Than the Normal "Land Grant Price" in Korla City" and "Deferral of Payment for Land and Land-Use Rights in Korla City."[206] However, with respect to the remaining programs and the creditworthiness of the WSP Companies, we have continued to

[205] *See* PRB at 24-32.
[206] *See* GNSAR2 at Exhibit SN-1.

apply AFA to WSP due to WSP's failure to respond to our NSA and Uncreditworthiness Questionnaires.

We have previously pointed out a number of inconsistencies in WSP's evolving justifications regarding why it failed to respond to two questionnaires. (Initially, WSP claimed that it was a victim of "extraordinary circumstances"[207] and later argued that it was hampered by ineffective notification from the Department). [208] For instance, we acknowledged that one of the attorneys employed as counsel for WSP was out of the office between November and early February on maternity leave, but pointed out that another attorney had been listed as lead counsel on the service lists for the duration of this proceeding.[209] This attorney has been the recipient of automatically generated e-mail notifications from IA ACCESS for the duration of this proceeding.[210] The IA ACCESS system sent him two such automated notifications that the questionnaires at issue here had been released by the Department.[211] Contrary to WSP's allegation in its case brief that "{u}nlike the previous two supplemental questionnaires… the Department did not communicate the issuance of the supplemental questionnaire by telephone or by e-mail," the Department did in fact provide notification to counsel for WSP. In fact, WSP admits as much in an earlier letter, stating, "{w}e understand that IA ACCESS notifications related to the supplemental questionnaires were sent to {the attorney}; however, those emails were inadvertently overlooked and he did not realize that those notifications completely replaced the direct emails or calls from the case analyst."[212]

Moreover, the facts here do not reflect that WSP neglected to respond to the questionnaires because it "overlooked" the IA ACCESS notifications. Rather, they reflect that WSP received the notification, opened it, and simply failed to read the *entire* notification email. On December 6, 2013, the IA ACCESS system sent a public digest email notifying counsel for WSP that the Department had released NSA questionnaires to WSP, the Government of the People's Republic of China ("GOC") and the other respondent in this proceeding.[213] Then, internal logs for IA ACCESS show that at 5:01 p.m. on the same day, lead counsel for WSP accessed the NSA questionnaire we issued to the GOC.[214] However, it appears that lead counsel for WSP simply failed to scroll down in the digest email and see that the same notification email also contained links to the questionnaire issued to WSP, and was clearly labeled as pertaining to WSP. Thus,

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[207] *See* Letter from WSP to the Department, "Letter Regarding Supplemental Questionnaires" (February 7, 2014) at 7.
[208] *See*, *e.g.*, WCB at 4.
[209] *See* Letter from the Department to WSP, "Administrative Review of Oil Country Tubular Goods from the People's Republic of China: Retroactive Extension Request for Supplemental Questionnaires" (March 10, 2014) (First NSA Ext Response) at 1.
[210] *Id*. at Attachment 1.
[211] *Id*. at Attachments 2 and 3.
[212] *See* Letter from WSP, "Letter Regarding Supplemental Questionnaires" (March 28, 2014) (First NSA Ext Req) at 2-3.
[213] *See* Letter from the Department to WSP, "Administrative Review of Oil Country Tubular Goods from the People's Republic of China: Retroactive Extension Request for Supplemental Questionnaires" (March 10, 2014) at Attachment 3. As explained in the IA ACCESS Handbook, "…public digests will be emailed from IA ACCESS at approximately noon and 5:00 p.m. Eastern time each business day." *See* IA ACCESS Handbook at 18. The IA ACCESS Handbook is publicly accessible online at https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf
[214] *Id*. at Attachment 4.

the facts here do not reflect ineffective notification. Instead, the facts demonstrate that counsel for WSP was negligent in fully reading the notifications it received from the Department.

Furthermore, as pointed out by U.S. Steel, it is unclear why counsel for WSP, which represented WSP in the last administrative review (in which new subsidy allegations were also filed), did not attempt to find out whether any questionnaire had been issued to WSP after viewing the new subsidy allegation questionnaire we issued to the GOC and realizing that the Department's questions for the GOC pertained to WSP's cross-owned affiliate. WSP itself has acknowledged that counsel for WSP experienced "a failure of internal communication," that notifications from the Department were "inadvertently overlooked," and that "the docket was not being checked systematically" while one of WSP's attorneys was out of the office on maternity leave.[215] Also, WSP does not address how both Jiangsu Chengde and the GOC were able to find and access the new subsidy allegation questionnaires issued to those parties on the day that they were issued, given that the Department issued those questionnaires in the same manner that it issued its questionnaire to WSP.[216]

WSP's insistence that the Department is attempting to "punish" it despite it having been a "fully cooperative and engaged respondent" throughout this proceeding is not grounded in the facts of this case. Despite WSP's insistence that it has "submitted all responses on a timely basis except for the two supplemental questionnaires at issue," we note that cooperation in an AD/CVD investigation or administrative review is not limited merely to filing responses by the deadlines for those responses. It is also relevant whether the responses contain the information requested, in the form and manner it was requested. WSP's failure to respond to two supplemental questionnaires is not an isolated incident. Indeed, from WSP's very first questionnaire response, its responses have been fraught with errors, omissions, and other oversights that have hindered this proceeding and forced the Department to devote an unusually high amount of resources to its administration. For example, in the *Preliminary Results* and above under "Use of Facts Otherwise Available and Adverse Inferences – Policy Loans," we explained that WSP's loan tables contained numerous errors, omissions and inconsistencies, and even after we asked WSP to correct these errors, WSP's next response repeated many of the same errors. Many of these errors were not subtle – for instance, in its initial reporting of loans received by some of its cross-owned affiliates, WSP simply left almost half of our loan reporting template blank.[217] When reporting loans for Bazhou, WSP disregarded our loan template for some loans and reported them on a table of its own devising.[218]

In addition to this, WSP's initial response was missing a wide variety of information requested by our initial questionnaire, ranging from missing translations to missing electricity bills and illegible copies.[219] In particular, WSP's initial responses regarding its purchases of steel rounds were so deficient as to be unusable.[220] Out of 15 columns in our template for reporting this

[215] *See* Letter from WSP to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China: Letter Regarding Supplemental Questionnaires" (March 28, 2014) (Second NSA Ext Req).
[216] *See*, e.g., First NSA Ext Response at Attachment 4.
[217] *See*, e.g., MQR at Exhibit M9.
[218] *See* BQR at Exhibit B11, Worksheet "ALL".
[219] *See*, e.g., MQR at Exhibit M7.
[220] *See* WQR at Exhibit 17.

information, WSP left 7 completely blank.[221] In some instances, it reported negative purchase values or other erroneous information.[222] WSP also omitted any information regarding the actual names and addresses of the producers of the steel rounds it purchased.[223] WSP's omission of this information further delayed the proceeding because WSP provided the GOC with information based on the names of its suppliers, rather than the names of its producers, and the GOC relied on this information to provide ownership information to the Department.[224] We asked that WSP remedy these and other errors in our first supplemental questionnaire; however, WSP's W1SR still contained many of the errors we had asked WSP to correct.[225] In fact, even though this was the second time the Department had requested some of this information from WSP, WSP's W1SR contained so many deficiencies, including many of the same errors that appeared in the WQR and were specifically identified in our first supplemental questionnaire, that we took the extraordinary step of reaching out to counsel for WSP by telephone to see if there was some extenuating circumstance preventing WSP from providing correct information despite direct requests from the Department.[226] This phone call prompted WSP to file significant corrections to its sales totals and its reporting of steel rounds purchases.[227] In the absence of these corrections, the Department may have lacked reliable sales information and information regarding WSP's purchases of steel rounds on which to base its findings.

As described above, the Department made extensive efforts to obtain usable and reliable information from WSP. These efforts directly contradict WSP's claims that the Department had an agenda adverse to WSP's interests. Rather, the record shows that, despite the steps taken by the Department, it is WSP's failure to cooperate, whether intentionally or through its own negligence, which has resulted in the application of AFA for a number of programs. Indeed, a number of other errors in WSP's submissions, such as submitting grant information regarding an entirely different program than the one for which we requested information,[228] appear to be consistent with general inattentiveness to this proceeding.

