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September 22, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Decision Memorandum for the Preliminary Determination

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I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of 53-foot domestic dry containers (domestic dry containers) from the People's Republic of China (PRC), as provided in section 703 of the Tariff Act of 1930, as amended (Act). This investigation covers two producer/exporter entities: (1) CIMC International Marine Containers (Group) Co., Ltd. (CIMC Group); CIMC Containers Holding Co., Ltd. (CIMC Holding); CIMC Wood Development Co., Ltd. (CIMC Wood); Guangdong Xinhui CIMC Special Transportation Equipment Co., Ltd. (Xinhui Special); Qingdao CIMC Containers Manufacture Co., Ltd. (Qingdao CIMC); Nantong CIMC-Special Transportation Equipment Manufacture Co., Ltd. (Nantong CIMC); Xinhui CIMC Container Co., Ltd. (Xinhui Container); and Xinhui CIMC Wood Co., Ltd. (Xinhui Wood) (collectively, CIMC); and (2) Hui Zhou Pacific Container Co., Ltd. (HPCL); Qingdao Pacific Container Co., Ltd. (QPCL); and Qidong Singamas Energy Equipment Co., Ltd. (QSCL) (collectively, Singamas).

II. BACKGROUND

A. *Case History*

On April 30, 2014, the Department received countervailing duty (CVD) and antidumping duty (AD) Petitions concerning imports of domestic dry containers from the PRC filed in proper form by Stoughton Trailers, LLC (Petitioner).[1] On May 13, 2014, the Department initiated a CVD investigation of domestic dry containers from the PRC.[2] Supplements to the Petition and our consultations with the Government of the PRC are described in the Initiation Checklist.[3] On May 19, 2014, we released U.S. Customs and Border Protection (CBP) data to parties under the Administrative Protective Order (APO). On May 19, 2014, we also released public research regarding the production and/or exportation of domestic dry containers from the PRC. We received comments on the CBP data and public research on May 30, 2014, from CIMC and Singamas. CIMC and Singamas also voluntarily reported the quantity and value of their sales to the U.S. during the period of investigation (POI) of calendar year 2013.

The Department determined to investigate CIMC and Singamas in this investigation[4] and, on June 13, 2014, the Department issued a CVD questionnaire to the Government of the PRC (GOC). The GOC filed an initial questionnaire response on August 5, 2014. CIMC and Singamas filed questionnaire responses on June 30, July 14 and July 28, 2014.

Between July 3 and September 10, 2014, the Department issued supplemental questionnaires to both CIMC and Singamas. CIMC's responses to these questionnaires were received July 8, August 4, August 25, September 2, 2014, September 10, 2014 and September 15, 2014. Singamas's responses to these questionnaires were received July 14, August 4, August 25, September 2, and September 4, 2014. On August 4, Singamas submitted a letter in response to the Department's request for certain companies to file questionnaire responses.

On June 20, 2014, based upon a request from Petitioner, the Department postponed the deadline for this preliminary determination until September 22, 2014.[5] On September 8, 2014, CIMC and Petitioner submitted proposed benchmark prices for use in calculating a benefit for Provision of Hot-Rolled Steel Sheet and Plate for Less Than Adequate Remuneration (LTAR). On September 10, 2014, Petitioner filed rebuttal comments regarding benchmark prices submitted by CIMC. On September 16, 2014, CIMC submitted rebuttal comments regarding benchmark prices suggested by Petitioner.

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[1] *See* "Countervailing Duty Petition 53-Foot Domestic Dry Containers from the People's Republic of China," dated April 30, 2014 (Petition) and the accompanying AD Petition.

[2] *See 53-Foot Domestic Dry Containers From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 79 FR 28679 (May 19, 2014) (*Initiation*). On the same date we also published a notice of initiation for the AD investigation of domestic dry containers from the PRC. *See 53-Foot Domestic Dry Containers From the People's Republic of China: Initiation of Antidumping Duty Investigations*, 79 FR 28674 (May 19, 2014) (*AD Initiation*); *see also* Countervailing Duty Investigation Initiation Checklist: 53-Foot Domestic Dry Containers from the People's Republic of China (PRC CVD Initiation Checklist), dated May 13, 2014.

[3] *See* PRC CVD Initiation Checklist.

[4] *See* "Respondent Selection" section below. *See* also Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China, Memorandum from Ilissa Kabak Shefferman, International Trade Compliance Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, dated June 12, 2014 (Respondent Memo).

[5] *See 53-Foot Domestic Dry Containers from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 79 FR 40714 (July 14, 2014).

On September 9, 2014, Petitioner filed a request that the Department align the final determination of this CVD investigation with the companion AD investigation of domestic dry containers from the PRC.[6] On September 10, 2014, CIMC submitted pre-preliminary comments.

B. *Period of Investigation*

The period of investigation (POI) is January 1, 2013, through December 31, 2013.

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, and as noted in the *Initiation*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation*.[7] On May 29, 2014, we received a request from CIMC to extend the deadline for scope comments by seven days. On May 30, 2014, we granted CIMC's extension request.[8] On June 9, 2014, we received scope comments from Petitioner requesting no changes to the scope language, as it was written in the *Initiation*.

IV. SCOPE OF THE INVESTIGATION

The merchandise subject to investigation is closed (*i.e.*, not open top) van containers exceeding 14.63 meters (48 feet) but generally measuring 16.154 meters (53 feet) in exterior length, which are designed for the intermodal transport[9] of goods other than bulk liquids within North America primarily by rail or by road vehicle, or by a combination of rail and road vehicle (domestic containers). The merchandise is known in the industry by varying terms including "53-foot containers," "53-foot dry containers," "53-foot domestic dry containers," "domestic dry containers" and "domestic containers." These terms all describe the same article with the same design and performance characteristics. Notwithstanding the particular terminology used to describe the merchandise, all merchandise that meets the definition set forth herein is included within the scope of this investigation.

Domestic containers generally meet the characteristic for closed van containers for domestic intermodal service as described in the American Association of Railroads (AAR) Manual of Standards and Recommended Practices Intermodal Equipment Manual Closed Van Containers for Domestic Intermodal Service Specification M 930 Adopted: 1972; Last Revised 2013 (AAR Specifications) for 53-foot and 53-foot high cube containers. The AAR Specifications generally define design, performance and testing requirements for closed van containers, but are not

[6] *See* Letter from Petitioner entitled "53-Foot Domestic Dry Containers from The People's Republic of China: Request by Petitioners to Align the Final Determinations in the Companion CVD and ADD Investigations," dated September 9, 2014.
[7] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); *see also Initiation*, 79 FR at 28679-80.
[8] *See* Letter to CIMC from Angelica Mendoza, Program Manager, AD/CVD Operations, Office VI, Enforcement and Compliance, dated May 30, 2014.
[9] "Intermodal transport" refers to a movement of freight using more than one mode of transportation, most commonly on a container chassis for on-the-road transportation and on a rail car for rail transportation.

dispositive for purposes of defining subject merchandise within this scope definition. Containers which may not fall precisely within the AAR Specifications or any successor equivalent specifications are included within the scope definition of the subject merchandise if they have the exterior dimensions referenced below, are suitable for use in intermodal transportation, are capable of and suitable for double-stacking[10] in intermodal transportation, and otherwise meet the scope definition for the subject merchandise.

Domestic containers have the following actual exterior dimensions: an exterior length exceeding 14.63 meters (48 feet) but not exceeding 16.154 meters (53 feet); an exterior width of between 2.438 meters and 2.60 meters (between 8 feet and 8 feet 6 3/8 inches); and an exterior height of between 2.438 meters and 2.908 meters (between 8 feet and 9 feet 6 ½ inches), all subject to tolerances as allowed by the AAR Specifications. In addition to two frames (one at either end of the container), the domestic containers within the scope definition have two stacking frames located equidistant from each end of the container, as required by the AAR Specifications. The stacking frames have four upper handling fittings and four bottom dual aperture handling fittings, placed at the respective corners of the stacking frames. Domestic containers also have two forward facing fittings at the front lower corners and two downward facing fittings at the rear lower corners of the container to facilitate chassis interface.

