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October 14, 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 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Issues and Decision Memorandum for the Final Determination

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I. BACKGROUND

The Department of Commerce ("Department") determines that countervailable subsidies have been provided to producers and exporters of 1,1,1,2 tetrafluoroethane ("tetrafluoroethane") in the People's Republic of China ("PRC"), within the meaning of section 705 of the Tariff Act of 1930, as amended ("Act").

On April 18, 2014, the Department published its Preliminary Determination in the countervailing duty ("CVD") investigation of tetrafluoroethane from the PRC.[1] Additionally, the Department published the Amended Preliminary Determination on May 30, 2014,[2] and on July 25, 2014, the Department released a Post-Preliminary Memorandum addressing certain issues for which additional information was still pending at the time of the Preliminary Determination.[3] Between July 29 and August 12, 2014, we conducted a verification of the questionnaire responses of the Zhejiang Quhua Fluor-Chemistry Co., Ltd., and its cross-owned affiliates' (collectively "Juhua Group"), Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd., and its cross-

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[1] See Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Preliminary Determination and Alignment of Final Determination with Final Antidumping Determination, 79 FR 21895 (April 18, 2014) ("Preliminary Determination").
[2] See Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Amended Preliminary Determination, 79 FR 31088 (May 30, 2014) ("Amended Preliminary Determination").
[3] See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, through Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office V, Re: Post-Preliminary Analysis of Countervailing Duty Investigation: 1,1,1,2 Tetrafluoroethane from the PRC, dated July 25, 2014 ("Post-Prelim Memorandum").

owned affiliates' (collectively "Sinochem"), Jiangsu Bluestar Green Technology Co., Ltd ("Bluestar"), and T.T. International Co., Ltd. ("T.T. International"). Between September 2, 2014, and September 8, 2014, interested parties submitted case and rebuttal briefs.

General Issues

1. Whether Loans Provided by Banks Other Than the "Big Four" Are Countervailable
2. Whether the Department is Properly Countervailing Loans to Companies Producing a Disfavored Product
3. Whether AFA is Warranted With Regard to the Fluorospar for LTAR Program & Whether the Program is Countervailable
4. Whether Partial AFA is Warranted For the Mining Rights for LTAR Program
5. Whether the Department Should Calculate a Separate Combination Rate for Weitron
6. Whether the Department Correctly Treated the Tax and VAT Programs as Recurring Subsidies
7. Bluestar's Minor Corrections With Regard to Electricity
8. Whether the Department Correctly Calculated the Electricity Benchmark
9. Whether the Department Correctly Included Purchases Made for Trading Purchases in its Fluorspar Calculation for JUHUA
10. Whether the Department Correctly Included Purchases Made From Trading Companies in its Fluorspar Calculation for JUHUA
11. Whether Certain Types of Financing are Countervailable
12. Whether the Department Used the Correct Denominator for Juhua Mining
13. Whether the Department Correctly Attributed Subsidies for Sinochem Taicang
14. Whether the Department Correctly Calculated the Benchmark for Loan Programs
15. Whether the Department Double Counted Loans Received by Sinochem Lantian
16. Whether the Department Correctly Calculated the Acidspar Benchmark
17. Whether the Department Should Cumulate the Subsidy Rates of Three AHF Suppliers to Sinochem
18. Whether the Attribution of Subsidies Received by Authorities is a Departure from Department Practice and Results in Double Counting of Subsidy Benefits
19. Whether the Department Properly Rejected Sinochem's August 1, 2014, Submission as Untimely
20. Whether the Department Should Apply the Program-Wide Change Rule and Not Calculate a Subsidy Rate for the Two-Free Three-Half Program

II. SUBSIDIES VALUATION INFORMATION

A. Period of Investigation

The period of investigation ("POI") for which we are measuring subsidies is January 1, 2012, through December 31, 2012.

B. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life ("AUL") of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 9.5 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[4] (Because the AUL is 9.5 years, we allocated benefits from non-recurring subsidies over a 10-year period.) The Department notified the Respondents of the AUL in the initial questionnaire and requested data accordingly.[5] 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.

C. Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets.[6] 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.[7] In certain circumstances, a large minority voting

[4] See Preliminary Determination, and accompanying Decision Memorandum at 4.
[5] As stated in the Preliminary Determination, regardless of the AUL chosen, we will not countervail subsidies conferred before December 11, 2001, the date of the PRC's accession to the World Trade Organization. Id., and accompanying Decision Memorandum at 4-5, n.17 (citing 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 at "Subsidies Valuation Information").
[6] The Department's regulations at 19 CFR 351.525(b)(6)(vi) state that cross-ownership exists when one corporation can use or direct the assets of another corporation in essentially the same way it can use its own. Normally, however, "this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations."
[7] See, e.g., Countervailing Duties, 63 FR 65348, 65401 (November 25, 1998) ("Final Rule").

interest (for example, 40 percent) may also result in cross-ownership.[8] The Court of International Trade ("CIT") upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.[9]

JUHUA

Quhua Fluor-Chemistry submitted responses to the Department's questionnaires on behalf of itself and its parent Juhua Stock, as well as for the other companies owned by Juhua Stock, namely, Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd. ("Lianzhou"), Zhejiang Quzhou Juxin Flurochemical Industry Co., Ltd. ("Juxin"), Zhejiang Quzhou Jusu Chemical Co., Ltd. ("Jusu"), and Zhejiang Kaisheng Fluorochemical Co., Ltd. ("Kaisheng"). Additionally, Quhua Fluor-Chemistry submitted questionnaire responses on behalf of other affiliated companies, namely, Juhua Group Corporation ("Juhua Group"), Zhejiang Juhua Chemical Mining Co., Ltd. ("Juhua Mining"), Zhejiang Juhua Calcium Carbide Co., Ltd. ("Juhua C.C."), Huangshan City Juhua Fluorspar Co., Ltd. ("Huangshan Juhua"), Juhua Quzhou Utility Co., Ltd. ("Juhua Utility"), Juhua Group Corporation Thermal Power Plant ("Juhua Group TP Plant"), Quzhou Lianfu Trade Co., Ltd. ("Lianfu"), and Juhua Group Imp. & Exp. ("Juhua EXIM").

Information from the responses indicates the nature of the affiliations and the roles in the production and sales chains of the subject merchandise as to the following Juhua Stock companies:[10]

> *Juhua Stock*
> A producer of subject merchandise, Juhua Stock is owned by Juhua Group, which is in turn owned by the Zhejiang Province State-Owned Assets Supervision and Administration Commission of the State Council ("Zhejiang SASAC"). Thus, Juhua Stock is ultimately a state-owned enterprise ("SOE"). Juhua Stock generates consolidated financial statements that cover the companies mentioned immediately below.
>
> *Juxin*
> Like its parent, Juxin produces subject merchandise, which was exported by Quhua Fluor-Chemistry and Lianzhou during the POI.
>
> *Quhua Fluor-Chemistry*
> An exporter, but not a producer, of subject merchandise, Quhua Fluor-Chemistry also produces anhydrous hydrofluoric acid, which it supplies to Juxin and Juhua Stock as an input into their production of subject merchandise.

[8] Id.
[9] See Fabrique de Fer de Charleroi v. United States, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[10] Unless otherwise noted see JUHUA QR at 4-7 (for information regarding the nature of the affiliations and the roles in the production and sales chains of the subject merchandise as to the Juhua Stock companies); see also Memorandum To: Catherine Bertrand, From: Josh Startup, Re: Countervailing Duty Investigation of 1,1,1,2-Tetrafluoroethane from the People's Republic of China: Cross-ownership Zhejiang Quhua Fluor-Chemistry Co., Ltd. and its Cross-Owned Affiliates, dated April 11, 2014, for the proprietary details of the ownership structures.

Lianzhou
This company packages and exports subject merchandise produced by Juxin and Juhua Stock.

Lianfu
This company is owned by Lianzhou.[11] Lianfu exported subject merchandise in 2010 and 2011, but not during the POI.[12]

Kaisheng
An acidspar trading company, Kaisheng purchased acidspar from unaffiliated suppliers, some of which it used to produce hydrogen fluoride that it supplied to Juxin and Juhua Stock as an input into their production of subject merchandise. It sold the rest of the acidspar to unaffiliated companies.

Jusu
Also owned by Juhua Stock, Jusu produced trichloroethylene, which it supplied to Juxin and Juhua Stock as an input into their production of subject merchandise.

Zhejiang Jinju Chemical Co., Ltd. ("Jinju Chemical")
Owned by Juhua Stock, Jinju Chemical sold coal gas and nitrogen gas to Juxin and Juhua Stock as inputs into their production of subject merchandise.[13]

As noted above, in this investigation we are treating Juhua Stock and its subsidiaries Quhua Fluor-Chemistry, Juxin, Lianzhou (including Lianfu), Kaisheng and Jusu, as one entity, JUHUA. Thus, we are treating any purchases, production and sales by any of these companies as purchases, production and sales made by JUHUA. To the extent that any subsidies were provided to any of these companies, we are attributing the benefit directly to JUHUA, in accordance with 19 CFR 351.525(b)(6)(i).

The responses also provide information regarding the nature of the affiliations and the roles in production and sales as to the following additional companies:[14]

Juhua Group
The parent company of Juhua Stock, Juhua Group, is owned by Zhejiang SASAC and is, therefore, an SOE. Additionally, the company has its own productive operations, including the manufacture of certain chemical products, but reportedly did not produce, sell or export subject merchandise during the POI.

[11] See JUHUA's March 21, 2014, submission for Lianfu ("JUHUA First Supp.") at 4.
[12] Id., at 6; see also EXIM's March 21, 2014, submission at 4.
[13] See JUHUA QR at 6-7.
[14] Unless otherwise noted see JUHUA QR, submission at 4-7.

Juhua Mining
Owned by Juhua group, Juhua Mining mined and sold iron pyrite to Juhua Stock for the production of sulfuric acid and hydrogen fluoride, both of which are inputs into Juhua Stock's production of subject merchandise. Juhua Mining also supplied acidspar to Kaisheng for Kaisheng's production of hydrogen fluoride.

Huangshan Juhua
Owned by Juhua Mining, Huangshan Juhua sold fluorspar to Juhua Mining for Juhua Mining's production of acidspar, which was then supplied to Kaisheng for Kaisheng's production of hydrogen fluoride.[15]

Juhua CC
Owned by Juhua Group, Juhua CC supplied calcium carbide to Juhua Stock as an input into Juhua Stock's production of acetylene and trichloroethylene, and ultimately the production of subject merchandise.

Juhua Utility
Also owned by Juhua Group, Juhua Utility is a water treatment company that treats water for industrial use. Juhua Utility sold the majority of its treated water to the responding companies, including a very small percentage to Juhua Stock and Juxin as an input into their production of subject merchandise.[16]

Juhua Group TP Plant
Also owned by Juhua Group, Juhua Group TP Plant is a power generator that supplied steam to Juhua Stock and Juxin for use in their production of subject merchandise. However, the company sold the majority of its steam to responding companies for use in the production of many different products other than the subject merchandise. Additionally, Juhua Group TP Plant also sold all of its electricity production to responding companies.[17]

Juhua EXIM
Owned by Juhua Group;[18] Juhua EXIM exported a small quantity of subject merchandise during the POI;[19]

Based on the information on the record, we determine cross-ownership exists among Juhua Group and its wholly or majority-owned subsidiaries, namely Juhua Mining (inclusive of Huangshan Juhua), Juhua CC, Juhua Utility, Juhua Group TP Plant and Juhua EXIM, in accordance with 19 CFR 351.525(b)(6)(vi). Additionally, we find that cross-ownership within the meaning of 19 CFR 351.525(b)(6)(vi) also exists between the Juhua Group companies and JUHUA.

[15] Id., at 5-6.
[16] See JUHUA First Supp. at 6.
[17] Id.
[18] See JUHUA's March 21, 2014, submission for EXIM at 4.
[19] See JUHUA's First Supp. at 12-13.

To the extent that subsidies were provided to any Juhua Group company that supplied JUHUA with an input that is primarily dedicated to the production of downstream products (inclusive of subject merchandise) produced by JUHUA, we are attributing any benefit to JUHUA at a rate equal to the amount of the benefit divided by the combined sales of the input and downstream products, in accordance with 19 CFR 351.525(b)(6)(iv). To the extent that subsidies were provided to Juhua Group itself, we are attributing any benefit to JUHUA at a rate equal to the amount of the benefit divided by the consolidated sales of Juhua Group, in accordance with 19 CFR 351.525(b)(6)(iii).