It is unclear how WSP arrived at the conclusion that providing two out-of-time extensions would have presented a "minimal burden" for the Department, especially in light of the increased resources already consumed by this case as a result of the deficiencies in WSP's responses outlined in this section and above under "Use of Facts Otherwise Available and Adverse Inferences." As the Department pointed out at the hearing in this proceeding, WSP made this claim without knowledge of the substantial casework already being undertaken by this office.[229] Thus, we disagree with WSP's assessment of the burden presented by its out-of-time extension request, which arrived less than two weeks before the fully-extended deadline for the Department to issue its preliminary results of review. Additionally, granting WSP's request would likely have required the issuance of additional supplemental questionnaires, which would have

[221] *Id*.
[222] *Id.*
[223] *Id.*
[224] *See* GQR at Exhibit 3.
[225] *See.*, e.g., W1SR at Exhibit S1-51.
[226] *See* Memorandum to the File, "Phone Conversations with Counsel for Wuxi Seamless Oil Pipe Co., Ltd., ("WSP") Regarding WSP's First Supplemental Questionnaire Response" (November 14, 2013).
[227] *See* WSP 2nd Supp.
[228] *See* W4SR at 2, where we requested information regarding a technology grant program and WSP responded for the program "Export Credit Insurance Reimbursements from the Wuxi New District Administration Committee."
[229] *See* Hearing Transcript at 28.

presented an additional burden in light of the two months lost between the issuance of the new subsidy allegation questionnaire on December 6, 2013 and counsel for WSP's discovery that it had not responded to two supplemental questionnaires on February 7, 2014.

Furthermore, we disagree with WSP's allegation that the Department abruptly changed its practice in this proceeding to the detriment of WSP, regarding sending notification to parties via email or phone, in addition to the automatic notifications sent by IA ACCESS. As WSP itself underscored, the Department frequently invites counsel for a party to review the bracketing of that party's business proprietary information (BPI) before releasing documents to the case record.[230] This is done as a courtesy to the party owning the BPI and as an added safeguard against the inadvertent release of BPI outside of the protection of an administrative protective order, or APO. In some instances, where it is unclear whether some information could be proprietary, the Department may also ask an outside party to review an ostensibly public questionnaire to ensure that the document is, indeed, public (but not, as WSP suggests, for every public questionnaire).

WSP appears to have conflated the Department offering outside parties an opportunity to review bracketing of BPI with what it alleges is a practice of providing "courtesy copies" for every document generated by the Department. WSP claims that "{it is} the Department's practice to communicate any supplemental questionnaires to counsel by phone or direct e-mail from the case analyst, as was done in this review for the first two supplemental questionnaires."[231] WSP fails to mention that the first two supplemental questionnaires issued by the Department to WSP in this proceeding contained proprietary information, and so it was appropriate to ask counsel for WSP to review the bracketing of these questionnaires before placing them on the record. However, the two questionnaires to which WSP did not reply were public documents in their entirety, and there was no uncertainty regarding whether they may contain proprietary information. Therefore, it was not necessary to ask counsel for WSP to review these questionnaires before they were placed on the record.

Finally, apart from the two programs described above, we disagree with WSP that it is appropriate to exclusively rely on the GOC's information for calculating subsidy rates for the NSA programs, in light of WSP's failure to provide this information. The Department requires different information from both the government and the respondent in CVD proceedings in order to fully analyze whether the respondents in a CVD investigation or administrative review have received countervailable subsidies, and in this instance, lacks this information from WSP. Furthermore, we agree with U.S. Steel that respondents in future proceedings would have little incentive to cooperate with the Department's requests for information should the Department decide in this case that it is adequate to rely entirely on the government's response in the absence of cooperation from the respondent company. We also did not employ WSP's suggested alternative methodology for weighting the AFA rate according to the proportion of Bazhou's sales to the sales of all WSP Companies. WSP's approach assumes that there is a relationship between the sales of a company and the degree to which it is subsidized. However, as pointed out by U.S. Steel, countervailable subsidies are by their nature non-commercial and could even exceed a company's total sales under some circumstances.

[230] *See* Second NSA Ext Req at 2.
[231] *See* WCB at 6.

For the reasons above, we continued to apply AFA to WSP for the new subsidy allegation programs for these final results, and continued to do so using our standard CVD AFA practice.

Comment 4: Whether the Department Should Have Investigated the Program "Preferential Financial Support to Bazhou Seamless"

GOC's Arguments:[232]

- Pursuant to 19 USC 1671a(b)(1), the Department will initiate an investigation of a subsidy allegation when a petitioner's evidence includes a financial contribution, benefit, and specificity in regard to the relevant allegation. U.S. Steel notes that the Department conceded that "U.S. Steel 'does not allege a certain type of financial aid but suggests that it would likely have been in the form of preferential loans, grants, loan guarantees, and other financial support'."

- Accordingly, this allegation does not meet the Department's standard for initiation because Petitioner did not provide evidence of who provided the subsidy or the form in which it was provided to the recipient. Further, U.S. Steel failed to identify an actual program under which the alleged benefit was provided. Finally, U.S. Steel failed to illustrate that any alleged financial support was provided on terms that were preferable to those available on a commercial basis. For these reasons, the Department should not countervail this program in the final determination.

U.S. Steel's Rebuttal:[233]

- U.S. Steel's allegation of this program is based on an article provided by GOC authorities and published on an official GOC website. This article details official actions taken to alleviate the financial difficulty of Bazhou Seamless, Bazhou's designation as a "high tech" company, and its location in a specific production zone designated by the GOC for promotion.

- These facts provide a reasonable basis to conclude that the GOC provided Bazhou with preferential financial support, including through grants and loans.

Department's Position

We continue to find that U.S. Steel's allegation regarding the "Preferential Financial Support to Bazhou Seamless" program met the statutory threshold for initiation. We note that Section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), states that petitioners must allege the three elements[234] necessary for the imposition of the duty imposed by section 701(a)

[232] *See* GCB at 36-37.
[233] *See* PRB at 34-36.
[234] Section 771(5)(B) of the Act states that a subsidy shall be deemed to exist if (1) there is a financial contribution by a government of a country or any public entity within the territory of the country or if a government entrusts or directs a private party to make a financial contribution, and (2) a benefit is thereby conferred.

of the Act and that the allegation must be accompanied by information reasonably available to petitioners supporting those allegations.

As stated in our "Initiation Memo,"[235] U.S. Steel alleged all three elements of a subsidy and supported its allegation with supporting information reasonably available to it. In particular, the record shows U.S. Steel's allegation was supported by information published by the regional government where Bazhou operates. Specifically, U.S. Steel provided an article indicating that various government departments and financial institutions were directed to act in a concerted effort to provide artificial support for Bazhou during a time of financial difficulty.[236] Further, U.S. Steel's allegation provided a reasonable basis to indicate that provincial government officials led a coordinated effort to provide preferential support to Bazhou, including directives to financial institutions and that the support provided was in the form of preferential loans, grants, loan guarantees, and other forms of financial support.[237]

As U.S. Steel demonstrated, taken together, these actions provide a reasonable basis to conclude that the GOC may have provided Bazhou with a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a direct transfer of funds including grants, loans, and loan guarantees, that this support was specific to Bazhou within the meaning of section 771(5A)(D)(iii)(I) of the Act, and that a benefit was thereby conferred to Bazhou.

C. Provision of Electricity for LTAR

Comment 5: Whether the Provision of Electricity for LTAR is Countervailable

GOC's Arguments[238]

- The provision of electricity is not countervailable because it constitutes general infrastructure, and is not a financial contribution pursuant to U.S. law[239] or the SCM Agreement.[240]
- Consistent with past cases such as *Wire Rod from Saudi Arabia*, the Department should reject U.S. Steel's attempts to claim "infrastructure subsidies."[241]

[235] See "Countervailing Duty Administrative Review: Certain Oil Country Tubular Goods from the People's Republic of China New Subsidy Allegations" (Initiation Memo) at 6, dated December 3, 2013.
[236] See "Provincial Leaders Set Good Examples of Serving Companies, Personally Visiting Companies in Autonomous Region to Coordinate Problems Regarding Business Orders," "Oil Country Tubular Good from the People's Republic of China, June 20, 2013 (New Factual Information) at Exhibit 21. Specifically, the article indicated that Zingjiang provincial Deputy Party Secretary and Deputy Governor Du Beiwei led a concerted effort to support Bazhou in 2012.
[237] *See* Letter from U.S. Steel to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China" (July 29, 2013) at 15-17.
[238] *See* GCB at 32-33.
[239] *See* section 771(5)(D)(iii) of the Act.
[240] *See* GCB, at 42.
[241] *See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From Saudi Arabia*, 51 FR 4206 (February 3, 1986) (*Wire Rod from Saudi Arabia)*; *see also Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid From Israel*, 52 FR 25447 (July 7, 1987) (*Phosphoric Acid from Israel)*, and *Bethlehem Steel Corporation v. United States*, 223 F. Supp. 2d 1372 (CIT 2002) (*Bethlehem Steel)*.

- The GOC's provision of electricity to OCTG producers is not specific to the OCTG industry.
- In *Wire Rod from Saudi Arabia*, the Department described a three-prong test for analyzing whether basic infrastructure provides a countervailable subsidy. In this case, the Department did not make determinations regarding these criteria.[242]

U.S. Steel's Rebuttal[243]

- The Department relied on AFA for the provision of electricity for LTAR in the *Investigation Final* because the GOC failed to act to the best of its ability to provide information requested by the Department. In this review, the GOC also had opportunities to provide the missing information, but did not do so.
- The Department rejected identical arguments regarding whether the provision of electricity is non-countervailable as "general infrastructure" in the *Investigation Final* and in *Hot-Rolled Steel from Thailand*.[244]
- The Department rejected identical arguments regarding whether it may apply AFA in *Sinks from the PRC*[245] and in *Wood Flooring from the PRC*.[246]
- That the Department has countervailed the provision of electricity for LTAR in other CVD investigations simply shows that the GOC has provided electricity subsidies to certain favored industries.