All domestic containers as described herein are included within this scope definition, regardless of whether the merchandise enters the United States in a final, assembled condition, or as an unassembled kit or substantially complete domestic container which requires additional manipulation or processing after entry into the United States to be made ready for use as a domestic container.

The scope of this investigation excludes the following items: 1) refrigerated containers; 2) trailers, where the cargo box and rear wheeled chassis are of integrated construction, and the cargo box of the unit may not be separated from the chassis for further intermodal transport; 3) container chassis, whether or not imported with domestic containers, but the domestic containers remain subject merchandise, to the extent they meet the written description of the scope. Imports of the subject merchandise are provided for under subheading 8609.00.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Imports of the subject merchandise which meet the definition of and requirements for "instruments of international traffic" pursuant to 19 U.S.C. §1322 and 19 C.F.R. §10.41a may be classified under subheading 9803.00.50, HTSUS. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise as set forth herein is dispositive.

V. ALIGNMENT

The AD investigation has the same scope with regard to the merchandise covered.[11] As noted above, on September 9, 2014, Petitioner submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final determination in

[10] "Double-stacking" refers to two levels of intermodal containers on a rail car, one on top of the other.
[11] *See AD Initiation.*

the companion AD investigations. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i)-(ii), we are aligning the final CVD determination deadline with that of the final determination in the companion AD investigation of domestic dry containers from the PRC. The final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued on February 2, 2015.

VI. RESPONDENT SELECTION

Section 777A(e)(1) the Act directs the Department to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. The record of this proceeding did not yield any additional producers/exporters of subject merchandise during the POI other than CIMC and Singamas.[12] Thus, the Department determined to individually investigate both CIMC and Singamas.

VII. INJURY TEST

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On June 9, 2014, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of domestic dry containers from the PRC.[13]

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

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.[14] In *CFS from the PRC*, the Department found that:

> . . . given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.[15]

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[12] *See* Respondent Selection Memo, where we explained that there was no record information to identify additional producers/exporters of the domestic dry containers, beyond CIMC and Singamas.

[13] *See* 53-Foot Domestic Dry Containers from the People's Republic of China Investigation Nos. 701-TA-514 and 731-TA-1250 (June 2014) (Preliminary); *53-Foot Domestic Dry Containers From China; Determinations*, 79 FR 33950 (June 13, 2014).

[14] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decision Memorandum (CFS IDM) at Comment 6.

[15] *Id*.

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.[16] Furthermore, on March 13, 2012, Public Law 112-99 was enacted which confirms that the Department has the authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.[17] The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[18]

IX. SUBSIDIES VALUATION

A. *Allocation Period*

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.[19] The Department finds the AUL in this proceeding to be 12 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[20] The Department notified the respondents of the AUL in the initial questionnaire and requested data accordingly.[21] No party in this proceeding disputed this allocation period.

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

B. *Attribution of Subsidies*

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject

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[16] *See, e.g.*, *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*) and accompanying Issues and Decision Memorandum (CWP IDM) at Comment 1.

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

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

[19] *See* 19 CFR 351.524(b).

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

[21] In past CVD investigations involving the PRC, we have stated that we will not countervail subsidies conferred before December 11, 2001, the date of the PRC's accession to the WTO. *See, e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*) and accompanying Issues and Decision Memorandum (Solar Cells IDM) at Comment 2. This issue is not relevant in this investigation, because the AUL does not extend back earlier than 2002.

merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting interest between two corporations, or through common ownership of two (or more) corporations.[22] In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[23] The Court of International Trade 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.[24]

CIMC

CIMC Group responded to the Department's original and supplemental questionnaires on behalf of itself; a parent holding company; four additional holding companies, CIMC Holding, China International Marine Containers (Hong Kong) Limited (CIMC Hong Kong), CIMC Holdings (BVI) Limited (CIMC BVI) and CIMC Wood; and the following affiliates: Xinhui Special, Qingdao CIMC, Nantong CIMC, Xinhui Container and Xinhui Wood.[25] These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of CIMC Group's majority of voting rights in all of the above-named companies.[26]

CIMC Group has direct shareholding interest in Xinhui Special, Qingdao CIMC, and indirect shareholding interest in Xinhui Special, Nantong CIMC, Qingdao CIMC, Xinhui Container and Xinhui Wood.[27] CIMC Group also has 100 percent direct or indirect ownership in CIMC Holding, CIMC Hong Kong, CIMC Wood and CIMC BVI.[28] CIMC Holding , CIMC Hong Kong, CIMC BVI and CIMC Wood are referenced in cross-owned company ownership descriptions.[29] For further discussion of these holding companies, refer to the CIMC Preliminary Calculation Memo.[30]

Xinhui Special, Qindao CIMC, Nantong CIMC and Xinhui Container are engaged in the manufacture and sale of merchandise subject to this investigation. Xinhui Special, Qingdao

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[22] *See*, *e.g.*, *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998).
[23] *Id.*
[24] *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[25] *See* CIMC's July 8, 2014 supplemental questionnaire response (CIMC 7/28/2014 SQR) at Attachment 1.
[26] *Id*.
[27] *See* CIMC 7/8/2014 SQR at Attachment 1, Page 1.
[28] *Id* at Attachment 1, Page 2.
[29] *Id.*
[30] *See* Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from China: Preliminary Determination Calculations for CIMC, Memorandum from Yasmin Nair and Ilissa Kabak Shefferman, International Trade Compliance Analysts, to Richard Weible, Office Director, September 22, 2014 (CIMC Preliminary Calculation Memo).

CIMC and Nantong CIMC produced and exported merchandise subject to this investigation during the POI, while Xinhui Container produced merchandise subject to this investigation on a contract basis for Xinhui Special. For a further discussion of ownership issues pertaining to these companies, refer to the CIMC Preliminary Calculation Memo.[31]

Xinhui Wood is engaged in the production of wood flooring designed for use in containers, as well as the provision of relevant technical advisory services. Xinhui Wood produced wood flooring used by Xinhui Special in the production of subject merchandise during the POI.

Summary of Attribution of Subsidies to CIMC

Based on CIMC Group's ultimate ownership of all companies listed above, we preliminarily find that these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Because CIMC group is a parent company, we preliminarily attributed the benefit from subsidies received by CIMC Group to CIMC Group's consolidated sales (net of intercompany sales), in accordance with 19 CFR 351.525(b)(6)(iii). For a further discussion of attribution regarding CIMC Holdings, CIMC BVI, CIMC Wood and CIMC HK, refer to the CIMC Preliminary Calculation Memo.[32]

Xinhui Special, Qingdao CIMC, Nantong CIMC and Xinhui Container were producers of the subject merchandise during the POI. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we attributed subsidies that these companies received to their combined sales (net of intercompany sales).

Xinhui Wood provided wood flooring inputs to Xinhui Special. These companies were cross-owned during the POI within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of CIMC's majority ownership in them.[33] Because Xinhui Wood is an input producer that supplied inputs to Xinhui Special that are primarily dedicated to the production of the downstream product pursuant to 19 CFR 341.525(b)(6)(iv), we are attributing all subsidies received by Xinhui Wood to the combined sales of the company and Xinhui Special, Qingdao CIMC, Nantong CIMC and Xinhui Container (net of intercompany sales).[34]

Singamas

Singamas Container Holdings Ltd, (SCHL) responded to the Department's original and supplemental questionnaires on behalf of itself, *i.e.*, the holding company and three producers and exporters of the subject merchandise: HPCL, QPCL, and QSCL. These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of Singamas's majority of voting rights in all of the above-named companies.[35]

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[31] *Id*.
[32] *Id.*
[33] *Id*.
[34] For the denominators used in the preliminary calculations, *see* CIMC Preliminary Calculation Memo.
[35] *See* Singamas's response dated June 30, 2014, at 2 to 3.