T.T. International

On January 16, 2014, T.T. International notified the Department that it is a trading company that exports, but does not produce subject merchandise. T.T. International reported that during the POI it exported subject merchandise produced by the following four unaffiliated manufacturers: Bluestar, Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd. ("Sinochem Taicang"), Zhejiang Sanmei Chemical Industry Co., Ltd. ("Sanmei"), and Quhua Fluor-Chemistry.[20] Sinochem Tiacang and Bluestar submitted full questionnaire responses as suppliers to T.T. International, and Quhua Fluor-Industry submitted a response as a mandatory respondent on behalf of itself and JUHUA. The Department exempted Sanmei from providing a response to the questionnaire, given its relatively insignificant share of the volume of T.T. International's exports of subject merchandise.[21] As noted above, in determining a deposit rate for a non-producing trading company such as T.T. International, the Department's regulations state that we may calculate a deposit rate for each of the supplying producers and combine each producer's rate with the trading company's own deposit rate to establish producer-specific deposit rates for the trading company's subject merchandise exports into the United States.[22]

Our practice in CVD proceedings for trading companies has been to derive a weighted average of such rates to establish one deposit rate for the trading company for all its subject merchandise

[20] See Letter to the Department from T.T. International, Re: Exempting Sanmei from Responding to the CVD Questionnaire, dated January 28, 2014 ("T.T. International Supplier Letter").
[21] See Letter to T.T. International Co., Ltd., from Catherine Bertrand, Program Manager, Office V, Re: 1,1,1,2 Tetrafluoroethane from the PRC, dated January 29, 2014.
[22] See 19 CFR 351.107(b)(1).

exports, regardless of the producer.[23] Either way, however, in the course of determining the deposit rate(s) to apply to the trading company's subject entries, it is necessary for the Department first to determine the individual deposit rate for each producer of subject merchandise exported by the trading company. In the CVD context, this means the Department needs to identify and measure any subsidies provided to each producer, determine the benefits allocable to the POI, and calculate a net countervailable subsidy rate for each producer. Thus, regardless of whether a particular producer is selected as a mandatory respondent, the Department must conduct the same level of analysis of each producer's subsidization as it would for a mandatory respondent, including an analysis of the producer's corporate affiliations for the purposes of attributing any subsidy benefit under our attribution rules at 19 CFR 351.525(b)(6)(i)-(vi), 351.525(b)(7) and 351.525(c). With regard to Quhua Fluor-Chemistry, a supplier of subject merchandise to T.T. International that is also a mandatory respondent in this investigation, we addressed its affiliations for attribution purposes above.

Below we address the affiliations of Sinochem Taicang and Bluestar, the two other producer-suppliers of subject merchandise to T.T. International that we are examining in order to establish a CVD deposit rate for T.T. International.

Sinochem Taicang

Sinochem Taicang submitted responses to the Department's questionnaires on behalf of itself, Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd. ("Sinochem Xi'an"), China Newtech Development and Trade Co., Ltd. ("New Technology"), Sinochem Lantian Co., Ltd ("Sinochem Lantian"), Sinochem Group Co., Ltd. ("Sinochem Group"), Jiangxi Sanmei Chemical Co., Ltd. ("Jiangxi Sanmei"), Zhejiang Lansol Fluorchem Co., Ltd. ("Zhejiang Lansol"), Fujian Kings Fluoride Industry Co., Ltd ("Kings Fluoride"), Fujian Jianyang Kings Mining Co., Ltd. ("Kings Mining"), and Xingguo County Zhongying Mining Co. Ltd. ("Zhongying Mining"). Sinochem Taicang, which identified itself as a major producer of subject merchandise, reported that its ultimate parent is Sinochem Group, which owns Sinochem Taicang's parents Sinochem Lantian, New Technology and Sinochem Xi'an.[24] Additionally,

[23] See, e.g., Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy, 61 FR 30288, 30309 (June 14, 1996), under "Suspension of Liquidation" (in which the Department noted that "We calculated the ad valorem rate for Agritalia, an export trading company, by weight averaging, based on the value of exports to the United States represented by each of Agritalia's suppliers, the adjusted subsidy rate for each supplier and adding to this rate the subsidy rate calculated for Agritalia based on subsidies it received directly."); see also Certain Pasta From Italy: Final Results of the Fourth Countervailing Duty Administrative Review, 66 FR 64214 (December 12, 2001) ("Italy Pasta"). While the Department did not explicitly discuss averaging in the later decision, averaging is implied by the fact that the Department examined two major suppliers to Agritalia, then derived just one deposit rate for Agritalia. Id., 66 FR at 64215 and accompanying Issues and Decision Memorandum in the "Subsidies Valuation Methodology" section under "Attribution;" see also Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557, 28559 (May 21, 2010) ("Pre-Stressed Concrete Steel Wire"), and accompanying Issues and Decision Memorandum at 8-9. As in the Italy Pasta review, the Department did not explicitly discuss averaging in this decision, but averaging is implied in the attribution for trading company Fasten I&E, for which the Department examined more than one producer but assigned a single deposit rate to Fasten I&E's parent, the Fasten Group Corporation.

[24] See Sinochem Taicang's March 21, 2014, submission at pages 3-4.

Sinochem Taicang reported the operational roles of each of the following companies it identified as cross-owned within the definition of our attribution rules:

> Sinochem Xi'an (parent) – producer of subject merchandise;
> Jiangxi Sanmei – producer of anhydrous hydrofluoric acid ("AHF");
> Zhejiang Lansol – producer of AHF;
> Kings Floride – producer of AHF;
> Kings Mining – acidspar mining company;
> Zhongying Mining – acidspar mining company.[25]

Based on information on the record, we determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), among the above-listed or mentioned companies through ultimate owner Sinochem Group.[26]

To the extent that subsidies were provided to the ultimate parent Sinochem Group, we would attribute any benefit to Sinochem Group's total consolidated sales (net of intercompany sales) in accordance with 19 CFR 351.525(b)(6)(iii). To the extent that subsidies were provided to any of Sinochem Taicang's parents – New Technology, Sinochem Lantian, Sinochem Xi'an, and Sinochem Group – we are attributing any benefit to the consolidated sales (net of intercompany sales) of the relevant parent company, also in accordance with 19 CFR 351.525(b)(6)(iii).

To the extent that subsidies were provided to any other cross-owned company that supplied an input that is primarily dedicated to the production of downstream products manufactured by Sinochem Taicang (inclusive of subject merchandise), we are attributing any benefit to the combined sales of the input and downstream products.

Bluestar

Bluestar submitted responses to the Department's questionnaires on behalf of itself, Jiangsu Kangtai Holdings Group Company ("Jiangsu Kangtai") and China Mass Enterprises ("China Mass"). Bluestar reported that Jiangsu Kangtai and China Mass are both holding companies.[27] Bluestar further reported that neither Jiangsu Kangtai nor China Mass is engaged in production or sales activities.[28]

As noted above, in addition to JUHUA, we are calculating separate net CVD rates for Bluestar and Sinochem Taicang, combining each rate with the individual rate calculated for T.T. International, then deriving a weighted average single deposit rate applicable to T.T. International for all of its subject entries, regardless of the producer. Additional details regarding the calculation of this deposit rate are contained in the final calculation memorandum for T.T. International.

[25] See, e.g., Sinochem Taicang's March 21, 2014, submission at pages 3-4.
[26] See Preliminary Determination, and accompanying Decision Memorandum at 11-12.
[27] See Bluestar's February 24, 2014, submission at pages 4-5.
[28] Id.

D. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the Respondents' receipt of benefits under each program when attributing subsidies, e.g., to the Respondents' export or total sales, or portions thereof. In the "Analysis of Programs - Programs Determined to Be Countervailable" section below, we describe the denominators that we used to calculate the countervailable subsidy rates for the various subsidy programs.[29]

III. BENCHMARK INTEREST RATES

The Department investigated loans received by the Respondents from PRC policy banks and state-owned commercial banks, as well as non-recurring, allocable subsidies.[30] 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.[31] 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."[32]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in CFS from the PRC, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.[33] Because of this, any loans received by the Respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is

[29] See Memorandum to the File, through Catherine Bertrand, Program Manager, from Josh Startup, Case Analyst, "Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Quhua Fluor-Chemistry. Final Calculation Memorandum," dated concurrently with this memorandum; see also Memorandum to the File, through Catherine Bertrand, Program Manager, from Katie Marksberry, Case Analyst, "Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: T.T. International Final Calculation Memorandum ("Final Calculation Memoranda").

[30] See 19 CFR 351.524(b)(1).

[31] See 19 CFR 351.505(a)(3)(i).

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

[33] 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 at Comment 10; see also Memorandum to the File from Josh Startup, Case Analyst, "Countervailing Duty Investigation of 1,1,1,2-Tetrafluoroethane from the People's Republic of China: Banking Memoranda," dated April 11, 2014 ("Banking Memoranda").

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.[34]

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in CFS from the PRC[35] and more recently updated in Thermal Paper from the PRC.[36] Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income, lower-middle income, upper-middle income, and high income. As explained in CFS from the PRC, this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, the PRC fell in the lower-middle income category.[37] Beginning in 2010, however, the PRC is in the upper-middle income category and remained there from 2011 to 2012.[38] Accordingly, as explained further below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2012. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving PRC merchandise.[39]

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

In each of the years from 2003-2009 and 2011-2012, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.[40] For 2010, however, the regression does not yield that outcome for the PRC's income group.[41] This

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[34] See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada, 67 FR 15545 (April 2, 2002) ("Lumber from Canada") and accompanying Issues and Decision Memorandum at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

[35] See CFS from the PRC, and accompanying Issues and Decision Memorandum at Comment 10.

[36] See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008) ("Thermal Paper from the PRC"), and accompanying Issues and Decision Memorandum at 8-10.

[37] See World Bank Country Classification, http://econ.worldbank.org/; see also Memorandum to the File from Alexis Polovina, Case Analyst,"Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Benchmark Memo," dated concurrently with this memorandum ("Preliminary Benchmark Memo").

[38] See World Bank Country Classification.

[39] 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 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) ("Warmwater Shrimp").

[40] See Banking Memoranda.

[41] See Preliminary Benchmark Memo.

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.[42] First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-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.[43] Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.[44]

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.[45]

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.[46] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.[47]

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[42] Id.
[43] Id.
[44] Id.
[45] See, e.g., Thermal Paper from the PRC, and accompanying Issues and Decision Memorandum at 10.
[46] See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 16836 (April 13, 2009) ("Citric Acid from the PRC") and accompanying Issues and Decision Memorandum at Comment 14.
[47] See Preliminary Calculation Memoranda.

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.[48] The interest rate benchmarks and discount rates used in our calculations are provided in the Respondents' Preliminary Calculation Memoranda.[49]

IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended ("the Act") provide that the Department shall apply "facts otherwise available," subject to section 782(d) of the Act, if necessary information is not on the record or if an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available ("AFA"), information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the 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."[50] 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."[51]

Provision of Fluorspar for Less than Adequate Remuneration[52]

With regard to information we require to fully examine the provision of fluorspar for less than adequate remuneration ("LTAR") program, the Government of China ("GOC") requested

[48] Id.
[49] Id.
[50] 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).
[51] See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994) (SAA).
[52] In the Post-Preliminary Memorandum, we determined that our examination of the program should encompass all grades of fluorspar, including acidspar and lower-grade metspar. See Post-Preliminary Memorandum at 9.

extensions on its responses to the Input Producer Appendix in the initial questionnaire.[53] After granting four extensions to the GOC, in the Preliminary Determination we found that the information submitted was incomplete and unreliable for our analysis with regard to (a) the acidspar market in the PRC and (b) the level of government involvement in the companies that supplied acidspar to Respondents during the POI. For this final determination, with regard to the fluorspar market in the PRC, we find that the GOC failed to provide complete data to indicate that fluorspar prices from transactions in the PRC provide a viable basis for deriving a benchmark for the fluorspar purchases made by Respondents during the POI. The GOC only provided quantity and value data for five out of 55 suppliers, and aggregate percentages of SOE shares in the market obtained by the GOC from the Fluorspar Professional Committee were based only on its membership, constituting only a subset of the market, and were not supported with underlying data.[54] Accordingly, the Department does not have complete information to determine whether the fluorspar market is sufficiently free from government involvement such that the Chinese prices may be used for benchmark purposes. Therefore, we must rely on facts otherwise available in accordance with section 776(a)(2)(A) and (C) of the Act. Thus, this final determination, for benchmarking Respondents' fluorspar purchases during the POI, and as further described below under the Provision of Fluorspar for LTAR section, we are resorting to world market prices available on the record, which we find to be appropriate benchmarks for the acidspar purchases, consistent with 19 CFR 351.511(a)(2)(ii).