Department's Position

In continuing to find this program countervailable, we relied on our findings in the *Investigation Final* that "the GOC's provision of electricity confers a financial contribution, under section 771(5)(D)(iii) {of the Act}, and is specific, under section 771(5A) {of the Act}."[247] This determination in the *Investigation Final* was based on AFA as a result of the GOC's failure to provide certain "provincial electricity information" requested by the Department.[248] Here, however, we are only relying on our prior finding that the program was countervailable. Based on this prior finding of countervailability, we used electricity consumption information supplied by Jiangsu Chengde to calculate the benefit for these companies.

In this proceeding, we notified the GOC that "{w}e do not intend to reevaluate the countervailability of this program. However, we also informed the GOC that if there were any changes to the operation of the program during the POR, it should explain the changes and answer all relevant questions in the Electricity Appendix."[249] In an administrative review, we do

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[242] *See Wire Rod from Saudi Arabia*, at 4210.
[243] *See* PRB, at 21-24.
[244] *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001) (*Hot-Rolled Steel from Thailand)*, and accompanying IDM at Comment 10.
[245] *See Sinks from the PRC*, and accompanying IDM at Comment 13
[246] *See Multilayered Wood Flooring From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011) (*Wood Flooring from the PRC)*, and accompanying IDM at Comment 4.
[247] *See Investigation Final*, at 23.
[248] *Id.*, at 5.
[249] *See* InitQ, at II-5 (emphasis in original).

not revisit prior countervailability findings in the proceeding absent new evidence that would cause the Department to revisit its prior findings.[250] In this administrative review, the GOC could have provided the provincial electricity information we requested in the *Investigation Final*, but failed to provide this information. Therefore, we continued to use the highest electricity rates in each respective tariff category as our benchmark.

Without the information the GOC failed to provide in these proceedings, we cannot fully analyze whether the provision of electricity in China is specific. If anything, our collective applications of AFA regarding the provision of electricity indicate a broad, consistent pattern of non-cooperation by the GOC.

Regarding the GOC's claim that the provision of electricity is non-countervailable as general infrastructure, we disagree. The GOC cites to the Department's analysis in *Wire Rod from Saudi Arabia* of certain benefits such as roads and ports as potential general infrastructure benefits, and argues that the Department should apply the same analysis to the provision of electricity in this case. We note that the *Wire Rod from Saudi Arabia* decision was issued in 1986, and the Department has since revised its approach to assessing whether a particular financial contribution constitutes general infrastructure.[251] Moreover, the Department has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure.[252] Also, the Department's regulations explicitly categorize electricity within the provision of goods and services.[253]

As we have explained elsewhere, there are certain types of information that can only be provided by a government, and when the government does not provide that information, the Department necessarily draws an adverse inference.[254] Although we recognize that such a finding may affect the respondent, such an effect does not render the application of adverse facts available unlawful.

D. Provision of Steel Rounds for LTAR

Comment 6: Whether Majority State-Owned Producers of Steel Rounds are "Authorities"

Majority State-Owned Enterprises

GOC's Arguments[255]

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[250] *See Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews*, 61 FR 52408, 52420 (October 7, 1996) (*Live Swine from Canada*).

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

[252] *Id.*

[253] *See CVD Preamble*, at 65377.

[254] *See Wood Flooring from the PRC*, and accompanying IDM at Comment 4.

[255] *See* GCB, at 17-18.

- SOEs are not authorities.
- SOEs are required by Chinese law to maximize returns for their owners[256] and appoint company personnel who will maximize profits and act in the best interests of the company.[257]
- The Department did not explain its decision to treat SOEs as authorities, beyond describing these companies as majority-owned by the government. In this respect, the Department has not complied with WTO AB Decision 379 which requires the Department to examine factors beyond majority ownership.
- For these reasons, the Department's treatment of SOEs as "authorities" is contrary to record evidence and in violation of the United States' WTO obligations.

WSP's Arguments[258]

- The Department must examine factors beyond majority ownership in order to maintain compliance with WTO AB Decision 379 and its own past practice.
- The Department applies a five-factor test (government ownership, government presence on the board of directors, government control over activities, the entity's pursuit of government policies, and whether the entity is created by statute) in evaluating whether an entity is an authority, and there is no evidence that the GOC exercises control over any of these factors.[259]
- Record evidence indicates that the respondents' purchases of steel rounds were based on commercial considerations. Therefore, there is no financial contribution and no subsidy.

U.S. Steel's Rebuttal[260]

- The Department has considered and rejected the above arguments in prior proceedings such as *Wind Towers from the PRC* and the *2011 Administrative Review*.
- An "as applied" challenge, WTO AB Decision 379 was limited in its scope to the specific CVD proceedings involved. The instant review and the investigation were not among these proceedings.

Department's Position

We continue to find that certain steel round producers, which are majority-owned by the GOC, are "authorities." However, contrary to the GOC's and WSP's arguments, our finding on this point is not based solely on state ownership. Rather, as explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.[261] Our finding is based on the fact that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.

[256] *See* GQR, at Exhibit 11, Article 6.
[257] *Id.*, at Exhibit 11, Article 8.
[258] *See* WCB, at 14-16.
[259] *See KASR from the PRC*, and accompanying IDM at Comment 4.
[260] *See* PRB, at 7-12.
[261] *See* Public Body Memorandum at 35-36

Therefore, we determine that these entities are "authorities" within the meaning of section 771(5)(B) of the Act and that the respondent companies received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

The Department has further addressed these arguments in *Sinks from the PRC*.[262] We explained that WTO AB Decision 379 involved an "as applied" challenge to the AD and CVD determinations at issue in that case, and the Department's recent implementation applied only to those AD and CVD determinations.[263] Neither the decision nor the implementation applies to this administrative review. In any event, the AB found that a "public body" must be an entity that possesses, exercises or is vested with governmental authority. This is the Department's finding in this administrative review.

Furthermore, WSP's "five factors" argument is not relevant to the issue as our Public Body Memorandum fully explains the Department's decision that majority state-owned companies in China are "authorities" under U.S. law.

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

> It has been argued that government-owned firms may act in a commercial manner. We do not dispute this. Indeed, the Department's own regulations recognize this in the case of government-owned banks by stating that loans from government-owned banks may serve as benchmarks in determining whether loans given under government programs confer a benefit. However, this line of argument conflates the issues of the "financial contribution" being provided by an authority and "benefit." If firms with majority government ownership provide loans or goods or services at commercial prices, *i.e.*, act in a commercial manner, then the borrower or purchaser of the good or service receives no benefit. Nonetheless, the loan or good or service is still being provided by an authority and, thus, constitutes a financial contribution within the meaning of the Act.[264]

Comment 7: Relevance of CCP Affiliations to Whether a Company is a GOC "Authority"

GOC Arguments[265]

- The CCP is a political party, and members of the CCP do not have the legal authority to direct business operations.
- The various CCP bodies are not part of the GOC. Chinese law prohibits GOC officials from being the owners, members of the boards of directors or managers of steel round producers.

[262] *See Sinks from the PRC*, and accompanying IDM at Comment 10.
[263] *See* Section 129 Implementation; *see also Sinks from the PRC*, and accompanying IDM at Comment 10.
[264] *See Wind Towers from the PRC*, and accompanying IDM at Comment 12.
[265] *See* GCB, at 18-25.

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

WSP's Arguments[266]

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

U.S. Steel's Rebuttal[267]

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

Department's Position

The GOC (and to some extent, WSP) have made three arguments regarding the CCP in their briefs and throughout this proceeding. First, they argue that CCP officials are prohibited from

[266] *See* WCB, at 13-14.
[267] *See* PRB, at 7-12.

serving as owners, members of the boards of directors, and managers of companies. Second, they argue that it would be "tremendously burdensome" to supply the Department with information regarding the CCP affiliations of "hundreds, perhaps thousands, of natural persons owning suppliers or persons serving as owners, members of the board of directors and managers of suppliers."[268] Third, they argue that "the CCP affiliations or activities of suppliers are not relevant to the statutory analysis of government 'authorities.'"[269]

With respect to the first argument, the GOC argues in its case brief that CCP officials are restricted from being owners, members of the boards of directors and managers of companies, by the Executive Opinion of the Central Organization Department of Central Committee of CPC on Modeling and Trial Implementation of the Provisional Regulations of State Civil Servants in CCP Organs (ZHONG FA (1993) No. 8), which reflects the CCP's intent to model its personnel management system after the Civil Servant Law, including restrictions on enterprise employment.[270] However, it has been explained that this rule only applies to "staff of the administrative organs of the CCP and specified officials."[271] Thus, the rule only applies to a subset of party and government officials. The GOC has not defined the "specified officials" it applies to nor the officials to which it does not apply. Moreover, Article 63 of the 2006 Civil Servant Law states that:

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

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

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

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

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

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[268] *See* GCB at 21.
[269] *Id.*, at 23.
[270] *Id.*, at 19.
[271] *See* GQR at 14.