In addition, Singamas also responded on behalf of the following holding companies, which SCHL owns and controls. These companies are Eng Kong Container & Warehousing Limited, Singamas Depots Holdings, Singamas Terminals Holdings Limited, Singamas Terminals (HK) Limited, Singamas Terminals (China) Limited, Singamas Warehouse (Shanghai) Company Limited, Wellmass Group Limited, Superb Gain Holdings Limited, Teamwill International Limited, Singamas Europe Limited, Singamas Refrigerated Container Ltd,[36] Value Success Investments Limited, and Singamas Container Holdings Ltd.[37] These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of Singamas's majority of voting rights in all of the above-named companies.[38]

Singamas also reported on behalf of three cross-owned affiliates that provided inputs to Singamas's producing companies. These three cross-owned input providers were Guangdong Shun An Da Pacific Container Co., Ltd. (GSPC), Qidong Pacific Logistics Equipment Co., Ltd. (QPLC), and Shanghai Baoshan Pacific Container Co., Ltd. (SBPC). These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of Singamas's majority voting rights in all of the above-named companies.[39]

Summary of Attribution of Subsidies to Singamas

QSCL, HPCL, and QPCL were producers of the subject merchandise during the POI. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we attributed subsidies that these companies received to their combined sales (net of intercompany sales).

C. *Denominators*

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program.[40] As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). For a further discussion of the denominators used, *see* the preliminary calculation memorandum. Similarly, where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator (or the total export sales of the cross-owned affiliates, as described above).[41]

X. BENCHMARKS AND DISCOUNT RATES

The Department is investigating loans received by CIMC from PRC state-owned commercial

[36] Singamas Europe Limited and Singamas Refrigerated Container Ltd. were dissolved in 2012. *See* Attachment A of Singamas June 30, 2014 Questionnaire Response.
[37] Singamas Container Holdings Ltd. (incorporated in the Bahamas), was dissolved in 201l. *Id*.
[38] *See* Singamas's response dated June 30, 2014, at Attachment A.
[39] *Id*. at 3-4.
[40] *See* 19 CFR 351.525(b)(1)-(5).
[41] *Id.*

banks (SOCBs), as well as non-recurring, allocable subsidies.[42] 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.[43] 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."[44]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from the PRC*, loans provided by PRC banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.[45] Because of this, any loans received by the respondents from private PRC or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a PRC benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.[46]

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *CFS from the PRC*[47] and more recently updated in *Thermal Paper from the PRC*.[48] Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from the PRC*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle

[42] *See* 19 CFR 351.524(b)(1).
[43] *See* 19 CFR 351.505(a)(3)(i).
[44] *See* 19 CFR 351.505(a)(3)(ii).
[45] *See CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10.
[46] *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada,* 67 FR 15545 (April 2, 2002) (*Lumber from Canada*) and accompanying Issues and Decision Memorandum (Lumber IDM) at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."
[47] *See CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10.
[48] *See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*) and accompanying Issues and Decision Memorandum (Thermal Paper IDM) at 8-10.

income category.[49] Beginning in 2010, however, the PRC is in the upper-middle income category and remained there through 2012.[50] Accordingly, as explained further below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2001-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2012. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving PRC merchandise.[51]

After the Department identifies the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation, the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators.

In each of the years from 2001-2009 and 2011-2012, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.[52] For 2010, however, the regression does not yield that outcome for the PRC's income group.[53] This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009 and 2011-2012. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we 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.[54] First, we did not include those economies that the Department considered to be non-market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate

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[49] *See* World Bank Country Classification, http://econ.worldbank.org/; *see also* Memorandum to the File "Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Benchmark Memo," dated concurrently with this memorandum (Preliminary Benchmark Memo).

[50] *See* World Bank Country Classification.

[51] *See*, *e.g.*, *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013) and accompanying Preliminary Decision Memorandum at "Benchmarks and Discount Rates," unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013), and accompanying Issues and Decision Memorandum (Shrimp IDM).

[52] *See* Memorandum to File from Ilissa Kabak Shefferman, International Trade Compliance Analyst, entitled "Banking Memorandum," (September 22, 2014) (Banking Memorandum).

[53] *Id.*

[54] *Id*.

on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.[55] Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.[56]

B. *Long-Term RMB-Denominated Loans*

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.[57]

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

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.[60] 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

[55] *Id.*
[56] *Id.*
[57] *See, e.g., Thermal Paper from the PRC,* and Thermal Paper IDM at 10.
[58] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*) and accompanying Issues and Decision Memorandum (Citric Acid IDM) at Comment 14.
[59] *See* CIMC Preliminary Calculation Memo.
[60] *See* Thermal Paper IDM at 10.

the term of the loan in question. *See* Banking Memorandum for the resulting inflation-adjusted benchmark lending rates.

C. *Discount Rates*

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.[61] The interest rate benchmarks and discount rates used in our preliminary calculations are provided in CIMC's preliminary calculation memorandum.[62]

XI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, use the "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. For purposes of this preliminary determination, we are relying on facts otherwise available with respect to certain of the respondent companies and the GOC, as described below.

Section 776(b) of the Act further provides that the Department may use an adverse inference in relying on the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. For purposes of this preliminary determination, we find it necessary to rely on adverse facts available (AFA) with respect to the GOC, as described below.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[63] 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."[64]

[61] *Id.*
[62] *Id.*
[63] *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).
[64] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).

Application of Facts Available

Measuring Government Involvement in the I-Beam Production Market

In its initial questionnaire response, the GOC reported the total volume and value of domestic production of hot-rolled steel (HRS) sheet and strip that is accounted for by companies in which the GOC maintains a majority ownership or management interest directly or through other GOC entities.[65] It stated that it did not collect this data for HRS I-beam producers.[66] Nevertheless, record information shows that state-owned producers of HRS sheet and strip account for at least 67 percent of PRC production during the POI.[67] Consequently, because of the government's significant involvement in the I-beam market, the use of private producer prices in the PRC would not be an appropriate benchmark (*i.e.*, such a benchmark would reflect the distortions of the government presence). For further discussion regarding benchmark prices, *see* below in, "Analysis of Programs – Hot Rolled Steel I-Beams for LTAR".

Inland Freight for Hot-Rolled Steel (HRS) Sheet and Plate for LTAR

Nantong CIMC reported inland freight for certain purchases of HRS. Nantong CIMC also reported that, for other purchases made under "CIF Shanghai" delivery terms, the company used its own vehicles to transport the HRS products from Shanghai to the factory in Nantong and, therefore, did not incur any additional freight expenses.[68] Section 351.511(a)(2)(iv) of the Department's regulations directs the Department to use delivered prices "to reflect the price a firm actually paid or would pay if it imported the product" in measuring the adequacy of remuneration. Thus, this section of the regulations directs us to include inland freight in the PRC in the benchmark. Therefore, for our preliminary determination, we are applying as facts available the inland freight rate reported by Nantong CIMC for some of its purchases of HRS to the "CIF Shanghai" purchases, for which CIMC did not report freight.

Likewise, Xinhui Container and Xinhui Special did not report inland freight.[69] Thus, for our preliminary determination, we applied as facts available the average inland freight reported by Nantong CIMC and Qingdao CIMC to all purchases of HRS products reported by Xinhui Special and Xinhui Container during the POI. We also relied on facts available with respect to inland freight for QSCL; details of this calculation are provided in the calculation memorandum for Singamas.

Electricity for LTAR

[65] *See* GOC IQR at Exhibit 34.
[66] *Id.* at 29.
[67] *Id* at Exhibit 34.
[68] *See* CIMC 9/2/2014 SQR at page Supp. K-3.
[69] *Id.*

Nantong CIMC was unable to report electricity usage separated between valley, normal and peak time periods.[70] Thus, we applied, as facts available, one benchmark price to calculate a benefit for electricity for Nantong CIMC. The single benchmark price used to calculate this benefit for Nantong CIMC is an average of the valley, normal and peak prices that the Department used in the electricity program calculations for the remaining CIMC companies. For further discussion, please refer to the CIMC Preliminary Calculation Memo. The Department will be soliciting additional information on Nantong CIMC's electricity use after the preliminary determination.

Application of Adverse Facts Available

GOC – Provision of Electricity for LTAR

The GOC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act and whether such a provision was specific within the meaning of section 771(5A) of the Act. In both the Department's original questionnaire and the August 19, 2014 supplemental questionnaire, the Department asked the GOC to provide, for each province in which a respondent is located, a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. The GOC provided no provincial-specific information in response to these questions in its initial questionnaire response.[71] The Department reiterated these questions in a supplemental questionnaire and the GOC did not provide the requested information in its supplemental questionnaire response.[72] This information is necessary for determining whether the GOC provides a financial contribution that is specific under this program.