With regard to the level of government involvement in the suppliers from which Respondents purchased acidspar and other fluorspar during the POI, we find that the GOC did not act to the best of its ability to provide the information we require for our analysis. In particular, in response to our questions and requests for information regarding the role that Chinese Communist Party ("CCP") officials may have played in any of the supplier's operations, we find that the GOC unreasonably restricted its search and review of information to an incomplete and inadequate set of documents provided by only 10 out of 55 suppliers in response to a different set of questions we asked in the Input Supplier Appendix.[55] We are not persuaded that, in responding to questions regarding the role played by the government or by organs of the CCP, the GOC has no access to sources of information other than an incomplete set of documents provided by these ten suppliers. While the GOC did provide copies of capital verification reports and similar pro forma documents available from the relevant local levels of government, such documents provide only minimal information regarding the shareholding structure of companies, and do not provide other key information we requested regarding, e.g., the roles played by CCP officials on the companies' boards of directors or in senior management positions, or by the government in making any appointments to these positions. This information is necessary to our determination of the role of government/CCP officials and CCP committees in the management and operations of these companies, and whether the suppliers are "authorities" within the meaning of section 771(5)(B) of the Act. Moreover, the GOC's effort to provide this

[53] See the GOC's Extension Request, dated January 23, 204; The GOC's Second Extension Request, dated February 12, 2014; The GOC's Third Request for Extension (Partial), dated February 21, 2014; and The GOC's Supplemental Extension Request, dated March 14, 2014.
[54] See the GOC's March 21, 2014 1st Supplemental Response, at 6-7.
[55] See GOC Supplemental Response, March 24, 2014, at pp.21-28.

information in this case is even less than its efforts in other cases.[56] Thus, in selecting from among the facts available with regard to government involvement in the operations of the acidspar suppliers, the Department determined that an adverse inference is warranted, pursuant to section 776(b) of the Act. Accordingly, for this final determination, we are making the adverse inference that the acidspar and other fluorspar purchased by Respondents during the POI were supplied by government authorities and, thus, provided a government financial contribution within the meaning of 771(5)(D)(iii) of the Act, and that such provision was specific to the fluoride chemicals industry as the predominant user of the good within the meaning of 771(5A)(D)(iii)(II) of the Act.

GOC – Electricity

With regard to the provision of electricity, we found in the Post-Prelim Determination that the GOC did not explain how cost elements in the price proposals for electricity led to retail price increases, but stated, without any supporting documents, that the cost elements are "obtained directly from the data provided by the power generating companies and grid companies"[57] and that electricity rates are "fully reflective of the changes in the supply and demand of the market, and further the international commitments and government policies made by the GOC for energy conservation and emission reduction."[58] Moreover, when the Department asked the GOC to explain how the National Development and Reform Commission ("NDRC") determines that the price adjustments proposed by the provinces reflect all relevant cost elements, and to explain how the NDRC determines that all relevant cost elements are accurately reported by the provincial level price bureaus, the GOC responded that the NDRC "corresponds with power generating companies, grid companies, and local price bureaus in cross-checking these data to ensure that the price adjustment proposals are comprehensive, true, accurate, and reliable," with no explanation of how it "corresponds" with these various parties.[59]

The GOC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act and whether such a provision was specific with the meaning of section 771(5A) of the Act. In both the Department's New Subsidy Allegation questionnaire, and the Department's July 18, 2014, supplemental questionnaire, for each province in which a respondent is located, the Department asked the GOC to provide a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the

[56] 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), and accompanying Issues and Decision Memorandum at 13; see, also, Citric Acid and Certain Citrate Salts: Preliminary Results of Countervailing Duty Administrative Review; 2012, 79 FR 36013 (June 25, 2014), and accompanying Issues and Decision Memorandum at 15.
[57] See GOC's NSA Response at 5.
[58] Id. at 6.
[59] Id. at 8.

province and across tariff end-user categories. Because the GOC provided no province-specific information in response to these questions in its questionnaire response, we are unable to fully assess if responding companies paid the market price for electricity in their respective provinces.[60] Further, because the GOC refused to provide information concerning the relationship (if any) between provincial tariff schedules and cost, we also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit from the provision of electricity for LTAR.[61]

Consequently, in the Post-Prelim Determination, we found that the GOC withheld necessary information that was requested of it, and thus, that the Department must rely on facts otherwise available in making our determination pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we 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 this information. Additionally, the Department provided the GOC with an opportunity to remedy the deficiency, pursuant to section 782(d) of the Act, and the GOC continued to submit information that is incomplete. Consequently, an adverse inference is warranted in the application of facts available ("FA") 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 is specific within the meaning of section 771(5A) of the Act. We also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates we selected are derived from information on the record of the instant investigation and are the highest electricity rates on this record for the applicable rate and user categories.[62]

Grants Discovered in JUHUA Company Financial Statements

The GOC did not provide complete responses to the Department's questions regarding the following programs: Fluorinated Electronic Chemical Industry Technology Grant, Technological Development and Reconstruction Grant, Grant to Promote Transformation and Upgrading, and a Grant for Relocation for Urban Renewal in Quzhou City. Specifically, the GOC indicated that it was still awaiting responses from the local governments for each of these programs, and therefore provided none of the information we requested.[63] Accordingly, in the Post-Prelim Determination we found that the GOC withheld necessary information that was requested of it, and thus, that the Department must rely on facts otherwise available in making its

[60] See the GOC's NSA Questionnaire Response, dated May 21, 2014, at 5-7 ("GOC NSA QR."); see also the GOC's July 22, 2014, supplemental questionnaire response, at 4-5.
[61] See section 776(b)(4) of the Act.
[62] See Memorandum to the File, through Catherine Bertrand, Program Manager, from Josh Startup, Case Analyst, "Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Quhua Fluor-Chemistry. Post-Preliminary Calculation Memorandum," dated concurrently with this memorandum; see also Memorandum to the File, through Catherine Bertrand, Program Manager, from Katie Marksberry, Case Analyst, "Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: T.T. International ("Post-Preliminary Calculation Memoranda").
[63] See GOC's June 10, 2014, supplemental questionnaire response ("JUHUA Grant QR") at 16-32.

determination with respect to these programs pursuant to sections 776(a)(1) and (a)(2)(A) of the Act.

GOC – Zhongying Minings' Mining Rights Transfer

Sinochem Taicang's cross-owned affiliate Zhongying Mining reported that, in 2005 and 2006, with the involvement of the local government authority, it acquired mining rights to two adjacent deposits from private owners.[64] In our supplemental questionnaire to Sinochem Taicang, we asked for further explanation of the relationship between Zhongying Mining, the Township People's government, the Provincial Department of Land and Resources, and any other level of government that has any administrative authority over the operations of the mines subject to transfer, and the transferring parties (Xingguo County Jinxinglong Fluorite Mine, Guangxi Xingye Chengxing Mine Industry Co., Ltd., Shengyuan Florite Co., Ltd., Zhu Jianjun, and Hu Youming).[65] Zhongying Mining stated, but without providing any supporting documentation, that Xingguo County Jinxinglong Fluorite Mine was at the time a private company and has no relationship with the government at any level. Additionally, Zhongying Mining stated, but also without providing any supporting documentation, that Guangxi Xingye Chengxing Mine Industry Co., Ltd. was owned by the same owner as Xingguo County Jinxinglong Fluorite Mine and also had no relationship with the government at any level. Further, Sinochem Zhongying stated that Shengyuan Florite Co., Ltd. was initially established by the Longping Township Government and was later privatized,[66] but likewise provided no documentary support showing when and how such privatization occurred.

Similarly, in our supplemental questionnaire to the GOC, we requested that it provide responses to our Input Producer Appendix, which includes questions regarding the role of government/CCP officials and CCP committees in the management and operations of these companies, for the following companies and time periods: Shengyuan Fluorite Co., Ltd.- March 2005, Xingguo County Jinxinglong Fluorite Mine- May 2006, and Guangxi Xinye Chengxing Mine Co.- May 2006.[67] The GOC did not provide responses to the Input Producer Appendix for these companies.[68] Instead, the GOC stated that Shengyuan Fluorite Co., Ltd. and Xingguo County Jinxinglong Fluorite Mine were owned by individuals, and now no longer exist.[69] Additionally, the GOC stated that Guangxi Xinye Chengxing Mine Co. was an assigned recipient of payment for escrow purposes, and is not related in any way to the supply of fluorspar under investigation, statements for which the GOC provided no documentary support.[70] The Department issued a supplemental questionnaire to the GOC, requesting again that it provide responses to the Input Producer Appendix.[71]

[64] See Sinochem Taicang's March 21, 2014, questionnaire response, at page 6.
[65] See Letter from the Department to Sinochem Taicang, "Supplemental Questionnaire," dated May 30, 2014.
[66] See Sinochem Taicang's June 10, 2014, questionnaire response, at pages 6-7. Due to the proprietary nature of this information, for a complete discussion see the Post-Prelim Memorandum at 5.
[67] See Letter from the Department to the GOC, "Supplemental Questionnaire," dated June 20, 2014, at 3.
[68] See Supplemental Questionnaire Response for MOFCOM, dated June 27, 2014, at pages 2-3.
[69] See id.
[70] See id.
[71] See Letter to MOFCOM, from the Department, dated July 18, 2014.

In its response, the GOC stated that because the companies are no longer in existence, the GOC was unable to locate "the type of information requested in the Input Producer Appendix."[72] Additionally, the GOC stated that the Department did not explain why information regarding Guangxi Xinye Chengxing Mine Co. is required, and stated that the GOC does not need to provide a response to the Input Producer Appendix for this company.[73] Although the GOC argued that it made its best effort to respond to the Department's requests for information, the Department notes that the GOC declined to respond to any of the questions in the Input Producer Appendix, and instead continued to argue that two of the companies no longer exist, whereas the request for information pertained to the time period during which the companies were in existence, and refused to respond to the appendix with regard to Guangxi Xinye Chengxing Mine Co.[74] Without a complete response, we lack information necessary for a full analysis of whether the companies that sold these mining rights are "authorities" within the meaning of section 771(5)(B) of the Act.

The information we requested regarding the ultimate owners of the companies which provided mining rights to Sinochem Taicang's cross-owned affiliate Zhongying Mining, and the role of government/CCP officials and CCP committees in the management and operations of these companies, which sold mining rights to the Respondents, is necessary to our determination of whether the providers are "authorities" within the meaning of section 771(5)(B) of the Act.[75] If the GOC was not able to submit the required information in the requested form and manner, it should have promptly notified the Department, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information. Additionally, the Department provided the GOC with an opportunity to remedy the deficiency, pursuant to section 782(d) of the Act, and the GOC continued to submit incomplete information that provides no reliable basis for the Department to determine whether the companies which provided mining rights to Sinochem Taicang's cross-owned affiliate Zhongying Mining are "authorities" within the meaning of section 771(5)(B) of the Act. Thus, in the Post-Prelim Determination, we found that the GOC failed to provide necessary information in the form and manner that was requested of it and, thus, that the Department must rely on "facts otherwise available" in issuing our final determination for these input producers.

Additionally, the Department has on the record the Mineral Resources Law of the PRC.[76] Article 3 of the Mineral Resources Law of the PRC states that "Mineral resources belong to the State… State ownership of mineral resources, either near the earth's surface or underground, shall not change with the alteration of ownership or right to the use of the land which the mineral resources are attached to."[77] Therefore, because the GOC did not respond to our request to provide a response to the Input Producer Appendix, and because record evidence indicates that all mineral resources belong to the state, for those companies which sold mining rights to Zhongying Mining, and for which the GOC failed to provide ownership information, failed to

[72] See Supplemental Questionnaire Response from MOFCOM, dated July 22, 2014, at page 3.
[73] See id. at page 3.
[74] See id.
[75] See Memorandum to The File, from Alexis Polovina, Case Analyst, Office V, Re: CCP Public Bodies Memo, dated April 11, 2014 ("CCP Public Bodies Memo").
[76] See JUHUA's February 24, 2014, questionnaire response at Exhibit P.D.7.
[77] See id.

identify whether the members of the board of directors, owners or senior managers were government/CCP officials, or failed to report if the companies had CCP committees, we are finding the transferring entities to be "authorities" within the meaning of section 771(5)(B) of the Act for this final determination. Additional discussion regarding this program is below under "I. Programs Determined to be Countervailable, A. Fluorspar Mining Rights for LTAR."

V. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, responses to our questionnaires and our verification of factual information, for the final determination we find the following:

A. Programs Determined to Be Countervailable

1. *Provision of Acidspar and Fluorspar for Less Than Adequate Remuneration*

According to Respondents' responses, JUHUA's cross-owned affiliate Kaisheng and Sinochem Taicang's cross-owned affiliates Jiangxi Sanmei, Zhejiang Lansol, and Kings Fluoride purchased acidspar from various suppliers during the POI.[78] As discussed above in the "Use of Facts Otherwise Available and Adverse Inferences" section, we are basing our determination regarding the provision of acidspar for LTAR in part on AFA. Consequently, we determine that acidspar purchased by Respondents during the POI constitutes a government-provided good and a financial contribution under section 771(5)(D)(iii) of the Act. Further, based on the GOC's response that fluorite is predominantly used by the refrigerant industry,[79] we determine that this provision is specific to the refrigerant industry, the sector to which Respondents belong, as the predominant user of the good within the meaning of 771(5A)(D)(iii)(II).