In the *Preliminary Results*, the Department highlighted *PC Strand from the PRC* as a case in which we discovered CCP officials simultaneously serving as company officials, contrary to the GOC's claim that this is prohibited.[272] The GOC objects and claims that the Department's findings in *PC Strand from the PRC* concerned only CCP members, not CCP officials.[273] However, a plain reading of our determination indicates otherwise. In *PC Strand from the PRC*, the Department determined that "{i}n the instant investigation, the information on the record indicates that certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies."[274] We understand "National Party Conference" to be a reference to the "National Party Congress," which is described in the Public Bodies Memorandum as "the highest leading body of the Party."[275] The Department considers representatives of the National Party Congress to be relevant government officials for purposes of the CVD law and an "authorities" analysis. Thus, the GOC is incorrect that the Department's finding in *PC Strand from the PRC* was limited to a finding of membership in the CCP.

The GOC argues that the Department has previously found that the *Company Law* of China as well as capital verification reports, articles of association and business registrations -- all of which were examined in this proceeding -- demonstrate the absence of legal state control over privately owned Chinese companies. However, this argument relies exclusively on examples involving the Department's findings with respect to separate rate applications in AD proceedings,[276] which involve a different test, standard and focus with regard to "control." In the context of a separate rate analysis, the Department's sole focus is on the government's control over export activities. For example, the Department has repeatedly noted that a state-owned enterprise may receive a separate rate given that the focus of the separate rates test is limited to control over export activities and not other aspects of the enterprise's operations.[277] By contrast, the Department is concerned here with whether the key positions within a company are filled by personnel who are also CCP or GOC officials, and may exert control over the company's activities more broadly.

The GOC also argues that the burden of providing the requested information is unreasonable and unnecessary, stating that it would be "tremendously burdensome" to supply the Department with information regarding the CCP affiliations of "hundreds, perhaps thousands, of natural persons owning suppliers or persons serving as owners, members of the board of directors and managers of suppliers."[278] It is important to note that the Department has not requested information regarding all possible CCP affiliations, but rather only whether owners, members of the board of directors and managers are also CCP or government officials. Assuming the GOC is not misconstruing the Department's request for information, the Department fails to see how the GOC can assert that there may be "hundreds perhaps thousands" of CCP officials potentially

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[272] *See Preliminary Results*, and accompanying DM at 17.
[273] *See* GCB, at 20-21.
[274] *See PC Strand from the PRC*, and accompanying IDM at Comment 8.
[275] *See* CCP Attachment to Public Bodies Memorandum, at 13.
[276] *See, e.g., Steel Plate from the PRC*, and accompanying IDM at 11 and Comment 2 .
[277] *See, e.g., Wind Towers From the PRC*, and accompanying IDM at Comment 6; *see also Pencils from the PRC*, at 55627-29.
[278] *See* GCB, at 21.

acting as company owners, board members or managers, and yet also assert that all CCP officials are prohibited from simultaneous involvement in the commercial sphere.

If the GOC was not able to submit the required information in the requested form and manner, it should have promptly notified the Department, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information. Further, the GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources.[279] Instead, the GOC chose not to respond to our questions regarding CCP officials for any input producer. The GOC insisted that "all the questions in Section IV {regarding CCP officials and committees} are neither applicable nor relevant to this investigation and the Department has no basis for requesting this information."[280] The GOC's responses in prior proceedings demonstrate that it is, in fact, able to access the information we requested.[281] Therefore, we do not consider the GOC to have cooperated to the best of its ability.

Courts have upheld the proposition that the Department, and not the respondents, determines what information is relevant and necessary, and must be provided.[282] Thus, regardless of whether the GOC agrees with the Department's determinations of relevancy, by failing to respond to our questions, the GOC withheld information requested of it. By stating that the requested information is not relevant, the GOC has placed itself in the position of the Department, impermissibly attempting to place the Department in the position of reaching a conclusion based on the statements of the GOC alone, without any of the information that the Department considers necessary and relevant for a complete analysis.

The GOC avers that the Department has not provided sufficient explanation or evidence of the relevancy of its inquiries with respect to CCP officials and organizations. Specifically, the GOC argues that "the *Public Bodies Memorandum* provides little analysis or explanation as to the basis for the Department's conclusion that CCP officials or committees influence non-state-owned entities." This argument ignores a significant body of past findings, record evidence and

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[279] Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."

[280] *See, e.g.*, GQR at 23-24.

[281] *See PC Strand from the PRC*, and accompanying IDM at Comment 8.

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

expert third-party sources relied upon in the Public Bodies Memorandum and the attached CCP Memorandum. The full analysis in the context of China is presented in the Public Bodies Memorandum and its attached CCP Memorandum, and is summarized here. The Department notes that means of government control or influence as it relates to the standard of an "authority" in the context of countervailing duty proceedings may extend beyond ownership – and therefore may extend to private enterprises. Therefore, the Department first considered what entities comprised the "government" (for purposes of this analysis) in China in order to assess the various means of control that it may – or may not – exercise over enterprises. In this regard, the Department considers information regarding the CCP's involvement in China's economic and political structure to be relevant because public information demonstrates that the CCP exerts significant control over activities in China such that the CCP can properly be considered part of the government structure in China for purposes of this analysis.[283] The GOC's arguments do not rebut this finding nor the definition of "government" relied upon in the CCP Memorandum, other than to assert its view that that the CCP is not part of the government in China. The Department disagrees.

The Department explained in the Public Bodies Memorandum that it found that the government in China includes both the CCP and the state apparatus. The Department then explored the variety of means by which the GOC and CCP may exercise control over enterprises. The Department has noted that publicly available information indicates that Chinese law requires the establishment of CCP organizations, *i.e.*, primary organizations of party, in all companies, whether state, private, domestic, or foreign-invested that have three or more party members and that such organizations may wield a controlling influence in the company's affairs.[284] The GOC argues that Department mischaracterized Chinese law as requiring such CCP organizations in *all* enterprises, rather than only those with three party members or more. While the Department notes that the qualifications to this requirement were not spelled out in the summary of the Public Bodies Memorandum or the CCP Memorandum, the section addressing this topic begins with the sentence:

> In accordance with the *CPP Constitution*, all organizations, including private commercial enterprises, are required to establish "primary organizations of the party" (or "Party committees") if the firm employs at least three party members.[285]

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

> The party has cells in most big companies—in the private as well as the state-owned sector -- complete with their own offices and files on employees. It controls the appointment of captains of industry and, in the SOEs, even corporate dogsbodies. It holds meetings that shadow formal board meetings and often

[283] *See* CCP Attachment to the Public Bodies Memorandum, at 33, stating that "available information and record evidence indicates that the CCP meets the definition of the term 'government' for the limited purpose of applying the U.S. CVD law to China."
[284] *See* Public Bodies Memorandum, at 35-36, and sources cited therein.
[285] *Id.*, at 35.

> trump their decisions, particularly on staff appointments. It often gets involved in business planning and works with management to control pay.[286]

Further the Public Bodies Memorandum notes that {a}ccording to the Xinhua News Agency, there were a total of "178,000 party organs in private firms in 2006, a rise of 79.8 percent over 2002."[287] While focusing on the instances in which the Department did not note that these CCP organizations are only required by the CCP Constitutions in enterprises with three or more party members, the GOC fails to acknowledge or address that Primary Party Organizations are present in private enterprises in growing numbers. These Primary Party Organizations may be imbued with significant power according to expert, third-party sources.[288] Even if the Department had failed to understand this qualification – which it did not – the GOC's argument misses the point that it was reasonable for the Department to inquire about the presence of such committees in the input suppliers at issue, regardless of whether there is such a committee in every single enterprise in the PRC.