Consequently, we preliminarily determine that necessary information is not available on the record and that the GOC withheld information that was requested of it and, thus, that the Department must rely on facts otherwise available in making our preliminary determination pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and that there is specificity within the meaning of section 771(5A) of the Act. We also relied on an adverse inference in selecting the benchmark for determining the

[70] See CIMC 9/2/2014 SQR at page E-10.
[71] *See* the GOC's Initial Questionnaire Response, dated August 5, 2014 (GOC IQR) at 52-53.
[72] *See* the GOC's September 2, 2014 Supplemental Questionnaire Response (GOC SQR) at 19.

existence and amount of the benefit. The benchmark rates we selected are derived from information from the record of the instant investigation and are the highest electricity rates on this record for the applicable rate and user categories.[73]

GOC - Export Seller's Credits from the China Ex-Im Bank

In its initial questionnaire response, the GOC provided no response for this program, instructing the Department to refer to the mandatory respondents' questionnaire responses.[74] The Department reiterated its request for a response for this program from the GOC in a supplemental questionnaire. Among the information that the Department was soliciting from the GOC was a description of the records that were kept for this program, whether domestic dry containers could be eligible for support under this program, sample application forms, and any relevant regulations and manuals governing application for assistance under this program.[75] The GOC's supplemental questionnaire response referred back to its initial questionnaire response and provided no additional program information.

Consequently, we preliminarily determine that necessary information is not available on the record and that the GOC withheld information that was requested of it and, thus, that the Department must rely on facts otherwise available in making our preliminary determination pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of export seller's credits constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and that there is specificity within the meaning of section 771(5A) of the Act. Only CIMC reported receiving support under this program.[76] We are, therefore, finding that the loans that CIMC received from the Export-Import Bank are financial contributions and are specific.

GOC – Preferential Loans to State-Owned Enterprises

The Department examined whether state-owned enterprises (SOEs) receive preferential loans through state-owned commercial or policy banks (SOCBs). In our initial questionnaire to the GOC, we asked for information regarding this program. For example, we asked the GOC to provide any laws that address bank lending to SOEs. We also requested the total amount of new loans issued by SOCBs in the PRC in the years 2010-2013, as well as total amount of new loans

[73] *See* Preliminary Benchmark Memo.
[74] *See* the GOC's IQR at 5.
[75] *See* the GOC's SQR at 2-4.
[76] *See* CIMC 7/28/2014 IQR at Page E-13.

issued by SOCBs to SOEs during those years. We asked the GOC to provide this information both for SOCBs as a group and for the "Big Four" SOCBs. Additionally, we requested this information for each of the banks with outstanding loans to CIMC and its cross-owned companies during the POI.[77]

In its response dated August 5, 2014, the GOC argued that "the questions are not applicable."[78] On August 19, 2014, we requested the above information in a second supplemental questionnaire to the GOC. The GOC stated that the requested information does not exist.[79] The GOC did not provide us with the total amount of loans outstanding for the "Big Four" SOCBs and failed to provide the amount of loans provided by the "Big Four" to SOEs. The GOC also failed to provide the same information for SOCBs as a group. In its response, the GOC explained that it was unable to provide the total amount of loans issued to SOEs because it did not maintain such information.[80]

In the countervailing duty investigation of *Oil Country Tubular Goods (OCTG) from the PRC*,[81] the Department also requested information regarding Preferential Loans for SOEs. In that case, we asked the GOC to provide 1) the total amount of loans made by each of the "Big Four" SOCBs between 2002 and 2008, and 2) how many of those loans were made to SOEs. The GOC was able to provide this information.[82] Thus, the GOC's claim in this proceeding that SOCBs do not maintain loan information specific to SOEs contradicts its responses in earlier proceedings.

We preliminarily find that the GOC withheld information that was requested of it for this program within the meaning of section 776(a)(2)(A) of the Act. Accordingly, the Department is relying on "facts available." Moreover, the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information, so we are applying an adverse inference in our use of facts available. The statute identifies specificity as one of three necessary elements of a countervailable subsidy. We normally rely on information from the government to determine whether a program is specific. As adverse facts available, we find that this program is specific. We discuss this program further below under "Analysis of Programs."

<u>GOC – Whether Certain HRS Sheet and Plate and HRS I-Beam Producers Are "Authorities"</u>

As discussed below under the section "Programs Preliminarily Found to be Countervailable," the Department is investigating whether the GOC provided HRS sheet and plate and HRS I-beams for LTAR. We asked the GOC to provide information regarding the specific companies that produced the HRS sheet and plate and HRS I-beams that the mandatory respondents purchased during the POI. Specifically, we sought information from the GOC that would allow us to

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77 *See* Department's June 13, 2014 initial questionnaire.
78 *See* GOC's IQR at 5.
79 *See* the GOC's SQR at 7.
80 *Id.*
81 *See* Memorandum from Ilissa Kabak Shefferman, International Trade Compliance Analyst to the File, "Placement of information onto the record" at Attachment 2 – GOC QR from OCTG from the PRC. (September 22, 2014).
82 *See Id.*

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 POI, we requested 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 or representatives during the POI.

The GOC did not provide this requested information for any producer. Instead, the GOC argued that "even if an owner, a director, or a manager of the two producers is a Government or CCP official, this individual can never have additional responsibility, authority and/or capacity regarding the operation of the company as a consequence of his/her official or representative identity."[83]

Because the GOC did not provide information we need for our analysis, we asked for this information a second time, in a supplemental questionnaire issued on August 19, 2014. The GOC referred back to its August 5, 2014 initial questionnaire response and stated that it could not provide additional information.[84]

The GOC did not identify the individual owners, members of the board of directors or senior managers of the producers who were CCP officials during the POR for any producer. 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.[85] We have explained our understanding of the CCP's involvement in the PRC's economic and political structures in past proceedings.[86] With regard to the GOC's claim that PRC law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.[87]

The information we requested regarding the role of CCP officials in the management and operations of these producers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. The GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The GOC's responses in prior CVD proceedings involving the PRC demonstrate that it is, in fact, able to access information similar to what we requested.[88] Additionally, pursuant to section 782(c) of the Act,

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[83] See GOC's IQR at 24.
[84] *See* GOC's SQR at 27.
[85] *See* Memorandum from Ilissa Kabak Shefferman, International Trade Compliance Analyst to the File, "Placement of information onto the record" at Attachment 1 (September 22, 2014).
[86] *Id.*
[87] *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), and accompanying Issues and Decision Memorandum at 16.
[88] *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) (*HPSC from the PRC*), and accompanying Issues and Decision Memorandum (HPSC IDM) at 13.

if the GOC could not provide any information, it should have promptly explained to the Department what attempts it undertook to obtain this information and proposed alternative forms of providing the information.[89]

We preliminarily find that the GOC has necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in issuing our preliminary determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, we preliminarily find that the GOC 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 pursuant to section 776(b) of the Act. As AFA, we are finding that certain producers of HRS sheet and plate and HRS I-beams for which the GOC failed to identify whether the members of the board of directors, owners or senior managers were CCP officials, are "authorities" within the meaning of section 771(5)(B) of the Act.

For details on the calculation of the subsidy rate for the respondents, see below at "Provision of Hot-Rolled Steel Sheet and Plate for LTAR" and "Provision of Hot-Rolled Steel I-Beams for LTAR."

GOC – Provision of HRS is Specific

The Department asked the GOC to provide a list of industries in the PRC that purchase HRS sheet and plate and HRS I-beams directly and to provide the amounts (volume and value) purchased by each of the industries, including the domestic dry containers industry.[90] The Department requests such information for purposes of its *de facto* specificity analysis. The GOC provided a list of industries that used ferroalloy metal in 2007, an excerpt of the national standard on "Industries Classification in National Economy," which reflect all the economic activities in the PRC and includes steel producer sectors, and an excerpt of the general categorization of all economic activities under the United Nation's "International Standard Industrial Classification for All Economic Activities."[91]

That information submitted by the GOC, however, is insufficient because it does not report the actual PRC industries that purchased HRS and the volume and value of each industry's respective purchase for the POI and the prior two years, as we requested. The GOC stated that it does not collect official data regarding the industries in the PRC that purchase HRS directly.