As explained in the NSA memorandum, for the Post-Preliminary analysis, and for this final determination, we expanded the Provision of Acidspar for LTAR program to cover all grades of the broader category "fluorspar," which includes acidspar and lower-grade metspar.[80] JUHUA reported that the Juhua Group's cross-owned affiliate, Zhejiang Juhua Chemical Mining Co., Ltd. ("Juhua Mining"), was the only company to purchase fluorspar outside of the companies, which reported acidspar purchases in the Preliminary Results.[81] Taicang reported that its cross-owned affiliates Jiangxi Sanmei, Zhejiang Lansol and Kings Fluoride all purchased fluorspar, but only in the form of acidspar, which was addressed in the Preliminary Results.[82]

[78] See JUHUA QR at 17-20, and Exhibit P.D.1, and Sinochem's February 24, 2014 submission ("Sinochem QR") at 25, and Exhibits 64-66.
[79] See the GOC's February 24, 2014, submission at 19.
[80] See the Department's memorandum regarding Countervailing Duty Investigation: 1,1,1,2 Tetrafluoroethane from the People's Republic of China (PRC), Subject: New Subsidy Allegations, dated April 29, 2014, at 8-9 ("NSA Memorandum").
[81] See JUHUA's New Subsidy Allegation questionnaire response, dated May 21, 2014, at 14 and Exhibit N.J.1 ("JUHUA's NSA Response").
[82] See Taicang and TTI's New Subsidy Allegation questionnaire response, dated May 21, 2014, at 18 ("Taicang and TTI's NSA Response").

For the Provision of Fluorspar for LTAR, we followed the same methodology as outlined in the Preliminary Determination, adjusting the benchmark to cover fluorspar as discussed below.[83] As discussed above in the "Use of Facts Otherwise Available and Adverse Inferences" section, we are basing our determination regarding the Provision of Fluorspar for LTAR in part on AFA. Consequently, we determine that fluorspar purchased by Respondents during the POI constitutes a government-provided good and a financial contribution under section 771(5)(D)(iii) of the Act. Further, as stated above, based on the GOC's response that fluorite is predominantly used by the refrigerant industry,[84] we continue to determine that this provision was specific to the refrigerant industry, the sector to which Respondents belong,[85] as the predominant user of the good within the meaning of section 771(5A)(D)(iii)(II) of the Act.

To determine whether a financial contribution in the form of a good provided for LTAR confers a benefit within the meaning of 771(5)(E)(iv), the Department follows the benchmarking criteria under 19 CFR 351.511(a)(2), which sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for the government-provided good or service. 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. This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

To identify an appropriate market-based benchmark for measuring the adequacy of remuneration for the acidspar and other fluorspar purchased by Respondents, we first considered whether we could compare the purchase price to a market-determined price for the good resulting from actual transactions in the PRC, in accordance with 19 CFR 351.511(a)(2)(i). As previously noted, we find that there are no reliable data for such transactions available in the record apart from the purchases made by Respondents. Moreover, although we requested aggregate data with regard to the fluorspar market in the PRC, we find that the information provided by the GOC is both inadequate and unreliable for determining whether that market is sufficiently free from government involvement and the resulting distortion in prices. Consequently, we determine that we have no viable "tier one" prices appropriate to use as benchmarks under 19 CFR 351.511(a)(2)(i).

Fluorspar Benchmark

The following explains the components of the benchmark we used to calculate the benefit for Respondents' purchases of fluorspar for LTAR.

[83] See Preliminary Determination, and accompanying Decision Memorandum at 17-19.
[84] See the GOC's February 24, 2014, submission at 19.
[85] See JUHUA's February 24, 2014, questionnaire response at 4-5; see also Sinochemo February 24, 2014, questionnaire response at 1.

a) Fluorspar

As explained in the Preliminary Determination, we used a world price as the benchmark for measuring the benefit from Respondents' purchases of fluorspar.[86] In this investigation, Quhua Fluor-Chemistry and Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd., a supplier of subject merchandise to T.T. International, submitted export data from Mexico to South Africa from Global Trade Atlas ("GTA") of fluorspar with a purity level above 97 percent calcium fluoride, i.e., acidpsar, and GTA export data of other fluorspar with a purity level below 97 percent calcium fluoride, for selected countries.[87] We obtained prices from GTA for additional countries beyond what Respondents placed on the record. We also obtained acidspar data from Industrial Minerals.[88] We averaged the GTA data and Industrial Minerals data to obtain a world market average price for acidspar with a purity level above 97 percent calcium fluoride. Juhua reported that Juhua Mining purchased fluorspar with a purity level below 97 percent.[89] For these purchases we used the GTA data with a purity level below 97 percent.

b) Ocean Freight

No parties to this proceeding submitted benchmark prices for ocean freight. Therefore, we relied upon commercially available ocean freight rates that correspond to the POI. JUHUA identified Ningbo as the closest port.[90] T.T. International identified the closest ports[91]; however, as T.T. International explained, it was unable to provide the per-metric-ton-to-freight expenses for transporting fluorspar from the nearest seaport, and instead provided copies of delivery contracts with its suppliers. Therefore, based on the location of the purchasers, we selected the closest ports for which we could find freight data.[92] These data consist of rates from Maersk Line quotes for ocean freight during the POI and correspond to chemical shipments to Ningbo and Xiamen, China, from Colombia, Germany, India, Mexico, Portugal, South Africa, and the United States in a standard 20-foot container. These countries represent the majority of countries exporting fluorspar.

c) VAT and Import Tariffs

We used the VAT rate of 17 percent and import duty rate of three percent for the benchmark, as reported by the GOC in its February 24, 2014, initial response at page 17.

[86] See Preliminary Determination, and accompanying Decision Memorandum at 17-19.
[87] See JUHUA's Additional Benchmark Information, dated May 23, 2014.
[88] Available at www.indmin.com; see Post-Preliminary Benchmark Data Memo, dated concurrently with this memorandum.
[89] See id. at 1-2.
[90] See JUHUA's February 26, 2014, Response at 20.
[91] See T.T. International's May 22, 2014 Response at 20.
[92] See T.T. International's February 26, 2014, Response at 6.

d) PRC Inland Freight

We applied the PRC inland freight identified by Respondents.[93] T.T. International only provided the inland freight information from its acidspar suppliers, rather than from the nearest port to its acidspar producers. Therefore, we used these reported values as they constituted the best information on the record. For one of T.T. International's acidspar suppliers, no inland freight was provided. Therefore, we averaged the freight from the two suppliers for which freight was provided.

As in the Preliminary Determination, we are treating Kaisheng as part of the JUHUA entity,[94] using JUHUA's consolidated sales as the denominator for a countervailable subsidy rate of 3.69 percent ad valorem under this program. For Juhua Mining's fluorspar purchases, we divided Juhua Mining's total benefit by the combined sales of its 2012 consolidated sales, plus that of JUHUA (net of intercompany sales) for a countervailable subsidy rate of 0.13 percent ad valorem. For T.T. International, we followed the same procedure as in the Preliminary Determination, using the revised benchmark. On this basis, for T.T. International's supplier Sinochem, we determine a countervailable subsidy rate of 17.91 percent ad valorem under this program.[95]

2. *"Two Free/Three Half" Program for FIEs*

Under Article 8 of the "Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises," an foreign-invested enterprise ("FIE") that is "productive" and scheduled to operate for more than 10 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.[96] According to the GOC, the 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.[97] JUHUA did not claim these tax exemptions during the POI. However, one of T.T. International's suppliers, Sinochem Taicang, reported that it and one of its cross-owned affiliated companies, Zhejiang Lansol, paid taxes at a reduced rate under this program during the POI.[98]

The Department previously found the "Two Free, Three Half" program to confer a countervailable subsidy.[99] Consistent with the earlier cases, we determine that the "Two Free, Three Half" income tax exemption/reduction confers a countervailable subsidy. The

[93] See JUHUA's February 26, 2014, Response at Exhibit P.D.2 and T.T International's February 26, 2014, Response at 26.
[94] See Preliminary Determination, and accompanying Decision Memo at 17-19.
[95] See T.T. International Post-Preliminary Calculation Memo.
[96] See the GOC's February 24, 2014, submission at 32.
[97] Id.
[98] See Sinochem's February 24, 2014, submission at 20.
[99] See, e.g., CFS from the PRC, and accompanying Issues and Decision Memorandum at page 3; see also 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 25.

exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings.[100] 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.[101] We note that Sinochem argued in its case brief that this program should not be included in the subsidy rate for this final determination. We addressed Sinochem's arguments below under Section VIII. Analysis of Comments, at Comment 20: Whether the Department Should Apply the Program-Wide Change Rule and Not Calculate a Subsidy Rate for the Two-Free Three-Half Program.

To calculate the benefit, we treated the income tax savings by Sinochem Taicang and Zhejiang Lansol under this program as recurring subsidies, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the two companies' tax rates to the rates they would have paid in the absence of the program. We divided Sinochem Taicang and Zhejiang Lansol's tax savings for their returns filed during the POI by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the Preliminary Calculations Memoranda, in accordance with 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(b)(6)(iv), respectively. We then summed the benefits to Sinochem Taicang and Zhejiang Lansol to determine the benefit attributable to T.T. International. On this basis, we determine a countervailable subsidy rate for T.T. International of 3.03 percent ad valorem for this program.[102]

3. *Preferential Loans for HFC Replacements for CFC Refrigerants*

Petitioner alleges that GOC policies favor the provision of loans at preferential rates to the fluoride chemical industry, particularly to manufacturers of environmentally friendly products such as tetrafluoroethane. Specifically, pursuant to the "Catalogue of Major Industries, Products, and Technologies Encouraged for Development in China", and the "Catalogue for Guidance of Foreign Investment Industries," Petitioner alleges that the GOC encouraged financing support by banks to promote the fluoride chemical industry.[103]
Information on the record provided by the GOC also indicates that it placed great emphasis on encouraging the development of the fluoride chemical industry in recent years.[104] The GOC provided the "2011 Catalogue for Guiding Industrial Restructuring," where fine fluorine-containing chemicals are listed as "encouraged." The 2011 Catalogue for Guiding Industrial Restructuring at Category I, Encouragement, section XI, Petrochemistry, specifies the following:

> 16. Development and application of special fluoride monomers such as perfluorinated ene ether; high-quality fluororesins such as FEP, PVDF, PTFCE, and ETFE; high-performance fluorous rubbers such as fluoroether

[100] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[101] See the GOC's February 24, 2014, submission at 35.
[102] See Preliminary Calculations Memoranda.
[103] See the petition at Volume III, Preferential loans for HFC replacements and CFC refrigerants, pages 11-12.
[104] See GOC's February 24, 2014, response at Exhibit A-7, and Memorandum to the File, from Alexis Polovina, Case Analyst, "Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Translation of 2011 Catalogue for the Guidance of Industrial Structure Adjustment," dated concurrently with this memorandum.

> rubber, fluorinated silicone rubber, AFLAS FEPM, and 246 high fluoride fluorine rubber; fluoride lubricating grease; substitutes of Ozone Depleting Substances (ODS) with zero Ozone-depleting Potentials(ODP) and low Global Warming Potentials (GWP); PFOS and PFOA and their salt substitutes and substitution technologies; fine chemicals containing fluorine and high-quality inorganic salt containing fluorine.[105]

In response to the Department's questionnaire, the GOC provided the "Decision of the State Council on Promulgating the 'Interim Provisions on Promoting Industrial Structure Adjustment' for Implementation (No. 40 (2005) (Decision 40)," which emphasizes industries encouraged by the GOC for further development through loans and other forms of assistance.[106] The chemical industries are among the favored industries listed in Decision 40.[107] Article 12 of Decision 40 states that "{t}he Guiding Catalogue for Industrial Restructuring is an important basis for guiding the direction of investment projects managed by the government, and formulation and implementation of fiscal and tax, credit, land, import and export, and other policies."[108] As mentioned above, the GOC identified fine fluorine-containing chemicals as being listed under the "encouraged category" in the 2011 Guiding Catalogue for Industrial Restructuring.