The GOC notes further that the Department concluded in the Public Bodies Memorandum that "it did not know the role of CCP committees in the affairs of non-state-owned enterprises." Specifically, the Department stated that "{t}he role of this party presence is unclear: it may exert varying degrees of control in different circumstances." The GOC, however, wrongly extrapolates from the opaque nature of these CCP organizations to argue that "the Department has no basis on which to assert that CCP affiliations and activities are relevant." Notably, the GOC has simply failed to respond to the Department's questions and explain the purpose of these committees, which might shed light on the purpose, meaning and role of these committees in private enterprises as well as state-invested enterprises. Importantly, neither has the GOC addressed the substantive concerns raised by third-party experts cited in the Public Bodies Memorandum and the CCP Memorandum with anything other than unsupported assertions.[289]

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

Comment 8: Sufficiency of Record Information for "Authorities" Analysis

GOC's Arguments[290]

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[286] *Id.*, at 36, citing to "A Choice of Models," The Economist (January 2012).
[287] *Id.*, citing to Brief Introduction of the Communist Party of China," ChinaToday.com, current as of April 2012 at http://www.chinatoday.com/org/cpc/.
[288] *See e.g.*, Public Bodies Memorandum at 4.
[289] *See, e.g.*, GCB, at 24 ("The Public Bodies Memo provides little analysis or explanation as to the basis for the Department's conclusion that CCP officials or committees influence non-state-owned entities.")
[290] *See* GCB, at 21-25.

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

U.S. Steel's Rebuttal[291]

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

Department's Position

Our analysis of information on the record indicates that certain steel rounds providers are "authorities" within the meaning of section 771(5)(B) of the Act.

Over the course of this proceeding, the Department maintained a careful accounting of the information provided (and not provided) for each steel round producer. Contrary to the GOC's allegation that our application of AFA was "sweeping and overly broad," we took pains to ensure that the GOC was offered at least two opportunities to provide information regarding ownership and the extent of the role played by CCP officials for every producer. The GOC's claim that it provided "a list of owners of steel rounds suppliers"[292] overlooks the fact that we requested ownership information for each level of ownership,[293] and the GOC only provided information regarding the immediate owners for the most of the producers. The GOC also failed to provide requested supporting documentation for a variety of producers. In light of the GOC's decision not to provide information about the ultimate owners of these producers, we can reasonably infer that these producers are state-owned. Further, the GOC's failure to cooperate combined with its insistence that the information it provided is sufficient amounts to a proposal that the Department rely on the GOC's statements alone, without the information we need to validate these statements. However, it is for the Department, and not the respondents, to determine what information is considered relevant and necessary, and must be provided.

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[291] *See* PRB, at 8.
[292] *See* GCB, at 27.
[293] "For any input producer, or any owner company (at any level of ownership) of the input producer, with some direct corporate ownership or less-than-majority state ownership during the POR, it is necessary to trace all ownership back to the ultimate individual or state owners. For each level of ownership of these input producers…" (emphasis in original). *See* InitQ at Section II, "Information Regarding Input Producers in the PRC Appendix**"** at Section II.

Moreover, even if the GOC had identified the ultimate owners of all producers, and provided the supporting documentation we requested for each producer, it did not provide the information we requested regarding CCP officials and CCP committees for any producer. As noted above, the Department's questions in this review regarding the CCP seek to establish whether producers of steel rounds are subject to government control, and business licenses, articles of association, *etc*. customarily do not contain this information. Therefore, we disagree with the GOC's claim that the supporting documentation it provided was a sufficient basis for the Department to analyze whether the producers of the steel rounds used by Jiangsu Chengde and WSP are authorities.

The GOC also argues that the Department found a shareholder of a particular producer of steel rounds in this review to not be an "authority" in *PC Strand from the PRC*.[294] We have relied on AFA and found this producer to be an "authority" here. The GOC mischaracterizes our findings in *PC Strand from the PRC*. Rather than finding that the shareholder in question is not an authority, we found that there was insufficient record evidence to reach a conclusion regarding the shareholder's status. We found that "certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies,"[295] but concluded that:

> …the record lacks the necessary broader information regarding, *e.g.*, the role that these organs play in China in forming and implementing such things as government industrial policies, or CCP initiatives or priorities. The record likewise lacks the information necessary to fully understand the extent of the ability of individual government or CCP officials to further such policies and initiatives within companies that they may own or manage. Accordingly, we find that this record information provides an insufficient basis on which to conclude than the relationships between individual owners and the GOC or CCP evince government control over Producer B.[296]

We explained that we would "continue to explore this issue in future segments of this proceeding and future CVD proceedings involving the PRC."[297] We have done so in this proceeding by repeatedly requesting further information from the GOC. The GOC has continued to fail to provide information about the CCP in this and previous cases. Furthermore, even if the Department had found this company to not be an "authority," the period of investigation for *PC Strand from the PRC* was 2008, while the POR of the instant review is 2012. Whatever the ownership structure of this company was in 2008, it may have changed between 2008 and 2012. Indeed, given the GOC's refusal to identify this company's ultimate owners during the POR, we can adversely infer that the ownership did change such that the company is now an "authority."

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

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[294] *See* GCB, at 20; *see also PC Strand from the PRC*, and accompanying IDM at Comment 8.
[295] *See PC Strand from the PRC*, and accompanying IDM at Comment 8.
[296] *Id.*
[297] *Id.*

Comment 9: Whether the Provision of Steel Rounds for LTAR is Specific

GOC's Arguments[298]

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

U.S. Steel's Rebuttal[299]

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

Department's Position

Our analysis of information on the record supports the conclusion that the provision of steel rounds at LTAR is specific. We note that the GOC's list of seven products containing steel rounds is the same list of seven industries the GOC provided to the Department in the investigation. In the *Investigation Final*, we explained that "{c}onsistent with our past practice, the products listed by the GOC (rebar, plain bar, merchant bar, light sections, narrow strip, wire rod, and seamless tubes) are a limited group of industries under section 771(5A)(D)(iii)(I) {of the Act}."[300] The GOC has not presented any new information here that would prompt us to depart from our earlier determination. Therefore, we continue to find for the final results that the GOC's provision of steel rounds is specific to a limited group of industries.

Comment 10: Benchmark Issues

GOC's Arguments[301]

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

WSP's Arguments[302]

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

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298 *See* GCB, at 27.
299 *See* PRB, at 12-13.
300 *See Investigation Final*, and accompanying IDM at Comment 12.
301 *See* GCB, at 28.
302 *See* WCB, at 16-17.

U.S. Steel's Rebuttal[303]

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

Department's Position

We have not used an in-China ("tier one") benchmark to calculate the benefit from steel rounds provided at LTAR for these final results. In the *Investigation Final*, relying on AFA, we found that domestic prices in the PRC cannot serve as viable, "tier one" benchmark prices because the GOC did not provide requested information regarding the extent of state ownership in the PRC steel rounds industry.[304] Instead, we relied on "tier two prices," *i.e.*, world market prices.[305] In this proceeding, we notified the GOC that "{w}e do not intend to reevaluate the countervailability of this program. However, if there were any changes to the operation of the program during the POR, please explain the changes and answer all relevant questions in the Standard Questions Appendix."[306]

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

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

E. Policy Lending

Comment 11: Whether Loans to the Respondents Are Specific

WSP's Arguments:[307]

- Nothing cited by the Department directs any of the SOCBs to provide preferential loans; expressions of support and development cannot constitute *de jure* specificity.
- That "policy" loans have been granted to a range of industries is *prima facie* evidence that the loans are generally available and not specific to any one industry.[308]

[303] *See* PRB, at 13-14.
[304] *See Investigation Final*, and accompanying IDM at 4 and Comment 13.
[305] *Id.*
[306] *See* InitQ, at II-5.
[307] *See* WCB at 17-19.

- There is no evidence showing that WSP or its subsidiaries received any preferential treatment by virtue of being OCTG producers and, thus, the loans were not *de facto* specific.
- Ownership of commercial banks by the GOC does not constitute control within the meaning of the statue; none of the so-called government directives contained language that directs any commercial bank to provide preferential loans to WSP, it's subsidiaries, or the OCTG industry.
- If the Department continues to find WSP's policy lending to be countervailable, it should use a "tier one" or "tier two" benchmark to determine the benefit.

GOC's Arguments:[309]

- Banks in the PRC operate with full autonomy and responsibility for risks, profits and losses,[310] and SOCBs no longer provide policy loans or special loans.[311]
- There is no record evidence establishing a link between any government policy to encourage the OCTG industry and particular loans received by WSP.

U.S. Steel's Rebuttal:[312]

- No party presented evidence in this proceeding that would call into question the findings of the *Investigation Final* that the laws governing bank lending in the PRC require Chinese banks to "carry out their loan business under the guidance of the State industrial policies."[313]
- Industrial policies call for support of certain industries, including the OCTG industry, through preferential lending,[314] beyond simply "aspirational" goals.
- Preferential lending policies of Jiangsu Province continue to be in place and applicable to the loans at issue in this administrative review.[315]
- The CVD investigations cited by WSP each dealt with a specific product that had been expressly targeted by the GOC for financial support and the large number serves to illustrate the magnitude of the GOC's efforts to support certain favored industries.
- Record evidence shows that WSP was uncreditworthy from 2009 through 2012, and SOCBs stepped in to lend to WSP when no commercial bank would.