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[89] Section 782(c)(1) of the Act states "If 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 of 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." Furthermore, the Department's questionnaire explicitly informs respondents that if they are unable to respond completely to every question in the attached questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, the respondents must notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response.

[90] *See* Initial Questionnaire at Section B.1 and B.2.

[91] *See* GOC's IQR at 34-35.

Consistent with past proceedings, we preliminarily determine that this claim is contradicted by the GOC's submission of a list of industries that used ferroalloy metal in 2007.[92]

Therefore, consistent with past proceedings,[93] we preliminarily determine that necessary information is not available on the record and that the GOC has withheld information that was requested of it, and, thus, that the Department must rely on "facts available" in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of HRS is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. We note that that the Department has previously found the provision of hot-rolled steel in China to be specific because hot-rolled steel is only provided to steel consuming industries and thus is only provided to a limited number of industries.[94]

XII. ANALYSIS OF PROGRAMS

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

A. *Programs Preliminarily Determined to Be Countervailable*

1. Preferential Loans to SOEs

As explained above under "Use of Facts Otherwise Available and Adverse Inferences," we requested information related to this program from the GOC twice. The GOC failed to provide adequate responses to our questions both times. As a result, necessary information is not on the record. In cases where an interested party withholds information that has been requested or where there is not enough information on the record for us to determine whether a program is specific, we use facts otherwise available.[95] Furthermore, an adverse inference is warranted where a party fails to cooperate by not acting to the best of its ability to comply with a request for information from the Department.[96] Therefore, as discussed above, we determine, as AFA, that this program is specific to SOEs.

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[92] *See Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from the PRC*), and accompanying Issues and Decision Memorandum (Wind Towers IDM) at Comment 13, where the Department found that the GOC's list of industries that used ferroalloy metal in 2002 supported a conclusion that the GOC tracks industry consumption information and failed to comply with our request for information. *See also Drawn Stainless Steel Sinks From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) (*Sinks from the PRC*), and accompanying Issues and Decision Memorandum at Comment 8 (where the GOC did provide a list of industries that purchased the input).

[93] *See* Wind Towers IDM at Comment 13.

[94] *See* Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of High Pressure Steel Cylinders from the People's Republic of China (April 30, 2012) at 17.

[95] *See* sections 776(a)(1) and 776(a)(2)(A) of the Act.

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

We also determine that loans from SOCBs to SOEs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. 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.[97]

One of the respondents, the CIMC Group is an SOE. We determine the CIMC Group to be an SOE because it is controlled by two companies, China Merchants Investment Ltd., and COSCO Container Industries Ltd., that are 100 percent owned by the GOC's State-owned Assets Supervision and Administration Commission of the State Council (SASAC). CIMC Group and Qingdao CIMC reported loans outstanding during the POI.[98] To calculate the benefit under the preferential loans for SOEs program, we used the benchmarks described under the "Loan Benchmarks" section above.[99] For the loans to CIMC Group, we divided the interest savings during the POI by the consolidated sales of CIMC Group during the POI, as reported in its 2013 Annual Report, in accordance with 19 CFR 351.525(b)(6)(iii).[100] For the loans to Qingdao CIMC, we divided the interest savings during the POI by the combined sales of Qingdao CIMC, Xinhui Special, Nantong CIMC, and Xinhui Container (exclusive of intercompany sales), pursuant to 19 CFR 351.525(b)(6)(ii).

On this basis, we determine that CIMC received a countervailable subsidy of 0.01 percent *ad valorem*.

2. <u>Export Seller's Credits from China Ex-Im</u>

CIMC Group reported loans from China Ex-Im that were outstanding during the POI.[101] Consistent with *Citric Acid from the PRC,* we find that the loans provided by the GOC under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act.[102] The loans also provide a benefit under section 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(A) and (B) of the Act.[103]

To calculate the benefit under this program, we compared the amount of interest CIMC Group paid on the outstanding loans to the amount of interest the company would have paid on comparable commercial loans. In conducting this comparison, we used the interest rates described in the "Benchmarks and Discount Rates" section above. We divided the total benefit

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[97] *See* section 771(5)(E)(ii) of the Act.
[98] *See* CIMC 9/2/2014 SQR at pages Supp. B-4 and Supp. E-3 and the CIMC Preliminary Calculation Memo at page 5.
[99] *See* also 19 CFR 351.505(c).
[100] See CIMC's initial questionnaire response dated July 28, 2014 (CIMC 7/28/2014 IQR) on page 22 of CIMC Group's 2013 Annual Report at Exhibit E-3.
[101] *See* CIMC 7/28/2014 IQR on page E-13 and Exhibit E-6.
[102] *See* Citric Acid IDM at 13.
[103] *Id.*

amount by the CIMC Group's total consolidated export sales during the POI.[104] On this basis, we find that CIMC received a countervailable subsidy of 4.75 percent *ad valorem*.

3. Provision of Electricity for LTAR

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the GOC's provision of electricity for LTAR, in part, on AFA. Therefore, we determine that the GOC's provision of electricity confers a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act and is specific under section 771(5A)(D) of the Act.

For determining the existence and amount of any benefit under this program, we selected the highest non-seasonal provincial rates in the PRC for each electricity category (*e.g.*, "large industry," "general industry and commerce") and "base charge" (either maximum demand or transformer capacity) used by the respondent. Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a category.

Consistent with our approach in *Wind Towers from the PRC*, we first calculated the respondent's variable electricity costs by multiplying the monthly kWh consumed at each price category (*e.g.*, peak, normal, and valley, where appropriate) by the corresponding electricity rates paid by the respondent during each month of the POI.[105] Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by the respondent during the POI from the monthly benchmark variable electricity costs.

To measure whether CIMC or Singamas (*i.e.*, QPCL, HPCL, and HSCL) received a benefit with regard to its base rate (*i.e.*, either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to the companies by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the company's consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by the company during the POI from the benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from the respondent's variable electricity payments and base rate payments.[106]

To calculate the net subsidy rates attributable to CIMC and Singamas, we divided the benefit by total POI sales of respondent producers as described in the "Subsidies Valuation Information" section above. On this basis, we find that CIMC received a countervailable subsidy of 0.38 percent *ad valorem* and Singamas received a countervailable subsidy of 0.41 percent *ad valorem*.

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[104] *See* CIMC 9/2/2014 SQR.

[105] *See* Wind Towers IDM at 21-22.

[106] For more information on the respondent's electricity usage categories and the benchmark rates we have used in the benefit calculations, *see* Electricity Benchmark Memo. For the calculations, *see* CIMC Preliminary Calculation Memo and Singamas Preliminary Calculation Memo.

4. Provision of Hot-Rolled Sheet and Plate for LTAR

The Department is examining whether CIMC and Singamas purchased HRS sheet and plate, predominant inputs for domestic dry containers, at less than adequate remuneration. As instructed in the Department's questionnaires, the respondent companies identified the suppliers and producers from whom they purchased HRS sheet and plate during the POI.[107]

The GOC reported that the respondent companies purchased hot-rolled sheet and plate from companies that the GOC has classified as SOEs, as well as from companies that the GOC considered to be "privately-held." We understand the GOC's classification of certain companies as "SOEs" to mean that those companies are majority-owned by the government. As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.[108] 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. Therefore, we preliminarily determine that these entities constitute "authorities" within the meaning of section 771(5)(B) of the Act and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.[109] Further, we find that the respondents received a benefit to the extent that the price they paid for the HRS sheet and plate produced by these suppliers was for LTAR.[110] As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section of this memorandum we are treating the domestic producers of HRS sheet and plate that the GOC has classified as non-"SOEs" to be "authorities" under the Act. Therefore, we preliminarily determine that the HRS sheet and plate supplied by all domestic producers is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act and the respondents received a benefit to the extent that the price they paid for the HRS sheet and plate produced by these suppliers was for LTAR, pursuant to section 771(5)(E)(iv) of the Act.