Two cross-owned affiliates of JUHUA, the Juhua Group,[109] and Juhua Stock;[110] and several cross-owned affiliates of T.T. International's suppliers, Bluestar[111] and Sinochem,[112] as well as T.T. International,[113] reported having short-term loans from SOCBs that were outstanding during the POI; the Juhua Group and Juhua Stock also had long-term loans from SOCBs[114] and the Juhua Group had bill discounting outstanding during this same period.[115] The Department finds that the loans to these companies are countervailable, pursuant to a GOC policy of lending to preferred industries in the PRC, such as the fluoride chemical industry.[116] As such, this program of preferential policy lending is de jure specific to tetrafluoroethane producers, within the meaning of section 771(5A)(D)(i) of the Act. We also find that SOCBs are "authorities" within the meaning of section 771(5)(B) of the Act,[117] and thus, consistent with Department practice, loans from these SOCBs constitute financial contributions pursuant to section 771(5)(D)(i) of the

[105] See GOC's February 24, 2014, response at Exhibit A-7.
[106] Id., at Exhibit A-6
[107] Id.
[108] Id., at Exhibit A-6, Article 12.
[109] See JUHUA QR at 14, and Exhibit P.A.1.
[110] Id.
[111] See Bluestar QR at 12 and Exhibit 11.
[112] See Sinochem QR at 17, and Exhibits 55-65.
[113] See T.T. International's February 24, 2014, response at Exhibit 9.
[114] See JUHUA's second supplemental response dated March 28, 2014, at 1 and Exhibit S2-A.
[115] Id. at 4-6 and Exhibit S2-1.
[116] See GOC's February 24, 2014, response at Exhibit A-6.
[117] See Banking Memoranda at 6-8, and 62-64.

Act.[118] Pursuant to section 771(5)(E)(ii) of the Act, we find these loans 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. To calculate the benefit from this program, we used the benchmarks discussed above under the "Subsidy Valuation" section.[119] We divided the benefits received by Juhua Group, T.T. International, Bluestar, and Sinochem from these loans by the appropriate total sales denominator for each respective company, as discussed in the "Subsidies Valuation Information" section above, and in the Preliminary Calculations Memoranda. On this basis, we determine a subsidy rate of 0.46 percent ad valorem for the JUHUA, 0.67 percent ad valorem for T.T. International, 1.38 percent ad valorem for Bluestar, and 0.01 percent ad valorem for Sinochem.

4. *Preferential Loans for State-Owned Enterprises*

Petitioner alleges that loans made by policy banks and SOCBs constitute direct financial contributions from the government.[120] However, because we examined all loans from such lenders under the Preferential Loans for HFC Replacements for CFC Refrigerants program above, we are not examining loans separately under this program.

5. *Fluorospar Mining Rights for LTAR*

The Juhua Group reported that its cross-owned affiliate Zhejiang Juhua Chemical Mining Co., Ltd. ("Juhua Mining") purchased mining rights in July 2004 as part of its purchase of a mining company.[121] In May 2005, Juhua Mining established Huangshan City Juhua Fluorspar Co., Ltd. ("Huangshan Juhua") and transferred the mining rights and other assets to it.[122] Additionally, Sinochem Taicang reported that its cross-owned affiliate Fujian Jianyang Kings Mining Co., Ltd. ("Kings Mining") purchased mining rights in 2010, and cross-owned affiliate Xingguo County Zhongying Mining Co. Ltd. ("Zhongying Mining") purchased mining rights in 2005 and 2006.[123]

The record evidence indicates that the providers of the mining rights purchased by both Respondents are "authorities" within the meaning of section 771(5)(B) of the Act and, as such, the provision of fluorospar mining rights constitutes a financial contribution under section 771(5)(D)(iii) of the Act. Specifically, Juhua Mining purchased its mining rights from an entity which is 100 percent owned by a local government agency.[124] It is also clear that under the Mineral Resources Law of the PRC, all mineral resources belong to the State.[125] The rights to

[118] See, e.g., Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 40480 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment E.2; and Certain Oil Country Tubular Goods Partial Rescission and Preliminary Results of Countervailing Duty Administrative Review, 79 FR 10475 (February 25, 2014).
[119] See also 19 CFR 351.505(c).
[120] See Petition at Volume III, page 10.
[121] See JUHUA's February 24, 2014, questionnaire response at 22-23.
[122] See JUHUA's Initial CVD Questionnaire Response, dated February 24, 2014, at page 23.
[123] See Sinochem Taicang's March 21, 2014, questionnaire response, at page 6. Due to the business proprietary nature of this information, see the Post-Prelim Memorandum at 7-9 for a complete discussion of this issue.
[124] See The GOC's June 10, 2014 Questionnaire Response at page 1.
[125] See JUHUA's February 24, 2014, questionnaire response at Exhibit P.D.7.

mine these state-owned resources were provided to Juhua Mining by an entity that is wholly owned by a local government. As such, we determine that the conferral of the right to mine State-owned resources by an entity wholly owned by the government, is the provision of a subsidy from an "authority" as defined under section 771(5)(B) of the Act.[126] Additionally, Sinochem Taicang's cross-owned affiliate King's Mining reported that it purchased its mining rights in 2010 from a government authority, specifically the Department of Land and Resource of Fujian Province.[127] Further, as described above in the section "GOC – Zhongying Minings's Mining Rights Transfer," because the GOC did not respond to the Department's requests for information, the Department is finding, as AFA, that the companies which provided the mining rights to Sinochem Taicang's cross-owned affiliate Zhongying Mining in 2005 and 2006 are "authorities" within the meaning of section 771(5)(B) of the Act. Further, based on the GOC's response that fluorite is predominantly used by the refrigerant industry,[128] we determine that this provision was specific to the refrigerant industry, the sector to which Respondents belong,[129] as the predominant user of the good within the meaning of section 771(5A)(D)(iii)(II) of the Act.

In Hot-Rolled Carbon Steel Flat Products from India, the Department examined a program similar to this program. Specifically, in that case, the Government of India provided captive mining of iron ore rights to steel producers.[130] In that case, in order to calculate a benefit, the Department calculated a per-unit price for the iron ore that the respondent company extracted under the captive mining rights program, including the cost of the rights and associated fees, and compared that cost to the iron ore benchmark.[131] Accordingly, in the instant investigation, we calculated the per-unit cost of the fluorspar mined by Huangshan Juhua, King's Mining, and Zhongying Mining, including the associated operational mining costs as reported by Respondents. We then added the cost of obtaining the mining rights as allocated to the POI, based on the number of years the companies hold the rights. In order to accurately determine the cost of obtaining the mining rights, we excluded the tangible assets (e.g., mining equipment, buildings, etc.) that were conveyed along with the mining rights, where applicable.[132] We excluded these tangible assets because there is no record evidence that the GOC conveyed these assets for LTAR, and the LTAR allegation originally was, and continues to be, only with regard to mining rights, and not with regard to tangible assets that may have been acquired concurrently.

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[126] As explained in the Public Body Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority. 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. See Memorandum to the File, from Alexis Polovina, Case Analyst, Re: Analysis of Public Bodies in the PRC in Accordance with the WTO Findings, dated April 11, 2014, at page 37.

[127] See Sinochem Taicang's February 24, 2014, questionnaire response at pages 27-28.

[128] See the GOC's February 24, 2014, submission at page 19.

[129] See JUHUA's February 24, 2014, questionnaire response at 4-5; see also Sinochemo February 24, 2014, questionnaire response at 1.

[130] See Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results of Countervailing Duty Administrative Review, 73 FR 1578, 1591 (January 9, 2008) ("Hot-Rolled Carbon Steel Flat Products from India"), unchanged in Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008).

[131] See Hot-Rolled Carbon Steel Flat Products from India, 73 FR at 1591-1592.

[132] For a detailed explanation of how the Department excluded the cost of the tangible assets from the purchase price of the mining rights, see Post-Preliminary Calculation Memoranda.

Further, as described in the Preliminary Determination, the record evidence indicates that there are no actual market-determined domestic prices we can use as the fluorspar benchmark pursuant to 19 CFR 351.511(a)(2)(i).[133] Given that no such market-determined prices are available, the Department is using world market prices in accordance with 19 CFR 351.511(a)(2)(ii). Therefore, to calculate the benefit, we multiplied the difference between the calculated per-unit price, including the cost of the mining rights and the associated fees, and the benchmark per-unit price of fluorspar by the total amount of fluorspar mined by the Respondents during the POI. To calculate the net subsidy rate for Huangshan Mining attributable to the Juhua Group, we divided the calculated benefit by the appropriate total sales denominator, as discussed in the Post-Preliminary Calculations Memoranda, in accordance with 19 CFR 351.525(b)(6)(iv). On this basis, we determine a countervailable subsidy rate for the Juhua Group of 0.01 percent ad valorem for this program.

For King's Mining and Zhongying Mining, we also divided the benefit by the appropriate total sales denominator, as discussed in the Post-Preliminary Calculations Memoranda, in accordance with 19 CFR 351.525(b)(6)(iv). We then summed the benefits to King's Mining and Zhongying Mining to determine the benefit attributable to T.T. International. On this basis, we determine a countervailable subsidy rate for T.T. International of 6.94 percent ad valorem for this program.

6. *Electricity for LTAR*

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

In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. However, where possible, the Department will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. JUHUA, Sinochem and Bluestar provided data on the electricity the companies consumed and the electricity rates paid during the POI.[134]

As noted above, the GOC did not provide the information requested by the Department as it pertains to the provision of electricity for LTAR program despite requests for such information. We find that, in not providing the requested information, the GOC did not act to the best of its

[133] See Preliminary Determination, and accompanying Decision Memorandum at page 18.

[134] See JUHUA's NSA Response at 1-5; see also JUHUA's July 1, 2014, supplemental questionnaire response at 1-4, and Exhibit S7-1.a; see also JUHUA's June 30, 2014, supplemental questionnaire response at 1-5, Exhibits S7-1.b, S7-1.c, and S7-1.d; see also Bluestar's New Subsidy Allegation Questionnaire Response, dated May 21, 2014, at 1-3, and Exhibit 19; see also Sinochem's June 30, 2014, supplemental questionnaire response at 6 and Exhibit 2, and Sinochem's NSA response at 1-3 and Exhibits 2-11.

ability. Accordingly, in selecting from among the FA, we are drawing an adverse inference with respect to the provision of electricity in the PRC pursuant to section 776(b) of the Act and determine that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act. To determine the existence and amount of any benefit from this program, we relied on Respondents' reported information on the amounts of electricity used, and the rates they paid for that electricity, during the POI. We compared the rates paid by Respondents for their electricity to the highest rates on the record that they could have paid in the PRC during the POI.

To calculate the benchmark, we selected the highest rates in the PRC for the type of user (e.g., "General Industry," "Lighting," "Base Charge/Maximum Demand") for the general, high peak, peak, normal, and valley ranges, as provided by the GOC.[135] This benchmark reflects an adverse inference, which we drew as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.

To measure whether Respondents received a benefit under this program, we first calculated the electricity prices they paid by multiplying the monthly kilowatt hours or kilovolt amperes consumed for each price category by the corresponding electricity rates charged for each price category.[136] Next, we calculated the benchmark electricity cost by multiplying the monthly consumption reported by Respondents for each price category by the highest electricity rate charged for each price category, as reflected in the electricity rate benchmark chart. To calculate the benefit for each month, we subtracted the amount paid by Respondents for electricity during each month of the POI from the monthly benchmark electricity price. We then calculated the total benefit for each company during the POI by summing the monthly benefits for each company.[137]

To calculate the subsidy rate pertaining to the GOC's provision of electricity for LTAR, we divided the benefit amount calculated for each respondent by the appropriate total sales denominator, as discussed in the "Subsidy Valuation Information" section above, and in the Preliminary Calculation Memoranda. On this basis, we determine a countervailable subsidy of 0.17 percent ad valorem for JUHUA.[138] Additionally, for Sinochem, Bluestar, and T.T. International, also we divided the benefit by the appropriate total sales denominator, as discussed in the Post-Preliminary Calculations Memoranda, in accordance with 19 CFR 351.525(b)(6)(iv). On this basis, we determine that Sinochem received a countervailable subsidy of 0.78 percent ad valorem under this program, Bluestar received a countervailable subsidy of 0.49 percent ad valorem under this program, and T.T. International received no measurable benefit (i.e., less than 0.005 percent) under this program.[139]

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[135] See the GOC's May 23, 2014, submission at Exhibit 3.

[136] We have adjusted Bluestar's electricity calculation to account for its minor corrections, which were presented at verification, as well as the inclusion of VAT in its reported electricity payments. See Section VIII: Analysis of Comments, at Comments 7 and 8.

[137] See JUHUA Post-Preliminary Calculation Memo; see also T.T. International Post-Preliminary Calculation Memo.

[138] See JUHUA's Final Calculation Memo.

[139] See T.T. International Post-Preliminary Calculation Memo.