Department's Position

We continue to find that loans made to the respondents are specific. The Department found in the *Investigation Final* that the GOC has in place a policy to encourage the development of

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[308] *See, e.g., Citric Acid AR*, 76 FR at 77206; *Wood Flooring from the PRC*, 76 FR at 64313; *Aluminum Extrusions from the PRC*, 76 FR at 18521; *Drill Pipe from the PRC*, 76 FR at 1971; *Coated Paper from the PRC*, 75 FR at 59212.
[309] *See* GCB at 29-32.
[310] *See* GQR, Exhibit 12, Article 4.
[311] *Id*., at Exhibit 13, Article 1.
[312] *See* PRB at 15-21.
[313] *See Wind Towers from the PRC*, and accompanying IDM at Comment 3.
[314] *Id.*; *see also Investigation Final*, at 12 and Comment 21; *CFS from the PRC*, and accompanying IDM at Comment 8; *CWP from the PRC*, and accompanying IDM at Comment 8; *Citric Acid Investigation*, and accompanying IDM at Comment 5.
[315] *See Investigation Final*, and accompanying IDM at Comment 21.

OCTG production through policy lending and, based on this, that policy loans to the OCTG industry were *de jure* specific.[316] No parties have placed on the record of this review any information that would cause us to reexamine our earlier finding of specificity. The GOC points to two exhibits from its response: the Commercial Banking Law of China[317] and a "Circular on Improving the Administration of Special Loans."[318] Both not only predate the *Investigation Final*, but they also predate the underlying analysis conducted in *CFS from the PRC*, where the Commercial Bank Law of China (one of the exhibits cited by the GOC) was specifically addressed.[319]

Specifically, in *CFS from the PRC* we observed that "Article 34 of the Commercial Banking Law paradoxically states that banks are required to "carry out their loan business upon the needs of national economy and the social development and under the guidance of State industrial policies."[320] We also observed that "{e}vidence on the record further indicates that, consistent with the Commercial Banking Law, banks continued to take industrial policy into account when making lending decisions."[321] Additionally, at verification, bank officials "explained… that banks continue to take industrial policy into consideration to some extent when evaluating possible loans."[322]

Similarly, the GOC's "Circular on Improving the Administration of Special Loans" is specifically contradicted both by our findings in *CFS from the PRC* that SOCBs continue to abide by government lending directives, and by numerous laws and other policy documents, such as five-year plans, ten year plans and directives regarding specific industries promulgated by the GOC after the issuance of the circular. Based on our analysis of these more recent directives, the Department has found in numerous prior countervailing duty investigations that the GOC has in place policies to support a variety of encouraged industries including but not limited to the paper, steel, and textile industries.[323]

Therefore, we continue to find policy loans specific to the OCTG industry, and therefore, the WSP Companies and Jiangsu Chengde.

Comment 12: Whether a Financial Contribution Exists and SOCBs are Authorities

WSP's Arguments:[324]

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[316] *Id.*, and accompanying IDM at 12.
[317] *See* GQR at Exhibit 12.
[318] *Id.*, at Exhibit 13.
[319] *See CFS from the PRC*, and accompanying IDM at Comment 8.
[320] *Id.*
[321] *Id.*
[322] *Id.*
[323] *See*, e.g., *CFS from the PRC* at 9 and at Comment 8; *see also Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) and accompanying IDM at 21; and *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) (*Steel Wheels from the PRC)* and accompanying IDM at 14.
[324] *See* WCB at 19.

- GOC ownership of a bank does not establish government authority within the meaning of the statute,[325] and without affirmative evidence of government control, the SOCBs cannot be deemed to be authorities.
- There is no record evidence that the GOC "entrusted or directed" the SOCBs to provide a financial contribution.

GOC's Arguments:[326]

- The Department provides no analysis of SOCBs as authorities beyond referencing the GOC's policy to encourage OCTG production as stated in the *Investigation Final*.
- The *Investigation Final* quoted *CFS from the PRC* in stating that the "Department considers banks that are owned or controlled by the government to be public authorities under CVD law."[327]
- The Department's reference to *CFS from the PRC* fails to satisfy the WTO SCM Agreement or the WTO Appellate Body's requirement as stated in WTO AB Decision China CVD.[328]

U.S. Steel's Rebuttal:[329]

- The Department has repeatedly found the PRC's SOCBs to be authorities.[330]
- In *Wind Towers from the PRC*, the Department emphasized that:
  - The determination that SOCBs are authorities is not based on government ownership alone, but takes into account the fact that the PRC's banking system remains under government control and is subject to a requirement that it make loans on preferential terms to implement government policies;
  - The GOC has failed to provide any evidence that it has changed or removed these requirements, divested its ownership in SOCBs, or made any other changes that would provide a factual basis for reconsidering the Department's prior findings that SOCBs are "authorities" that provide a financial contribution within the meaning of the statute; and
  - WTO AB Decision China CVD is an "as applied" finding limited to the specific proceedings involved and is not part of U.S. law except to the extent that it has been implemented in those specific proceedings.[331]

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[325] *See DRAMS from Korea*, and accompanying IDM at 17.
[326] *See* GCB at 29-31.
[327] *See Investigation Final*, and accompanying IDM at 96, citing *CFS from the PRC*, 72 FR at 60645.
[328] The GOC quotes from WTO AB Decision China CVD, paragraph 354: "In our view, merely incorporating by reference findings from one determination into another determination will normally not suffice as a reasoned and adequate explanation. Nonetheless, where there is close temporal and substantive overlap between the two investigations, such cross reference may, exceptionally, suffice. We do see substantive overlap between the *CFS from the PRC* and the *OTR Tires from the PRC* determinations, as both investigations were concerned with the nature of SOCBs in China. With respect to the temporal element, we note that there was only one year's difference between the period of investigation in *CFS from the PRC* (calendar year 2005) and the period of investigation in *OTR Tires from the PRC* (calendar year 2006)."
[329] *See* PRB at 19-20.
[330] *See, e.g.*, *Wind Towers from the PRC*, and accompanying IDM at Comment 4; *PC Strand from the PRC*, and accompanying IDM at Comment 21; *Investigation Final*, at 9-13 and Comment 20; *Citric Acid Investigation*, and accompanying IDM at I.A.; *Thermal Paper from the PRC*, and accompanying IDM at Comment 6; *OTR Tires from the PRC*, and accompanying IDM at Comment E.2; and *CFS from the PRC*, and accompanying IDM at Comment 8.
[331] *See Wind Towers from the PRC*, and accompanying IDM at Comment 4.

Department's Position

The Department explained in *CFS from the PRC* why SOCBs are "authorities" within the meaning of section 771(5)(B) of the Act. Contrary to the GOC's arguments, our findings were not, and are not, based upon government ownership alone. For example, we stated:

> …information on the record indicates that the PRC's banking system remains under State control and continues to suffer from the legacies associated with the longstanding pursuit of government policy objectives. These factors undermine the SOCBs ability to act on a commercial basis and allow for continued government control resulting in the allocation of credit in accordance with government policies. Therefore, treatment of SOCBs in China as commercial banks is not warranted in this case.[332]

In order to revisit the determination in *CFS from the PRC*, there must be evidence warranting reconsideration. However, there is no such evidence on the record of this administrative review. While it has made similar claims in other recent proceedings, it has never provided any evidence suggesting that even the most basic facts of the *CFS from the PRC* analysis have changed. For example, in the *Investigation Final*, we noted:

> {T}he GOC has failed to provide evidence that the government has divested itself of ownership in Chinese banks. The GOC has failed to address the issue of real risk assessment within the Chinese banking sector. The GOC has failed to address interest rate and deposit rate ceilings and floors set by the government. The GOC has failed to address both de jure and de facto reforms within the Chinese banking sector. The GOC has failed to address the elimination of policy-based lending within the Chinese banking sector. Therefore, the GOC has failed to provide the information that would warrant a reconsideration of the Department's determination in {*CFS from the PRC*}.[333]

Similarly, the GOC never provided a factual basis for reconsidering the CFS from the PRC decision in this instant administrative review. In our initial questionnaire to the GOC, we stated,

> 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 this program, or if the GOC replaced it with a successor program, please answer all applicable questions in the Standard Questions Appendix.[334]

The GOC replied that it "requests the Department revisit its previous incorrect factual and alleged findings with response to lending in China. The GOC intends to submit additional information during the course of this review, as soon as reasonable feasible, to further demonstrate that the Department's earlier findings are in error."[335] However, the GOC did not

[332] *See CFS from the PRC* and accompanying IDM at Comment 8; *see also* Additional Documents Memorandum at Attachment I.
[333] *See Investigation Final* and accompanying IDM at Comment 20.
[334] *See* InitQ, Section II at "K. Policy Loans."
[335] *See* GQR at II-32.

submit this information, giving us no basis to evaluate the GOC's claims that our findings regarding SOCBs in *CFS from the PRC* are no longer relevant.

Regarding the GOC's arguments concerning the *WTO AB Decision 379*, we note that the Appellate Body in that dispute affirmed our decision that SOCBs in China are "public bodies."