As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section of this memorandum above, we preliminarily determine that the GOC is providing HRS sheet and plate to a limited number of industries and enterprises, and, hence, that the subsidy is specific pursuant to section 771(5A)(D)(iii).

Finally, regarding benefit, the Department identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services pursuant to 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation

[107] *See* CIMC 7/28/2014 IQR at Exhibits A-7, B-7, C-7 and CIMC 9/2/2014 SQR at Exhibits Supp. A-8, C-24, and F-4; *see also* Singamas 7/28/2014 IQR at Exhibit 30 and 9/4/2014 SQR at Exhibit 73.
[108] *See* Memorandum from Ilissa Kabak Shefferman , International Trade Compliance Analyst to the File, "Placement of information onto the record" at Attachment XX (September 22, 2014).
[109] *See Oil Country Tubular Goods from the People's Republic of China; Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014), and accompanying Issues and Decision Memorandum at Comment 6.
[110] *See* section 771(5)(E)(iv) of the Act.

(*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in 19 CFR 351.511(a)(2)(i), the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.[111] This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.[112]

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving PRC buyers and sellers that can be used to determine whether the GOC authorities sold HRS sheet and plate to the respondents for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country may be considered significantly distorted and may not be an appropriate basis of comparison for determining whether there is a benefit.[113]

In its initial questionnaire response, the GOC reported the total volume and value of domestic production of HRS steel sheet and strip that is accounted for by companies in which the GOC maintains a majority ownership or management interest.[114] It stated that it did not collect this data for HRS sheet and plate producers.[115] Accepting the GOC's claim that it does not collect the requested data for HRS sheet and plate producers, we are instead relying on record information which shows that state-owned producers of HRS sheet and strip account for at least 67 percent of PRC production during the POI.[116] Consequently, because of the government's predominant involvement in the HRS sheet and strip market, the use of private producer prices in the PRC would not be an appropriate benchmark because such a benchmark would reflect the distortions of the government presence.

As we explained in *Softwood Lumber from Canada*:

> Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.[117]

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111 *See* Lumber IDM at "Market-Based Benchmark."
112 *Id.*
113 *See* Countervailing Duties; Final Rule, 63 FR 65348, 65377 (November 25, 1998).
114 *See* GOC IQR at Exhibit 34.
115 *Id.* at 29.
116 *Id.* at Exhibit 34.
117 *See* Lumber IDM at "There Are No First Tier Benchmarks Available".

For these reasons, prices stemming from private transactions within the PRC cannot give rise to a price that is sufficiently free from the effects of the GOC's presence and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration.

Given that we have preliminarily determined that no tier one benchmark prices are available, we next evaluated information on the record to determine whether there is a tier two world market price available to producers of subject merchandise in the PRC. Petitioners and CIMC both submitted prices that they suggest are appropriate.[118]

HRS Plate Benchmark

CIMC submitted benchmark prices for HRS plate.[119] CIMC sourced its benchmark prices from MEPS (International) Ltd., Metal Bulletin, Steel Orbis, and SBB-Platts. The Department's regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Accordingly, we calculated a simple average of the following prices submitted by CIMC: Metal Bulletin, Steel Orbis (FOB Ukraine), and SBB-Platts (FOB CIS). However, we have not relied on certain MEPS (International) Ltd. prices or the SBB-Platts prices because record information does not delineate the basis for the prices (*e.g.*, Ex Works, FOB, *etc.*); therefore, we are uncertain whether these prices include delivery charges such as inland and ocean freight. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or 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. Therefore, if these prices did not include delivery charges, and we used these prices in our benchmark, this would be inconsistent with 19 CFR 351.511(a)(2)(iv). If we did add delivery charges to these prices, and these prices already included delivery charges, then we would be including such delivery charges twice. Therefore, we are not including these prices in our benchmark. This is consistent with case precedent in which the Department rejected prices that would not allow us to make the appropriate adjustments under 19 CFR 351.511(a)(2)(iv).[120]

Petitioner submitted benchmark prices for ocean freight based on Maersk freight rates in 2013 for shipments of steel in a 40-foot standard container from Hamburg, Germany and Felixstowe, Great Britain to Qingdao, China.[121] Neither CIMC nor Singamas submitted suggested benchmarks for ocean freight. However, CIMC did submit certain prices for hot-rolled sheet in coils and for plate from various regions of the world. To calculate ocean freight that more

[118] *See* Letter from CIMC to the Department entitled "Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Global Hot-Rolled Steel Price Information, September 8, 2014; *see also* Letter from Stoughton Trailers LLC entitled "53-Foot Domestic Dry Containers from the People's Republic of China, September 8, 2014.
[119] *See* Letter from CIMC entitled "Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Global Hot-Rolled Steel Price Information," dated September 8, 2014 (CIMC HRS Benchmark Prices).
[120] *See High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying Issues & Decision Memorandum at 18-19 (HPSCs Final Decision Memo).
[121] See Petitioner submission on benchmarks dated September 8, 2014, at pages 3-4 and table 6.

accurately reflects the regional FOB export prices used to compile HRS benchmark prices, we used the ocean freight submitted by Petitioner in this case averaged with the ocean freight rates submitted and used in the investigation of *Carbon and Certain Alloy Steel Wire Rod* (*SWR*) from the PRC, which we have placed on the record of this case.[122] The POI for both SWR and this instant investigation is 2013. The freight rates in SWR from the PRC cover a wide range of freight rates that reflect exports of steel from various countries in the Global Trade Atlas (GTA) data submitted by Petitioner, and the hot-rolled sheet and plate steel exports placed on the record by CIMC. We calculated a simple average of the two ocean freight rates submitted by Petitioner in this investigation and the average USD/MT freight calculations from the SWR case.

For Qingdao CIMC and Nantong CIMC inland freight rates, we utilized inland freight rates reported by both companies. For a further discussion of inland freight rates used for all CIMC respondent companies, refer to the *Application of Facts Available* section of this memorandum and the CIMC Preliminary Calculation Memo. For Singamas' inland freight rates, we utilized inland freight rates reported by QPCL and HPCL.[123] For QPCL, we applied facts available as described in detail in the calculation memorandum for Singamas.[124] For both companies' calculations, we also added the applicable VAT and import duties, at the rates reported by the GOC.

HRS Coil Benchmark

Petitioner and CIMC submitted benchmark prices for HRS sheet in coils.[125] Petitioner submitted two separate sets of benchmark prices based on GTA statistics. The first set of benchmark prices reflected the monthly world export price based on world exports of all tariff codes underlying HTS 7225.30, which is the tariff code identified by CIMC and Singamas in their responses. The second set of benchmark prices excluded export data that either was a "basket" HTS category or covered different steel than that used by CIMC and Singamas. CIMC sourced its benchmark prices from American Metal Market (AMM), MEPS (International) Ltd., Metal Bulletin, Steel Orbis and SBB-Platts.

As with HRS Plate above, we have not relied on certain MEPS (International) Ltd. prices or the SBB-Platts prices because record information does not delineate the basis for the prices (*e.g.*, Ex

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[122] *See Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 FR 38490 (July 8, 2014), and accompanying Preliminary Decision Memorandum at 30 (final determination not yet issued); *and* Petitioner's submission on benchmarks dated June 2, 2014 entitled "Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Submission of Factual Information- Benchmark Data," which we are placing on the record of this at Attachment 3 of the Preliminary Benchmark Memo).
[123] *See* Singamas September 4, 2014, SQR at CVD-74.
[124] *See* Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from China: Preliminary Determination Calculations for Singamas, Memorandum from Yasmin Nair and David Cordell, International Trade Compliance Analysts, to Richard Weible, Office Director, September 22, 2014 (Singamas Preliminary Calculation Memo).
[125] See CIMC HRS Benchmark Prices *and* Letter from Stoughton Trailers, LLC entitled "53-Foot Domestic Dry Containers from the People's Republic of China," September 8, 2014 (Petitioner Benchmark Prices).