7. *VAT and Tariff Exemptions on Imported Equipment for Favored Industries*

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular 37) exempts both foreign invested enterprises ("FIEs") and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items.[140] The NDRC and the General Administration of Customs are the government agencies responsible for administering this program.[141] Qualified enterprises receive a certificate either from the NDRC or one of its provincial branches. To receive the exemptions, a qualified enterprise only has to present the certificate to the customs officials upon importation of the equipment. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.[142] The Department previously found this program to be countervailable.[143] Zhejiang Juhua Group Import and Export Co., Ltd. ("Juhua EXIM") reported receiving VAT and tariff exemptions under this program for imported equipment prior to the POI.[144]

We determine that the VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and the exemptions provide a benefit to the recipients in the amount of the VAT and tariff savings.[145] As described above, only FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program; therefore, we further determine that the VAT and tariff exemptions under this program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises.[146]

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL.[147] Therefore, because these exemptions are for capital equipment, we have examined the VAT and tariff exemptions that Juhua EXIM received under the program for the years prior to the POI that fall within the AUL.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the

[140] See High Pressure Steel Cylinders From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 76 FR 64301, 64303 (October 18, 2011).
[141] See id.
[142] See id.
[143] See, e.g., Citric Acid from the PRC, and accompanying Issues and Decision Memorandum at "H. VAT and Duty Exemptions on Imported Equipment."
[144] See JUHUA's NSA Response at 5-6, and Exhibit N.C.1.
[145] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[146] See, e.g., CFS from the PRC, and accompanying Issues and Decision Memorandum at Comment 16.
[147] See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(1).

program. To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is consistent with the Department's approach in prior cases.[148] Next, we summed the amount of duty and VAT exemptions received in each year. We divided the total amount of annual VAT and tariff exemptions by the corresponding total sales for the years in which the exemptions were received. Based on these calculations, we find that all of Juhua EXIM's exemptions amounted to less than 0.5 percent of total sales in the respective years. Accordingly, the benefits were expensed to the years of receipt.

8. *Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies*

Sinochem Taicang and Bluestar reported income tax deductions during the POI under the Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies program.[149] The Department previously found this program countervailable in Line Pipe from the PRC.[150] We determine that the income tax deductions provided under the program constitute a financial contribution, in the form of revenue forgone, and a benefit, in an amount equal to the tax savings, under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. We further find that this program is specific under section 771(5A)(A) and (C) of the Act because the receipt of the tax savings is contingent upon the use of domestic over imported goods.

We find that the benefit is equal to the tax savings received under the program, as reported on the company's tax return.[151] Further, we treated the tax savings as recurring subsidies consistent with 19 CFR 351.509(c)(1). To calculate the net subsidy rate, we divided the benefits received by Sinochem Taicang and Bluestar by the appropriate total sales denominator, as discussed in the Post-Preliminary Calculations Memorandum. On this basis, we determine a countervailable subsidy rate for Sinochem of 2.40 percent ad valorem.[152]

9. *VAT and Tariff Rebates on Domestically Produced Equipment for Encouraged Projects*

According to Trial Measure 171, the GOC refunds the VAT on purchases of certain Chinese-produced equipment to FIEs if the equipment is used for certain encouraged projects.[153]

[148] See, e.g., Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008) ("Line Pipe from the PRC"), and accompanying Issues and Decision Memorandum at Comment 8 (". . . we agree with Petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties").
[149] See Taicang and TTI's NSA Response at 5-7; see also Bluestar's NSA Response at 3.
[150] See Line Pipe from the PRC, and accompanying Issues and Decision Memorandum at "Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies."
[151] See 19 CFR 351.509(a)(1) and (b)(1).
[152] See T.T. International Post-Preliminary Calculation Memo.
[153] See Solar Cells from the PRC, and accompanying Issues and Decision Memorandum at Section VI.A.10.

Sinochem Taicang reported using this program.[154] The Department previously found this program countervailable.[155]

The Department continues to find that the rebates under this program are a financial contribution in the form of revenue foregone by the GOC and they provide a benefit to the recipients in the amount of the tax savings.[156] We also continue to find that the VAT rebates are contingent upon the use of domestic over imported equipment and, hence, specific under sections 771(5A)(A) and (C) of the Act.

Since this indirect tax is provided for, or tied to, the capital structure or capital assets of a firm, the Department treated this tax as a non-recurring benefit and allocated the benefit to the firm over the AUL.[157] To calculate a benefit under this program, for the years in which the rebate amount was less than 0.5 percent of the relevant sales figure, we expensed the rebates in the year of receipt, consistent with 19 CFR 351.524(a). For those years in which the VAT rebates were greater than or equal to 0.5 percent, we allocated the rebate amount over the AUL. We used the discount rates described in the "Subsidies Valuation Information" section in our Preliminary Determination to calculate the amount of the benefit allocable to the POI. To calculate the net subsidy rate, we divided the benefits received by Sinochem Taicang by the appropriate total sales denominator, as discussed in the Post-Preliminary Calculations Memorandum. On this basis, we determine a countervailable subsidy rate for Sinochem of 0.40 percent ad valorem for this program.[158]

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

According to the GOC, the China ExIm bank is solely owned by the PRC government and is under direct leadership of the State Council.[159] Further, the Export Seller's Credit is a product of China ExIm Bank, and provides loans to finance exports.[160] Additionally, eligibility to apply is contingent on export performance.[161] Sinochem Taicang, Sinochem Group, and Sinochem Lantian reported that they had outstanding financing under this program during the POI.[162] The Department has previously found this program countervailable.[163] The direct transfer of funds, such as loans, is a financial contribution, pursuant to 771(5)(D)(i) of the Act. Further, the Department finds that the loans also provided a benefit under 771(5)(E)(ii) of the Act in the amount of the difference between the amounts Sinochem Taicang, Sinochem Group, and Sinochem Lantian actually paid on these loans and what they would have paid for a comparable commercial loan. Finally, the receipt of loans under this program is tied to actual or anticipated

[154] See Taicang and TTI's NSA Response at 9-12.
[155] See Solar Cells, and accompanying Issues and Decision Memorandum at Section VI.A.10.
[156] See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).
[157] See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).
[158] See T.T. International Post-Preliminary Calculation Memo.
[159] See GOC Questionnaire Response on Export Credit, dated, May 27, 2014, at page 4.
[160] See id. at page 8.
[161] See id. at pages 8-9.
[162] See Sinochem Taicang's May 27, 2014 NSA Questionnaire Response on Export Credit at 1-2.
[163] See, e.g., Citric Acid from the PRC and accompanying Issues and Decision Memorandum at 6 "Policy Lending."

exportation or export earnings[164] and, therefore, this program is specific pursuant to sections 771(5A)(A) and (B) of the Act.[165]

To calculate the benefit conferred by these loans, we used the benchmarks described in the Preliminary Benchmarks Memo and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit by the export sales reported by the Sinochem Taicang, Sinochem Group, and Sinochem Lantian during the POI. We then summed the benefits to Sinochem Taicang, Sinochem Group, and Sinochem Lantian to determine the benefit attributable to T.T. International. On this basis, for T.T. International's supplier, Sinochem Taicang, we determine a countervailable subsidy rate of 0.79 percent ad valorem for this program.[166]

Grant Programs Discovered Through Analysis of JUHUA's Financial Statements

We examined JUHUA's and its cross-owned affiliates financial statements and discovered several grants that were not reported in either the company's or GOC's initial questionnaire responses. We issued supplemental questionnaires to JUHUA and the GOC, and received responses regarding the nature of those grants.[167] We determine that, in total, 27 grants were received by JUHUA and its cross-owned affiliates and that these grants are "non-recurring" consistent with 19 CFR 351.524(c)(1). With regard to those programs, we performed the "0.5 percent test" of 19 CFR 351.524(b)(2). For seven programs, we determine that JUHUA received benefits allocable to the POI that exceeded 0.005 percent ad valorem.[168] Our final determinations with regard to the countervailability of those programs are included below. For the remaining grant programs for which the benefits did not exceed the 0.5 percent test, as described in 19 CFR 351.524(b)(2), and, therefore, expensed to years prior to the POI, we have made no determinations with regard to their countervailability. Therefore, we listed these grant programs in the section "Programs Determined Not to Confer a Benefit or Not Used."

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

Under Article 28 of the Enterprise Income Tax Law ("EITL"), the income tax a firm pays is reduced to a rate of 15 percent if an enterprise is recognized as a key advanced hi-tech enterprise.[169] The Department previously found this program to be countervailable.[170] During the course of this investigation, we discovered that Quhua Fluor-Chemistry used this program and requested additional information from Quhua Fluor-Chemistry and the GOC.

[164] See GOC Questionnaire Response on Export Credit, dated, May 27, 2014, at page 8.
[165] See id.
[166] See T.T. International Post-Preliminary Calculation Memo.
[167] See JUHUA's June 3, 2014, supplemental questionnaire response ("JUHUA Grant QR"), and the GOC's Grant QR.
[168] See JUHUA Post-Preliminary Calculation Memo. These grants were received variously in the POI and certain years prior to the POI. Under our 0.5 percent allocation test, each grant yielded less than 0.5 percent of sales for the respective year and, thus, were allocable only to the year of receipt ("expensed"). Therefore, only those grants received during the POI itself yielded measurable benefits.
[169] See the GOC's June 10, 2014, supplemental questionnaire response at 3 ("GOC Grant QR").
[170] See, e.g., Warmwater Shrimp, and accompanying Issues and Decision Memorandum at 25.

Based upon the information submitted by Quhua Fluor-Chemistry and the GOC, Quhua Fluor-Chemistry paid a reduced income tax rate on the tax return it filed during the POI.[171] In accordance with Article 28 of the EITL, Quhua Fluor-Chemistry paid an income tax rate of 15 percent instead of the standard corporate income tax rate of 25 percent.[172]

Consistent with our determination in Warmwater Shrimp, we determine that this program constitutes a financial contribution in the form of revenue foregone by the GOC and confers a benefit in the amount of the tax savings, as provided under sections 771(5)(D)(ii) and 771(5)(E) of the Act. We further determine that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises whose products are designated as being in "high-tech fields with state support,"[173] and, hence, is de jure specific under section 771(5A)(D)(i) of the Act.

We calculated the benefit as the difference between taxes Quhua Fluor-Chemistry would have paid under the standard 25 percent tax rate and the taxes that the company actually paid under the preferential 15 percent tax rate, as reflected on the tax return filed during the POI, as provided for under 19 CFR 351.509(a)(1) and (b)(1). We treated the tax savings as a recurring benefit consistent with 19 CFR 351.524(c)(1). We then divide the benefit by JUHUA's total sales during the POI. On this basis, we determine a countervailable subsidy of 0.68 percent ad valorem for JUHUA.[174]

12. *Export Performance Grant*

JUHUA reported that Quhua Fluor-Chemistry, Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd. ("Lianzhou"), and Quzhou Lianfu Trade Co., Ltd. ("Lianfu") received export performance grants.[175] The GOC reported that this assistance was provided by the local government, but has not provided a response from the local government regarding the program.[176] We find that the grant is a financial contribution within the meaning of section 771(5)(D)(i) of the Act, confers a benefit under 19 CFR 351.504, and is specific as an export subsidy pursuant to section 771(5A)(A) and (B) of the Act. We calculated the benefit for this program by dividing the total subsidy by the relevant company's export sales for that year. For these grants we calculated ad valorem rates of 0.35 percent for Quhua Fluor-Chemistry, 0.01 percent for Lianzhou, 0.04 percent for Lianfu.

13. *Technological Development and Reconstruction Grant*

JUHUA reported that Zhejiang Quzhou Jusu Chemical Co., Ltd. ("Jusu") received a grant for technological development and reconstruction. The GOC reported that this program was

[171] See JUHUA's March 21, 2014, supplemental questionnaire response, at 13-14; see also JUHUA's Initial CVD Questionnaire Response, dated February 24, 2014, at Exhibit G.3.
[172] See id.
[173] See Warmwater Shrimp accompanying Issues and Decision Memorandum at 25; see also GOC Grant QR at 3.
[174] See JUHUA Post-Preliminary Calculation Memo.
[175] See JUHUA Grant QR, at 7-8.
[176] See GOC Grant QR at 12.

provided by the local government.[177] We find that the grant is a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confers a benefit under 19 CFR 351.504. Based on the limited information contained in JUHUA's questionnaire response, i.e., the name of the subsidy, it appears that access to this subsidy is expressly limited to companies undergoing technological development and reconstruction.[178] In order to conduct the analysis of whether a program is specific under section 771(5A)(D) of the Act, it is essential that the government provide a complete response to the questions regarding specificity that are contained in the questionnaire because it is only the government that has access to the information required in the analysis of both de jure and de facto specificity. However, the GOC has not provided a complete response to the specificity questions related to this program nor has it provided any of the Standard Questions Appendix or Allocation Appendix.[179] As a result, we find that the GOC failed to cooperate and are resorting to the use of AFA within the meaning of section 776(b) of the Act. Thus, based on the limited information on the record, and as AFA, we are determining the subsidy is de jure specific under section 771(5A)(D)(i) of the Act. We calculated the benefit by dividing the total subsidy received in that year by the Juhua Group's 2012 consolidated sales. We calculated an ad valorem rate of 0.01 percent.