For these reasons, we continue to find that SOCBs are authorities capable of providing a direct financial contribution to the respondents.

Comment 13: Use of an In-Country or External Loan Benchmark

WSP's Arguments: [336]

- Section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(3) direct the Department to use a market-based benchmark to measure the benefit of a loan.
- The Department should base the loan benchmark on a rate that WSP or its subsidiaries could "actually obtain on the market" or rely on a Chinese national average rate for comparable commercial loans.

GOC's Arguments: [337]

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

U.S. Steel's Rebuttal:[338]

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

[336] *See* WCB at 19.
[337] *See* GCB at 31-32.
[338] *See* PRB at 20-21.

regulations. Because of "special difficulties inherent" in using a PRC benchmark for loans, the Department must use an external market-based benchmark interest rate.
- The practice of using an external benchmark interest rate was established based on an extensive study conducted in *CFS from the PRC*, and the GOC has provided no evidence that would lead the Department to reconsider its earlier findings.
- The Department's benchmark calculation appropriately reflects conditions of lending in the PRC, accounts for changes in the PRC's level of economic development in recent years, and excludes negative interest rates that do not reflect interest rates for commercial loans.[339]

Department's Position

As discussed above, we have applied an AFA rate for WSP's loans and are not calculating a CVD rate for their use of program "Policy Loans." We are also not making any changes to the benchmarks we are using for Jiangsu Chengde's loan calculations for these final results.

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

Regarding the GOC's objection to the Department excluding inflation adjusted, negative interest rates from the short-term benchmark, the Department finds that negative-adjusted rates are not common, tend to be anomalous, and, moreover, are not sustainable commercially.[340] Therefore, we continue to exclude negative real interest rates in calculating our regression-based benchmark rates.

The GOC has raised the argument that many of the IFS-reported lending rates are not rates for short-term loans.[341] We agree that certain of the interest rates used in our regression analysis may reflect maturities of longer than one year. Indeed, the notes to the IFS state that these rates apply to loans that meet short- and medium-term financing needs. Therefore, we find that these rates should not be treated as exclusively short-term in nature.[342] To address this concern, we will continue to use the same interest rate data from the IMF and regression-based benchmark rate methodology, but will apply it to loans with terms of two years or less. This approach is consistent with the Department's approach in prior proceedings.[343]

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

We also disagree with the GOC's objection to the Department's derivation of the long-term benchmark, which consists of the short-term benchmark plus a spread that is a function of U.S. dollar "BB" bond rates. The Department has fully addressed the arguments raised by the GOC in prior cases.[344] The Department explained that 19 CFR 351.505(a)(3)(iii) requires the Department to use ratings of AAA to BAA and CAA to C- in deriving a probability of default in the stated formula. However, there is no statutory or regulatory language requiring that these rates apply to the calculation of long-term rates under 19 CFR 351.505(a)(3)(i) or (ii). Moreover, the transitional nature of PRC financial accounting standards and practices, as well as the PRC's underdeveloped credit rating capacity, suggests that a company-specific mark-up (to account for investment risk) should not be the general rule. The Department determined that a uniform rate would be appropriate, which would reflect average investment risk in the PRC associated with companies not found uncreditworthy by the Department. As we have received no other objective basis upon which to determine this average investment risk or a basis to presume it is only for companies with an investment grade rating, we are choosing the highest non-investment rate.[345]

When the Department began to apply this mark-up using the BB corporate bond rate, we solicited comments from parties and none were filed.[346] In this instant case, we have also not received any suggested alternatives. As no new arguments have been presented, we will continue to use the BB corporate bond rate for the final results in any long-term loan calculations or discount rate calculations. This mark-up accounts for the time value of money and credit risk over the long term, *i.e.*, over and above that which is already reflected in the short-term benchmark rate. Since the mark-up is the difference in nominal rates for an n-year bond and a 2-year bond, the mark-up also implicitly reflects, in theory, expected inflation for the n-2 year time period. Under this approach, we find there is no overlap between this inflation factor and the inflation factor added to the short-term benchmark because that factor represents only inflation in year one and not beyond. We further note our approach in this regard is consistent with the Department's practice.[347]

Lastly, we disagree with the GOC's and WSP's arguments that the Department should have used actual interest rates on bank loans in the PRC or a PRC national interest rate as the benchmark. In the *Preliminary Results* PDM, the Department stated that the "GOC's predominant role in the banking sector results in significant distortions that render the lending rates in the PRC unsuitable as market benchmarks."[348] As a result, the Department preliminarily determined that interest rates in the domestic Chinese banking sector do not provide a suitable basis for benchmarking the loans provided to the respondents in this review. Thus, we used an external benchmark to measure the benefit of countervailable loans.[349] The Department finds that no new information has been submitted on the record to give it reason to revisit its preliminary finding

[344] *See, e.g., Investigation Final*, and accompanying IDM at Comment 27; *see also Steel Wheels from the PRC*, and accompanying IDM at Comment 24.
[345] *Id.*
[346] *See Citric Acid Investigation*, and accompanying IDM at Comment 13.
[347] *See, e.g., id.*, at Comment 15.
[348] *See Preliminary Results*, and accompanying IDM at 8-9; *see also Thermal Paper from the PRC*, and accompanying IDM at Comment 20; *see also Steel Wheels from the PRC*, and accompanying IDM at Comment 23.
[349] *See Preliminary Results*, and accompanying IDM at 8-9.

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

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

Comment 14: Application of AFA to WSP for Its Failure to Report Certain Loans

As described above under "Use of Facts Otherwise Available and Adverse Inferences, WSP Companies – Policy Loans," we refused to accept untimely new factual information from WSP regarding its outstanding loans during the POR. We applied an AFA rate from *Welded Pipe from the PRC* of 44.84 percent to WSP for this program.[350]

WSP's Arguments:[351]

- WSP argues that courts have previously found Commerce to have abused its discretion when it refuses to consider untimely corrections.
- WSP asserts that Commerce had sufficient time to accept and analyze its untimely information, and that doing so would have presented a "minimal burden" on the Department as there were two months between when WSP submitted the untimely information, and when the Department issued its post-preliminary analysis. WSP also claims that concerns regarding finality were minimal since the release of a post-preliminary analysis was expected.
- WSP also alleges that the 44.84 percent rate calculated by the Department in *Welded Pipe from the PRC* and applied for this program as AFA is uncorroborated, because WSP does not use hot-rolled steel. According to WSP, "WSP's products are made only with billets."[352]
- Additionally, WSP argues that the 44.84 percent rate "does not have anything to do with the Policy Lending program" and therefore "has no relevance or probative value."[353]
- WSP surmises that "the Department's only motivation in selecting this rate was to 'punish' WSP for its mistake in not reporting the loans."[354] However, as the 12.37 percent rate calculated for this program at the *Preliminary Results* already relies in part on uncreditworthy benchmark rates for long-term financing as a result of WSP's failure to respond to questions about its creditworthiness, WSP concludes that "the Department does not need to increase the AFA rate beyond 12.97%." (*sic*)[355]
- Should the Department opt to apply a higher AFA rate than 12.37 percent, WSP argues that the Department should adjust the AFA rate to correspond to the percentage of short-term loans that were not reported in relation to the total number of outstanding loans.

[350] *See Welded Pipe from the PRC* and accompanying IDM at "A. Hot-rolled Steel for Less Than Adequate Remuneration."
[351] *See* WCB at 11-13.
[352] *See* WCB at 12.
[353] *Id.*
[354] *Id.*
[355] *Id.*

GOC's Arguments:[356]

- The GOC observes that the 44.84 percent AFA rate assigned to WSP for the Policy Loans program "is far higher than any other rate determined for OCTG policy loans."
- The GOC claims that the rate of 12.37 percent, which was calculated for this program at the Preliminary Results, was based on WSP's data and "was largely an AFA rate." According to the GOC, it follows that "the 44.84 percent rate has no basis in loans that WSP actually received."

U.S. Steel's Rebuttal:[357]

- U.S. Steel urges the Department to continue to apply the AFA rate from *Welded Pipe from the PRC*, arguing that the Department applied a rate of 44.84 percent to WSP for the Policy Loans program using its standard AFA methodology, which has been repeatedly upheld by the courts.
- According to U.S. Steel, the rate applied by the Department provided a "reasonably accurate estimate of the experience of subsidization of steel pipe and tube producers in China" as it was calculated for a Chinese producer of welded line pipe, based on data reported by that producer.
- U.S. Steel also highlights the Department's observation at the post-preliminary analysis that other calculated subsidy rates would have been lower than the rate calculated for WSP for the Policy Loans program at the *Preliminary Results*; thus, selecting one of these rates would have effectively rewarded WSP for its failure to cooperate.