Works, FOB, etc.); therefore, we are uncertain whether these prices include delivery charges such as inland and ocean freight.[126]

The Department's regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Accordingly, we calculated a simple average of the GTA prices submitted by Petitioner and the following prices submitted by CIMC: AMM, Metal Bulletin, Steel Orbis (FOB Turkey, FOB Russia, FOB Ukraine), and SBB-Platts (FOB B Sea, FOB Blk Sea, FOB Bld Sea Eur/Mt, FOB Blk Sea US$/CWt, FOB Blk Sea US$/Mt, FOB Blk Sea US$/St, Russia Black Sea FOB, Turkey FOB and Brazil FOB).

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we added to the monthly benchmark prices ocean freight and inland freight charges that would be incurred to deliver steel plate from a Chinese port to the companies' facilities. For ocean freight, we utilized the same rates calculated for the HRS plate benchmark, as described above in the HRS Plate Benchmark section. For Qingdao CIMC and Nantong CIMC inland freight rates, we utilized inland freight rates reported by both companies. For a further discussion of inland freight rates used for all CIMC respondent companies, refer to the *Application of Facts Available* section of this memorandum. For Singamas' inland freight rates, we calculated a benchmark as described above in the HRS Plate Benchmark section. For both companies' calculations, we also added the applicable VAT and import duties, at the rates reported by the GOC.

Comparing these adjusted HRS plate and coil benchmark prices to the prices paid by CIMC and Singamas's producers for their HRS plate and sheet in coil purchases, we measured a benefit to the extent that the price paid by the respondents was less than the benchmark price. Pursuant to 19 CFR 351.525(b)(6)(ii), we divided this difference by the combined total POI sales of respondent producers (exclusive of intercompany sales) in 2013, as described above in the "Attribution of Subsidies" section. On this basis, we preliminarily determine that CIMC received a countervailable subsidy of 5.02 percent *ad valorem* under this program and Singamas received a countervailable subsidy of 6.32 percent *ad valorem*.

5. Provision of Hot-Rolled Steel I-Beams for LTAR

The Department is examining whether CIMC and Singamas purchased HRS I-beams, predominant inputs for domestic dry containers, at less than adequate remuneration. As instructed in the Department's questionnaires, Singamas identified the suppliers and producers from whom it purchased HRS I-beams during the POI.[127] CIMC reported that it did not purchase this input during the POI.[128]

[126] *See* 19 CFR 351.511(a)(2)(iv).
[127] *See* Singamas's July 28, 2014 submission at Exhibit CVD-33.
[128] See CIMC 7/28/2014 IQR at pages A-18, B-17, C-18, D-17, and E-17 *and* 8/4/2014 IQR at pages F-19, G-16, I-15, J-16.

The GOC reported that Singamas purchased HRS I-beams from companies that the GOC has classified as SOEs, as well as from companies that the GOC considered to be "privately-held." We understand the GOC's classification of certain companies as "SOEs" to mean that those companies are majority-owned by the government. As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.[129] 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. Therefore, we preliminarily determine that these entities are "authorities" within the meaning of section 771(5)(B) of the Act and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.[130] Further, we find that the respondents received a benefit to the extent that the price they paid for the HRS I-beams produced by these suppliers was for LTAR under section 771(5)(E)(iv) of the Act. As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section of the notice, we are treating certain domestic producers of HRS I-beams that the GOC has classified as non-"SOEs" to be "authorities" under the Act. Therefore, we preliminarily determine that the I-beams supplied by all domestic producers are a financial contribution in the form of a provision of a good under section 771(5)(D)(iii) of the Act and that the respondents received a benefit to the extent that the price they paid for the HRS I-beams produced by these suppliers was for LTAR.

As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section of the notice, we preliminarily determine that the GOC is providing HRS to a limited number of industries and enterprises, and, hence, that the subsidy is specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

Finally, regarding benefit, the Department identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services pursuant to 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.[131] This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving PRC buyers and sellers that can be used to determine whether the GOC authorities sold HRS I-beams to the respondents for LTAR. Notwithstanding the

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[129] *See* Memorandum from Ilissa Kabak Shefferman, International Trade Compliance Analyst to the File, "Placement of information onto the record" at Attachment 1 (September 22, 2014).
[130] *See Oil Country Tubular Goods from the People's Republic of China; Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014), and accompanying Issues and Decision Memorandum at Comment 6.
[131] *See* Lumber IDM at "Market-Based Benchmark."

regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country may be considered significantly distorted and may not be an appropriate basis of comparison for determining whether there is a benefit.[132]

As discussed, above, in "Application of Facts Available," we are relying on record information[133] showing that state-owned producers of HRS sheet and strip account for at least 67 percent of PRC production during the POI. Consequently, because of the GOC's predominant involvement in the HRS I-beam market, the use of private producer prices in the PRC would not be an appropriate benchmark (*i.e.*, such a benchmark would reflect the distortions of the government presence).

For these reasons, prices stemming from private transactions within the PRC cannot give rise to a price that is sufficiently free from the effects of the GOC's presence and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration.

Given that we have preliminarily determined that no tier one benchmark prices are available, we next evaluated information on the record to determine whether there is a tier two world market price available to producers of subject merchandise in the PRC. No party submitted any prices.

To calculate the benefit during each month of the POI, we used a monthly world market price obtained from the Global Trade Atlas (GTA) for I-beams as a benchmark.[134]

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we added to the monthly benchmark prices ocean freight and inland freight charges that would be incurred to deliver steel plate from a Chinese port to the companies' facilities.

Petitioner submitted benchmark prices with respect to the hot-rolled sheet and plate, for ocean freight based on Maersk freight rates in 2013 for shipments of steel in a 40-foot standard container from Hamburg, Germany and Felixstowe, Great Britain to Qingdao, China.[135] Neither CIMC nor Singamas submitted suggested benchmarks for ocean freight. To calculate ocean freight that more accurately reflects the regional FOB export prices used to compile HRS benchmark prices, we used the ocean freight submitted by Petitioner in this case averaged with the ocean freight rates submitted and used in the investigation of *SWR* from the PRC, which we

[132] *See* Countervailing Duties; Final Rule, 63 FR 65348, 65377 (November 25, 1998).
[133] *See* GOC IQR at Exhibit 34.
[134] *See* Calculation Worksheets and Singamas Preliminary Calculation Memo.
[135] See Petitioner submission on benchmarks dated September 8, 2014, at pages 3-4 and table 6.

have placed on the record of this case, as discussed above.[136] We calculated a simple average of the two ocean freight rates submitted by Petitioner in this investigation and the average USD/MT freight calculations from the *SWR* case.

We also added the VAT and import duties applicable to imports of HRS I-beams into the PRC. We compared these prices to Singamas's actual purchase prices, including any taxes and delivery charges incurred to deliver the product to the respondent's plants.[137]

Comparing these adjusted benchmark prices to the prices paid by Singamas for its HRS I-beam purchases, we measured a benefit to the extent that the price paid by Singamas was less than the benchmark price. Pursuant to 19 CFR 351.525(b)(6)(ii), we divided this difference by the combined total POI sales by respondent producers *(i.e.* QPCL, HPCL and QSCL), exclusive of intercompany sales, as described above in the "Attribution of Subsidies" section. On this basis, we preliminarily determine that Singamas received a countervailable subsidy of 0.00 percent *ad valorem* under this program.

6. Two Free/Three Half Program for Foreign Invested Enterprises (FIEs)

The Department is examining whether CIMC and Singamas benefited from the Two Free/Three Half Program for FIEs. Under Article 8 of the FIE Tax Law, an FIE that is "productive" and scheduled to operate for more than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years. According to the GOC, the "Two Free, Three Half" program was terminated effective January 1, 2008, by the Enterprise Income Tax Law, but companies already enjoying the preference were permitted to continue paying taxes at reduced rates. This preferential tax program grants FIEs scheduled to operate in the PRC for no less than ten years 100 percent income tax exempt status for the first two profitable years and 50 percent income tax exempt status for the following three years.