14. *Fluorinated Electronic Chemical Industry Technology Grant*

JUHUA reported that Kaisheng received a grant for industrial technological development. The GOC reported that this program was provided by the local government.[180] We find that the grant is a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confers a benefit under 19 CFR 351.504. Based on the limited information contained in JUHUA's questionnaire response, i.e., the name of the subsidy, it appears that access to this subsidy is expressly limited to companies utilizing fluorinated electronic chemical technology.[181] In order to conduct the analysis of whether a program is specific under section 771(5A)(D) of the Act, it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire because it is only the government that has access to the information required in the analysis of both de jure and de facto specificity. However, the GOC failed to provide a complete response to the specificity questions related to this program and has not provided any of the Standard Questions Appendix or the Allocation Appendix.[182] As a result, we find that the GOC failed to cooperate and we are resorting to the use of AFA within the meaning of section 776(b) of the Act. Thus, based on the limited information on the record, and as AFA, we are determining the subsidy is de jure specific under section 771(5A)(D)(i) of the Act. We calculated the benefits by dividing the total subsidy of each received in the POI by the Juhua Stock's 2012 consolidated sales. We calculated an ad valorem rate of 0.01 percent.

[177] See id. at 16.
[178] See JUHUA Grant QR at 25.
[179] See GOC Grant QR at 16.
[180] See id. at 17.
[181] See JUHUA Grant QR at 25.
[182] See GOC Grant QR at 16.

15. *Grant to Promote Transformation and Upgrading*

JUHUA reported that Kaisheng received a grant to promote transformation and upgrading. The GOC reported that this program was provided by the local government.[183] We find that the grant is a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confers a benefit under 19 CFR 351.504. Based on the limited information contained in JUHUA's questionnaire response, i.e., the name of the subsidy, it appears that access to this subsidy is expressly limited to companies transforming and upgrading.[184] In order to conduct the analysis of whether a program is specific under section 771(5A)(D) of the Act, it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire because it is only the government that has access to the information required in the analysis of both de jure and de facto specificity. However, the GOC failed to provide a complete response to the specificity questions related to this program and has not provided the Standard Questions Appendix nor the Allocation Appendix.[185] As a result, we find that the GOC failed to cooperate and we are resorting to the use of AFA within the meaning of section 776(b) of the Act. Thus, based on the limited information on the record, and as AFA, we are determining the subsidy is de jure specific under section 771(5A)(D)(i) of the Act. We calculated the benefits by dividing the total subsidy of each received in the POI by the Juhua Stock's 2012 consolidated sales. We calculated an ad valorem rate of 0.01 percent.

16. *Grant for Relocation for Urban Renewal in Quzhou City*

JUHUA reported that Kaisheng received a grant for relocation for urban renewal in Quzhou City. The GOC reported that this program was provided by the local government.[186] We find that the grant is a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confers a benefit under 19 CFR 351.504. Based on the limited information contained in JUHUA's questionnaire response, i.e., the name of the subsidy, it appears that access to this subsidy is expressly limited to companies relocating to Quzhou City.[187] In order to conduct the analysis of whether a program is specific under section 771(5A)(D) of the Act, it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire because it is only the government that has access to the information required in the analysis of both de jure and de facto specificity. However, the GOC failed to provide a complete response to the specificity questions related to this program and has not provided the Standard Questions Appendix nor the Allocation Appendix.[188] As a result, we find that the GOC failed to cooperate and we are resorting to the use of AFA within the meaning of section 776(b) of the Act. Thus, based on the limited information on the record, and as AFA, we are determining the subsidy is de jure specific under section 771(5A)(D)(i) of the Act. We calculated the benefit by dividing the total subsidy received in that year by the Juhua Group's 2012 consolidated sales. We calculated an ad valorem rate of 0.046 percent.

[183] See id. at 17.
[184] See JUHUA Grant QR at 25.
[185] See GOC Grant QR at 16.
[186] See id. at 32.
[187] See JUHUA Grant QR at 50.
[188] See GOC Grant QR at 16.

VI. Programs Determined Not to Confer a Benefit During the POI

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

During the POI, T.T. International and Sinochem Corporation reported that they purchased export insurance from Sinosure;[189] however, both companies stated that they did not receive any payouts of claims under their export insurance policies from Sinosure during the POI.[190] Under 19 CFR 351.520(a)(2), the benefit from a government export insurance program is measured as the difference between the amount of premiums paid by the firm and the amount of any payouts on claims under the program during the POI. Respondents reported receiving no such payouts during the POI;[191] therefore, we determine that T.T. International and Sinochem Corporation received no benefits under this program during the POI.

2. *Reduction of Taxable Income for Revenue Derived from the Manufacture of Products that are in line with State Industrial Policy and Involve Synergistic Utilization of Resources*

JUHUA reported that Zhejiang Jinju Chemical Co., Ltd. ("Jinju Chemical") received a reduction of taxable income for revenue derived from the manufacture of products that are in line with state industrial policy and involve synergistic utilization of resources.[192] However, because the Department determined that cross-ownership did not exist between Jinju Chemical and the JUHUA companies, any subsidy to Jinju Chemical is not allocable to JUHUA under our regulations.[193] Therefore, we have not calculated a benefit to JUHUA for this program.

3. *Other Grants*

The JUHUA companies reported receiving grants under programs other than those described above. These include:

1. Grants from the Multilateral Fund for the Implementation of the Montreal Protocol. We find that these were funded by international lending and development institutions and, thus, provide no benefit pursuant to 19 CFR 351.527.

2. Payments to Juhua Hospital for Public Health and Childhood Immunization Services. We find that no benefits are attributable to JUHUA under any of our attribution rules at 19 CFR 351.525.

[189] See Sinochem Taicang's May 21, 2014, NSA Questionnaire Response on behalf of Sinochem Taicang and TT International, at page 14.
[190] See Sinochem Taicang's June 30, 2014, Supplemental Questionnaire Response at 6.
[191] See id.
[192] See JUHUA's NSA Response at 10.
[193] See the Department's Memorandum regarding, Countervailing Duty Investigation of 1,1,1,2-Tetrafluoroethane from the People's Republic of China: Cross-ownership Zhejiang Quhua Fluor-Chemistry Co., Ltd. and its Cross-Owned Affiliates, dated April 11, 2014, at 2. Our findings are unchanged in the final.

The JUHUA companies also reported the additional grants listed below. We find that for each of these grants, there was either no measurable benefit (i.e., less than 0.005 percent) to JUHUA or its cross-owned affiliates, or no benefits from these programs to allocate to the POI of the instant investigation.[194] Therefore, we have not analyzed them further and have not included them in our calculation.

3. Government bond subsidy for the production of Vinylidene Fluoride and Polyinylidene Fluoride
4. Water Measuring and Grants of Monitoring Laboratory
5. VAT Refunds
6. Government grants for the construction of vocational training centers
7. Technical transformation grants
8. Clean production allowance
9. Subsidy for being a Safety Production Enterprise
10. Subsidy for the environmental protection under the project of Compensatory Transfer of Mining Right of Polymetallic Pyrite
11. Grant for the online Environment Protection Monitoring Project
12. VAT refunds for half-collection in December 2010 and January 2011
13. Government grant for the Grants to Electrochemical Plant on Ionic Membrane NCS Program
14. Financial contribution award
15. Two refunds for the relevant taxes incurred in land use rights transfers, for "16 parcel of land" and "12 parcel of land"
16. Grants for vehicle trade-ins
17. Grant for supporting and guiding the fund for greater transportation logistics

Additionally, Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. ("Weitron China") reported export grants under the Enterprise Transformation and Upgrading Fund in 2009 and 2010.[195] We performed the 0.5 percent test using Weitron's export sales for those years and found those grants did not pass the 0.5 percent threshold and therefore we did not include them in the calculation.[196]

VII. Programs Determined Not to Be Used During the POI

With regard to the following programs, we find no record evidence that either the Respondents or cross-owned affiliates had operations in the locations where the alleged subsidies were provided. Accordingly, we find that these programs were not used by Respondents or their cross-owned affiliates during the POI:

[194] See, e.g., Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 17017 (March 23, 2012) and accompanying Issues and Decision Memorandum at Section II.C.
[195] See JUHUA Grant QR at 1-3.
[196] See JUHUA Post-Preliminary Calculation memorandum at Attachment 1.

1. *Fuxin Fluorine Industry Preferential Program: Exemption from Income Tax*
2. *Fuxin Fluorine Industry Preferential Program: Exemption from VAT*
3. *Fuxin Fluorine Shareholder Loans (Debt Forgiveness)*
4. *Preferential Loans Provided by the Export-Import Bank "Going-Out" for*
5. *Outbound Investment*
6. *Industry Preferential Program: Subsidized Land Transfer Ratio*

VIII. ANALYSIS OF COMMENTS

Comment 1: Whether Loans Provided by Banks Other Than the "Big Four" Are Countervailable

GOC's Comments:

- In the Banking Memoranda (consisting of two memoranda on the PRC's Non-Market Economy Status from 2006) on which the Department relied for its analysis of the PRC's banking sector, the term "SOCB" referred only to the "Big Four" state-owned commercial banks in the PRC (i.e., the Bank of China, the China Construction Bank, the Industrial Commercial Bank of China, and the Agricultural Bank of China).[197]
- The Banking Memorandum did not analyze any other PRC bank's ownership structure or other factors of government control, and recognized that there are non-SOCB banks in the PRC, such as joint stock commercial banks (JSCBs).[198]
- Nevertheless, in the Preliminary Determination, the Department improperly classified as SOCBs certain banks for which there was no record evidence of government ownership or control, such as CITIC and Bank of East Asia.[199]
- The Department countervailed all loans outstanding during the POI from these banks without any record evidence indicating that these banks are "public bodies" as required under United States or World Trade Organization ("WTO") subsidy law.
- The WTO Appellate Body has faulted the United States for impermissibly shifting to foreign Respondents the burden of proof for showing that SOCBs are *not* public bodies.[200]

[197] See Memorandum to the File from Josh Startup, Case Analyst, Office V regarding, "Banking Memorandum," dated April 11, 2014, at Attachment I, Memorandum to David Spooner, Assistant Secretary, Import Administration, from Shauna Lee-Alaia, Lawrence Norton and Anthony Hill, Office of Policy, Import Administration, "The People's Republic of China (PRC) Status as a Non-Market Economy (NME)," dated May 15, 2006, and at Attachment II, Memorandum to David Spooner, Assistant Secretary, Import Administration, from Shauna Lee-Alaia, Lawrence Norton and Anthony Hill, Office of Policy, Import Administration, "Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China") China's status as a non-market economy ("NME")," dated August 30, 2006 (Attachments I and II are collectively "Banking Memoranda").

[198] See id. at Attachment I at 5.

[199] See Preliminary Determination, and accompanying Issues and Decision Memorandum at 21.

[200] See Appellate Body Report, United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/AB/R, (March 11, 2011) ("WTO AB Decision") at ¶ 352.

- In this proceeding, the Department has not defined the term "SOCB" as it relates to "authorities" under section 771(5)(B) of the Act, nor has it provided any rationale as to why the non-Big Four PRC banks in this case may be classified as authorities.

Bluestar's Comments:

- The Department countervailed lending to Bluestar and Kangtai from banks that the Department has not found to be SOCBs.[201]
- The Department has pointed to no evidence on the record that these financial institutions are in fact government owned.
- The Department has also not provided any information that the Banking Memoranda from 2006 remain accurate today.

Petitioner's Rebuttal Comments

- The Department's practice is to treat state-owned banks outside of the four "policy banks" as authorities under section 771(5)(B) of the Act,[202] and the GOC provides no reason to challenge this precedent.
- The Department recently noted that the GOC has never actually provided evidence for the Department to reconsider its treatment of SOCBs as authorities.[203]

Department's Position: We disagree with the GOC and continue to find, consistent with our findings in CFS from the PRC regarding the PRC's banking sector, that state-owned or controlled banks outside the "Big Four" SOCBs are public authorities within the meaning of section 771(5)(B) of the Act. Neither the GOC nor Bluestar has submitted additional information on the record that contradicts our findings in CFS from the PRC that the PRC's banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the financial system and the government's use of banks to effectuate policy objectives.[204] The Department has repeatedly affirmed these findings in proceedings following CFS from the PRC. In OCTG from the PRC, for example, we noted that:

> {T}he GOC has failed to provide evidence that the government has divested itself of ownership in Chinese banks. The GOC has failed to address the issue of real risk assessment within the Chinese banking sector. The GOC has failed to address interest rate and deposit rate ceilings and floors set by the government.