Department's Position

In these final results, we have used an AFA rate of 44.84 percent, calculated for the provision of hot-rolled steel for LTAR in *Welded Pipe from the PRC*, for this program.[358] As an initial matter, we disagree with WSP's attempts to reframe the untimely new loan information it attempted to submit as "corrections." In our initial questionnaire to WSP, we asked WSP to "report all financing to your company that was outstanding during the POR, regardless of whether you consider the financing to have been provided under this program."[359] In its WQR, WSP informed us that it had provided "{a} list of all loans that were outstanding during the POR" (emphasis added).[360] At that point, we noticed a discrepancy between WSP's reported loans and its financial statements and asked WSP to confirm that it had reported all forms of financing that were outstanding during the POR, including bank acceptance notes.[361] WSP confirmed that "WSP and its cross-owned affiliates confirm that they have reported all forms of bank financing."[362]

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[356] *See* GCB at 34-35.
[357] *See* PRB at 32-33.
[358] *See Welded Pipe from the PRC* and accompanying IDM at "A. Hot-rolled Steel for Less Than Adequate Remuneration."
[359] *See* InitQ at III-10.
[360] *See* WQR at 16.
[361] *See* WSP 1st Supp at 13.
[362] *See* W1SR at 18.

However, this statement was not accurate. In our second supplemental questionnaire to WSP, we asked WSP to explain why a certain sum of bank acceptance notes appearing in its financial statements had not been reported.[363] At that point, WSP acknowledged that "WSP did not include bank acceptance notes in the loan table."[364] As WSP's inaccurate statements raised concerns regarding the validity of WSP's loan information, the Department then took the additional step of comparing the loans reported by WSP in this administrative review to the loans reported by WSP in the *2011 Administrative Review*. We found gaping discrepancies and, in our fourth supplemental questionnaire, asked WSP to explain them.[365] WSP replied that "the previously submitted 2012 loan table included borrowings outstanding as of December 31, 2012 and did not include the borrowings obtained in 2011 and expired within 2012."[366]

In other words, WSP's most recent failure to fully report its outstanding borrowing during the POR is not an isolated oversight by an otherwise cooperative respondent. Over the course of this proceeding, the Department has struggled to obtain reliable loan information from WSP, and WSP has made incorrect statements and provided incomplete information on numerous occasions (these discrepancies are described in this section, above at Comment 3, and above at "Use of Facts Otherwise Available – Policy Loans, as well as in the *Preliminary Results* and post-preliminary analysis for this review)." As described in our May 15, 2014 letter to WSP rejecting its untimely-filed information, WSP has submitted four separate versions of its loan tables, each different from the next.[367] This failure to cooperate has significantly increased the burden upon the Department and the resources required to be devoted to this proceeding. According to WSP's statements at the hearing in this proceeding, "I truly do believe that if this had been something that {the Department} had focused on earlier in the case, you know, we could have presented corrections."[368] However, this statement does not reflect the reality that the Department has had to make numerous inquiries into WSP's misreporting of its financing and has attempted to correct a wide variety of discrepancies, errors and omissions in WSP's reporting of its financing, starting from WSP's very first questionnaire response. The Department took the unusual extra step of comparing information between two separate reviews after serious concerns regarding the reliability of WSP's loan information arose from the volume of discrepancies identified in WSP's earlier responses.

Regarding corroboration of the AFA rate chosen, OCTG is a downstream steel product, and the respondent in *Welded Pipe from the PRC*, for which we calculated the 44.84 percent rate, also produced a downstream steel product. Thus, we find the 44.84 percent rate calculated based on the subsidization data submitted by a producer of downstream steel products to be representative of WSP's experience. Contrary to the GOC's claims, the mere fact that this rate is higher than other calculated PRC rates for a certain program does not render use of this rate unreasonable. The Department explained in *SRAMS from Taiwan* that an AFA rate should be "sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule to induce

[363] *See* WSP 2nd Supp at 5.
[364] *See* W2SR at 19.
[365] *See* WSP 4th Supp at 6.
[366] *See* W4SR at 8.
[367] *See* Letter from the Department to WSP, "Administrative Review of Oil Country Tubular Goods from the People's Republic of China: Rejection of Loan Information" (May 15, 2014) at 2.
[368] *See* Hearing Transcript at 22.

respondents to provide the Department with complete and accurate information in a timely manner."[369] Our application of AFA in this instance is consistent with our longstanding practice regarding AFA in CVD proceedings, which has been upheld by the courts.

For these reasons, we have not adopted WSP's alternative methodology of weighting the AFA rate according to the percentage of loans WSP failed to report, which would be inconsistent with our practice. Furthermore, there is no reason to believe that WSP's methodology would yield a more appropriate rate. As discussed above, WSP's failure to cooperate in this proceeding with respect to this program has not been limited solely to its failure to report a certain percentage of its financing, but has been widespread across the course of numerous questionnaires. We note that WSP's pattern of providing erroneous or incomplete information, by which it impeded this proceeding, suggests that even WSP's latest revision of its loan information might not be accurate and that WSP's suggested alternative methodology, which is based on this latest revision, would not fully capture the extent of WSP's subsidization. Moreover, WSP's suggested methodology presumes that the Department would consider in its determination untimely information rejected from the record of this proceeding, which 19 CFR 351.104(a)(2)(i) specifically prohibits.

According to WSP, it does not use hot-rolled steel and the production process for all of WSP's products starts with steel billets rather than hot-rolled steel.[370] However, hot-rolled steel is used to produce billets. WSP's response on behalf of its cross-owned affiliate Mengfeng states that "Mengfeng primarily produces steel round billets, but was not in production for the year of 2012."[371] Thus, while the WSP Companies did not consume hot-rolled steel during the POR, it is plausible for them to have consumed this input previously or to do so in the future. When evaluating whether AFA rates have been sufficiently corroborated in other cases, the Department has examined whether it is possible for an industry to use an input.[372] In this instance, we find that the OCTG industry can and does use hot-rolled steel, both as an input to some types of OCTG and as a precursor for the production of steel billets, which are used to produce other types of OCTG.[373] As we explained in the post-preliminary analysis, the ITC has previously found that "{t}he key costs in producing OCTG are raw materials such as hot-rolled steel and billets…"[374] Accordingly, we agree with U.S. Steel that the AFA rate selected for this program has been adequately corroborated.

By stating that the 12.37 percent rate calculated for WSP's Policy Loans at the *Preliminary Results* was "largely an AFA rate," the GOC appears to be suggesting that this calculated rate is

[369] *See SRAMS from Taiwan* at 8932.
[370] *See* WCB at 12.
[371] *See* MQR at 5.
[372] *See Raw Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Determination*, 73 FR 39667 (July 10, 2008) and accompanying IDM at 6-7.
[373] "Two basic processes are used in the manufacturing of OCTG. The seamless process involves heating a solid round bar of steel, or billet, cross-rolling or piercing the heated billet to produce a short hollow shell, then elongating and sizing the shell into a finished tube. OCTG manufactured through this process are normally referred to as seamless OCTG. The other process is a welded process, in which tubes are produced from a piece of flat steel, either coil or strip, that is formed into a tubular shape through rolling." *See* Memorandum to the File, "Placement of United States Securities and Exchange Commission Form 20-F for WSP Holdings Limited on the Record" (March 11, 2014) at Attachment 1, page 29.
[374] *See Certain Oil Country Tubular Goods from China*, Investigation No. 701-TA-463 (Final) (January 2010) at V-1.

an appropriate AFA rate for WSP's failure to provide loan information. We disagree. At the *Preliminary Results*, the Department relied on AFA regarding the loan benchmark and found WSP to the uncreditworthy, because WSP failed to submit a response to our questionnaire requesting information regarding its creditworthiness. Later, it became apparent that not only did WSP not provide information regarding its creditworthiness, but it also did not report a portion of its outstanding financing. This failure to report loans forced the Department to seek out appropriate facts otherwise available that also extended beyond the loan benchmark to the loans themselves.

Finally, with respect to WSP's argument that the AFA rate selected for the Policy Loan program "does not have anything to do with the Policy Lending program," we explain above under "Use of Facts Otherwise Available and Adverse Inferences" that other calculated rates for lending programs are lower than the rate calculated for WSP's loans at the Preliminary Results, and therefore, using one of these rates would provide WSP with "a more favorable result by failing to cooperate than if it had cooperated fully."[375] Thus, we resorted to the last tier of our standard CVD AFA hierarchy, in which we apply the highest calculated subsidy rate for any program otherwise analyzed in any prior PRC CVD case, so long as the respondent in question conceivably could have used the program for which the rate was calculated.[376] We have continued to use this methodology for the final results.

Recommendation

We recommend applying the above methodology for these final results.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

25 August 2014
(Date)

[375] *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).

[376] *See Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and IDM at "Application of Adverse Inferences: Non-Cooperative Companies" section; *see also Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying IDM at "Selection of the Adverse Facts Available Rate" section, and *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review,* 74 FR 20923 (May 6, 2009), and accompanying IDM at "SGOC Industrial Policy 2004-2009."