The Department has previously found this program to be countervailable.[138] Consistent with earlier cases, we preliminarily determine that the "Two Free, Three Half" income tax exemption/reduction constitutes a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue foregone by the GOC and it provides a benefit to the recipient in the amount of the tax savings.[139] We also determine that the exemption/reduction afforded by the program is limited as a matter of law to certain enterprises, *i.e.*, productive FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.[140]

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[136] *See Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 FR 38490 (July 8, 2014), and accompanying Preliminary Decision Memorandum at 30 (final determination not yet issued); *and* Petitioner's submission on benchmarks dated June 2, 2014 entitled "Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Submission of Factual Information- Benchmark Data", which we are placing on the record of this proceeding at Attachment 3 of the Preliminary Benchmark Memo).
[137] *See* CIMC's and Singamas's Preliminary Calculation Memos.
[138] *See* Solar Cells IDM at 15-16 and Comment 25.
[139] *Id*.
[140] *Id*.

CIMC reported that it did not use the Two Free/Three Half Program.[141] Upon examination of all CIMC cross-owned companies' financial statements and tax documents, we preliminarily determine that CIMC did not use this program.[142]

Singamas reported that only one of its cross-owned companies, HPCL, benefited from the Two Free/Three Half Program. To calculate the benefit, we treated the income tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the company's tax rate to the rate it would have paid in the absence of the program. We calculated the countervailable subsidy rate of 0.40 percent *ad valorem* for Singamas by dividing the total benefit during the POI by the combined total POI sales by respondent producers (*i.e.* QPCL, HPCL and QSCL), exclusive of intercompany sales, in accordance with 19 CFR 351.525(b)(6)(ii).

7. Preferential Tax Programs for Enterprises Recognized as High or New Technology Enterprises (HNTEs)

The GOC reported that this program was established on January 1, 2008. Pursuant to Article 28.2 of the *Enterprise Income Tax Law* (EITL) of the PRC, the government provides for the reduction of the corporate income tax rate from 25 percent to 15 percent for enterprises that are recognized as a HNTEs. The conditions to be met by an enterprise to be recognized as an HNTE are set forth in Article 93 of the *Regulation on the Implementation of the Enterprise Income Tax Law*.

The Department previously determined that this program is *de jure* specific and, thus, found it countervailable.[143] Consistent with earlier cases, we preliminarily determine that this program constitutes a countervailable subsidy.[144] The exemption/reduction is a financial contribution in the form of revenue foregone by the GOC and it provides a benefit to the recipient in the amount of the tax savings.[145] We also determine that the exemption/reduction afforded by the program is limited as a matter of law to certain enterprises, *i.e.*, HNTEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

Nantong CIMC and Xinhui Special were recognized as HNTEs during the POI.[146] As a result, the government reduced both companies' income tax rate from 25 percent to 15 percent. To calculate the benefit, we compared the income tax rate that Nantong CIMC and Xinhui Special would have paid in the absence of the program (25 percent) to the income tax rate that the companies actually paid (15 percent). We treated the income tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate for each year, pursuant to 19 CFR 351.525(b)(6)(ii), we divided the benefit by a denominator comprised

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[141] *See* CIMC 7/28/2014 IQR at pages A-23, B-21, C-22, D-21, E-21 *and* CIMC 8/4/14 IQR at pages F-23, G-19.
[142] *See* CIMC 7/28/2014 IQR at pages A-23, B-21, C-22, D-21, E-21,and CIMC 8/4/2014 IQR at pages F-23, G-19, I-19, J-20.
[143] *See* Solar Cells IDM at 16-17 and Comment 25.
[144] *Id.*
[145] *Id. See also* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[146] *See* CIMC 7/28/2014 IQR at pages A-23 and C-22.

of total sales (exclusive of inter-company sales) according to the methodology described above in the “Subsidies Valuation Information” section.

On this basis, we determine a countervailable subsidy rate of 0.18 percent *ad valorem* for CIMC.

8. Enterprise Tax Law Research and Development Program Grants

Article 30.1 of the Enterprise Income Tax Law of the PRC created a new program regarding the deduction of research and development expenditures by companies, which allows enterprises to deduct, through tax deductions, research expenditures incurred in the development of new technologies, products, and processes. Article 95 of Regulation 512 provides that, if eligible research expenditures do not “form part of the intangible assets value,” an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount. Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets costs. Xinhui Special, Nantong CIMC, Qingdao CIMC and Xinhui Wood reported benefitting from this program during the POI. The Department previously found in *Wind Towers from the PRC* and *Solar Cells from the PRC* that this program provides a countervailable subsidy.[147]

The Department verified the specificity of this program in *Wind Towers from the PRC*.[148] This income tax deduction is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also continue to determine that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with research and development in eligible high-technology sectors and, thus, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program to Xinhui Special, Nantong CIMC, Qingdao CIMC and Xinhui Wood, we treated the tax credits as recurring benefits, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax the companies would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). We then divided the tax savings by the appropriate total sales denominator (exclusive of inter-company sales), as described in the “Subsidies Valuation” section, above.

On this basis, we determine a countervailable subsidy rate of 0.12 percent *ad valorem* for CIMC.

B. *Program Preliminarily Determined Not to Be Used During the POI*

The Department preliminarily determines that the following program was not used during the POI:

[147] *See* Wind Towers IDM at 18-19 and Comment 17; *see also* Solar Cells IDM at 17 and Comment 25.
[148] *See* Wind Towers from the PRD IDM at 18-19.

1. Export Buyer's Program

C. *Programs With No Allocable Benefit in the POI*

1. "Famous Brands" Program

CIMC Group reported receipt of two, non-recurring grants during the AUL under the Famous Brands program.[149] This program is administered at the central, provincial and municipal government levels. Qualifying companies receive grants, loans and other incentives to enhance export activity.

We preliminarily determine that the grants received under the famous brands program constitute a financial contribution, in the form of a direct transfer of funds, and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively, and 19 CFR 351.504(a). We find this program to be specific under sections 771(5A)(A) and (B) of the Act.[150]

To calculate the benefit from the grants, we first applied the "0.5 percent expense test" as described in the "Allocation Period" section above. Grant amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. In calculating a benefit for these grants to CIMC Group, we determine that they do not meet the 0.5 percent threshold for allocation over the AUL period, pursuant to 19 CFR 351.524(b)(2). Therefore, we preliminarily determine that grants received by CIMC Group under the "Famous Brands" program provided no benefit during the POI because the benefits were expensed in the year of receipt, 2008 and 2009.

2. Other Grant to Singamas

Singamas reported receipt of one grant during the AUL.[151] The grant was received by HPCL under a program to encourage export-oriented industries. This grant constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act and is specific because it is contingent on export within the meaning of section 771(5A)(B) of the Act. To calculate the benefit from the grants, we first applied the "0.5 percent expense test" as described in the "Allocation Period" section above. We used the smallest denominator, *i.e*., export sales, to measure the benefit received. Grant amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. In calculating a benefit for these grants to Singamas, we determine that they do not meet the 0.5 percent threshold for allocation over the AUL period, pursuant to 19 CFR 351.524(b)(2). Therefore, we preliminarily determine that this grant received by Singamas provided no benefit during the POI because the benefits from the grant was expensed prior to the POI in the year of receipt.

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[149] *See* CIMC 9/2/2014 SQR at page Supp. E-3.
[150] *See* Wire Strand IDM at "Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level."
[151] *See* Singamas' Third Supplemental Response, dated August 25, 2014 at 8

D. *Programs For Which Additional Information Is Needed*

1. Other Grants to CIMC

CIMC Group, Qingdao CIMC, Xinhui Special, Nantong CIMC and Xinhui Container reported receiving various individual grants during the AUL from the GOC. These grants were disclosed in supplemental responses.[152] We received these supplemental responses very close to the deadline of this preliminary determination. Due to the fact that we need to solicit further information regarding some of these grant programs, we intend to include analysis of these programs in a post-preliminary determination.

2. Other Grants to Singamas

Three grants were received by QSCL and were administered by the local government of Qidong. These grants were described as "Incentives to Further Promote Industrial Economy" and "Advance Unit for Enterprise Investment." Due to the fact that we need to solicit further information regarding some of these grant programs, we intend to include analysis of these programs in a post-preliminary determination.

XIII. VERIFICATION

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

[152] *See* CIMC 9/2/2014 SQR at pages Supp. A-2, Supp. A-6, Supp. C-1, Supp. C-3, Supp. C-4, Supp, D-1, Supp. D-4, Supp. E-1, Supp. F-1, Supp. F-2.

XIV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

22 SEPTEMBER 2017
Date