[201] See Memorandum to the File, through Catherine Bertrand, Program Manager, from Katie Marksberry, Case Analyst, Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: T.T. International ("T.T. International Preliminary Calculation Memoranda").

[202] See e.g., CFS from the PRC and accompanying Issues and Decision Memorandum at Comment 10.

[203] See Certain 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) ("OCTG from the PRC") and accompanying Issues and Decision Memorandum at Comment 12.

[204] See Aluminum Extrusions and accompanying Issues and Decision Memorandum at Comment 7, citing Coated Paper Determination, and accompanying Issues and Decision Memorandum at Comment 10; see also Banking Memoranda. Regarding the GOC's statements concerning the WTO AB Decision, we note that the Appellate Body in that dispute affirmed the Department's finding that SOCBs are "public bodies" or "authorities" because they pursue and effectuate government policies.

> The GOC has failed to address both de jure and de facto reforms within the Chinese banking sector. The GOC has failed to address the elimination of policy-based lending within the Chinese banking sector. Therefore, the GOC has failed to provide the information that would warrant a reconsideration of the Department's determination in {the CFS from the PRC investigation}.[205]

In the more recent Aluminum Extrusions, we also noted that the banking system continues to be impacted by the legacy of government policy objectives, which continue to undermine the ability of the big four SOCBs and the rest of the domestic banking sector to act on a commercial basis, and allow continued government involvement in the allocation of credit in pursuit of those objectives.[206] We further indicated in Aluminum Extrusions, based on the findings from CFS from the PRC and given the continued involvement of the government in the banking sector, that we consider domestic banks, including those outside from the big four SOCBs, to be SOCBs whose loans provide a financial contribution.[207] Finally, we disagree that the Banking Memoranda are out of date. If Respondents or the GOC believes that some evidence on the record, including the evidence discussed in the Banking Memoranda, is no longer correct, then they may submit information to correct that evidence,[208] but they did not. The record does not contain any evidence that contradicts the evidence and analysis discussed in the Banking Memoranda.

Comment 2: Whether the Department is Properly Countervailing Loans to Companies Producing a Disfavored Product

Bluestar's Comments:

- The Department presumed but failed to demonstrate a link between the interest rates paid by Bluestar and Kangtai and the subsidy program identified by the Department. In doing so, the Department ignored the GOC's explanation that for environmental protection reasons, the production of merchandise under consideration is being phased out rather than promoted.[209] The Department must provide a rationale for its conclusion that the GOC would subsidize the production of an environmentally disfavored product.

Petitioner's Rebuttal Comments:

- The government's rationale for the program is irrelevant, and governments often do subsidize environmentally undesirable projects.
- There is no legal basis for the implicit claim that in order to investigate a program, the Department must show that the government's rationale for the program still applies when the subsidy is granted.

[205] See OCTG from the PRC, and accompanying Issues and Decision Memorandum at Comment 20.
[206] See, e.g., Aluminum Extrusions and accompanying Issues and Decision Memorandum at Comment 7.
[207] Id.
[208] See, e.g., 19 CFR 351.301(c)(1)(v) & 19 CFR 351.301(c)(4) (providing interested parties with an opportunity to provide factual information to rebut, clarify, or correct factual information on the record).
[209] See the GOC's Original CVD Questionnaire Response, dated February 24, 2014, at 3-7 ("GOC CVD QR").

Department's Position: We agree with Petitioner that it is irrelevant to our subsidy analysis whether or not the product benefiting from a subsidy may be characterized as a disfavored product. We only need to find that a subsidy provides a financial contribution that confers a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively, and that it is specific in some way within the meaning of section 771(5A) of the Act. Moreover, we note that while the GOC cites to having signed the Kyoto Protocol as evidence that the merchandise under consideration is disfavored, the GOC has also said that it will not "actively perform its relevant obligations" under the Protocol until a consensus is reached in the international community.[210] We determine, based on our analysis of the GOC policy documents on the record (e.g., the Catalogue for the Guidance of Industrial Structure Adjustment), that PRC banks have provided financing to the fluorochemical sector as part of the government's pursuit of certain policy objectives, and that such financing conferred benefits based on a comparison with lending benchmarks.[211] Therefore, we countervailed the loans in question in accordance with U.S. law.

Comment 3: Whether AFA is Warranted with Regard to the Provision of Fluorospar for LTAR Program & Whether the Program is Countervailable

GOC's Comments:

- The finding of the purchases of fluorspar as conferring countervailable subsidies was unreasonable and directly contradicted by record evidence.
- The GOC cooperated to its fullest ability under PRC laws with the Department's request for information, and submitted documents from cooperative suppliers. The Court of Appeals has stated that if the "cooperating entity has no control over the non-cooperating suppliers, a resulting adverse inference is potentially unfair to the cooperating party."[212]
- The fact that the GOC did provide capital verification reports and similar documents of a private nature to which it has no easy access is sufficient proof of its best efforts to cooperate within legal boundaries.
- The GOC has provided sufficient documentary evidence for the Department to assess the relevant suppliers' decision-making autonomy from the government.
- The Department is not entitled to presume a government authority finding even as to SOEs, per WTO jurisprudence.
- The GOC objects to the Department's expansion of this program to other grades of fluorspar, such as metspar, for which any connection to the subject merchandise industry is attenuated.
- The Department ignored the evidence that the PRC acidspar market is dominated by private companies with no ties to the GOC or the CCP.

[210] See id. at 8.
[211] See GOC's February 24, 2014, response at Exhibit A-7, and Memorandum to the File, from Alexis Polovina, Case Analyst, "Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Translation of 2011 Catalogue for the Guidance of Industrial Structure Adjustment," dated concurrently with this memorandum.
[212] See GOC Case Brief at 8, citing to Mueller Comercial de Mexico v. United States, 753 F.3d 1227, 1235 (Fed. Cir. 2014) ("Mueller").

- The record lacks evidence that any benefit or specificity exists between the PRC industry related to their acidspar purchases. In finding this LTAR program countervailable, the Department engaged in flawed logic that is unlawful under CVD law.
- The Department cannot expect, and lacks the authority to require, a perfect record with every piece of information for all suppliers.[213]
- In this case, as noted in questionnaire responses, only nine of the Respondents' 55 acidspar suppliers during the POI were state-owned (16 percent), and 64 of the suppliers (84 percent) were privately owned by individuals.[214]
- The GOC objects to the Department's "public body" analysis regarding SOEs, and emphasizes that the burden is on the Petitioner to submit evidence to show a supplier's government authority status. The Petitioner has not rebutted registration documents submitted by the GOC for the vast majority of suppliers, which are wholly privately owned.[215]
- As indicated in the Georgetown Applicability Memorandum, there is no longer direct and substantial government intervention in the suppliers' business that would vest these private parties with public authority.[216] If the Department continues to assume the opposite, and continues to apply AFA to the private suppliers in this case, the GOC requests that this investigation be terminated as the foundation for the Georgetown Applicability Memorandum would no longer exist.
- The Department's preliminary benefit analysis acknowledged the lack of complete information to determine the acidspar market was free from government involvement such that the PRC prices could be used for benchmarking purposes.[217] This cannot be reconciled with the Georgetown Applicability Memorandum statement that while price controls remain on "certain essential" goods, market forces determine the price of more than 90 percent of products traded in the PRC.[218]
- Petitioner has not alleged that acidspar is an "essential good" and there is no evidence on the record suggesting otherwise. As noted in questionnaire responses, acidspar was not one of the 34 types of key minerals identified in the Measures for Registration Administration of Mineral Resources Exploitation,[219] and the acidspar industry is now dominated by private corporations.[220]
- The Department was wrong not to consider the information from the Fluorspar Professional Committee, as it is information is from a national trade association submitted under the GOC's certification.
- There is no evidence to support the Department's LTAR specificity analysis on a product-specific basis. The acidspar suppliers' registration documents demonstrate that a number of them are engaged in businesses other than acidspar,[221] and there is no

[213] See GOC Case Brief at 8-9, citing to Section 782(e) of the Act.
[214] See MOFCOM Questionnaire Response, dated March 4, 2014, at 2 ("GOC Acidspar QR").
[215] See GOC CVD QR at D-1 and D-2, and GOC Acidspar QR at Exhibit 1 and 2.
[216] See GOC Case Brief at 11, citing to Georgetown Memo at 5-8.
[217] Id. at 13, citing to Preliminary Determination at 16.
[218] Id.
[219] See GOC CVD QR at 25.
[220] See GOC Acidspar QR at 2.
[221] See GOC CVD QR at D-1 and D-2, and GOC Acidspar QR at Exhibit 1 and 2.

contention that specialized acidspar producers price this input differently than more diversified suppliers.

- No product-specific or general LTAR program exists in the investigation.
- The Department mischaracterized the GOC's response to support its specificity finding. While the Department found the GOC to have stated that "fluorite is predominately used by the refrigerant industry," it is clear from the GOC's response that the hydrofluoric acid (refrigerant) industry is only one of many industries that use acidspar.[222]
- The threshold for finding specificity on the basis of "disproportionate use" cannot be set too low, otherwise every alleged product-specific LTAR program would be found to be a "specific" subsidy without any rational basis.
- The record lacks evidence, and the Petitioner did not allege, that PRC suppliers price acidspar differently when selling to the refrigerant industry; thus, there is no evidence on the record demonstrating a subsidy program targeting the tetrafluoroethane industry related to acidspar.

Petitioner's Rebuttal Comments:

- While the GOC argues that it lacks the legal authority to obtain documentation from acidspar suppliers, and therefore, under Mueller,[223] an AFA call is potentially unfair, the GOC still maintains the ability to induce suppliers to cooperate.
- In Mueller, there was no argument that the cooperating party and the supplier were not affiliated and the supplier could not induce the other party to participate, and thus the issue was whether the Department could still make an adverse inference against the supplier.
- However, in this case, the degree of GOC control over the suppliers is the issue to be resolved, and the Department cannot assume that the GOC has no control over the suppliers.
- In Mueller the court stated that even if the cooperating party lacked control over the supplier, AFA could still be used to encourage the cooperating party to use its influence to obtain supplier cooperation if the Department attempted to reach an accurate decision.[224]
- There is no doubt that the GOC has a number of ways to influence suppliers to cooperate, especially for those where the GOC owns the companies or member of the CCP have positions in them, and the GOC does not point to any law which prohibits the GOC from using its influence to gain cooperation.
- While the GOC argues that the evidence shows only nine of the 55 supplier it identified are state-owned, the GOC did not address the Department's concerns over the sufficiency of this evidence. Further, the suppliers for which the GOC supplied data are not a random sample of the market.
- The critical question for the Department is the size and market control of the government controlled suppliers, not the number of suppliers.

[222] See GOC CVD QR at 19.
[223] See Mueller, 753 F.3d at 1235.
[224] See id. at 1235-36.

- While the GOC no longer maintains total control over the economy that does not mean it does not intervene in certain sectors to distort prices. The Department has repeatedly found that the GOC has provided good for less than adequate remuneration and has used world price benchmarks in most of these cases.
- The GOC argues that in order to find specificity, "purposeful government action" is required for that subsidy. However, while some products are only used by a limited number of industries, making the provision of that type of product de facto specific regardless of the GOC's intent, the current definition of specificity in the statute in the Uruguay Round Agreements Act does not preclude countervailing such subsidies.

Department's Position: We disagree with the GOC that the expansion of the acidspar LTAR to include fluorspar was arbitrary and without any connection to the industry of the merchandise under consideration. First, we note that there are only two HTS numbers for fluorspar, those with purity above 97 percent calcium fluoride (acidspar) and those with a purity level below 97 percent calcium fluoride.[225] Second, the only HTS number which includes fluorspar, which is used in the production of merchandise under consideration,[226] is HTS number 252921, and therefore the only way to capture the fluorspar used is to include this HTS number for all fluorspar with under 97 percent calcium fluoride. Additionally, the GOC has not provided any record evidence to show that the expansion of the acidspar LTAR was unwarranted, other than its own, unsupported statement, that it is irrelevant to the production of subject merchandise.[227]

As explained in the Preliminary Determination, in order to do a complete analysis of whether the primary acidspar producers are "authorities" within the meaning of section 771(5)(B) of the Act, we sought information regarding the role that CCP officials may have played in any of the acidspar suppliers' operations.[228] Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or otherwise influenced by certain entities, the Department inquired into the means by which the GOC may exercise control over company operations and other CCP-related information.[229] The Department has explained to the GOC its understanding of the CCP's involvement in the PRC's economic and political structure in prior PRC CVD proceedings,[230] and has explained why it considers the information regarding the CCP's involvement in the PRC's economic and political structure to be relevant.[231]

As stated in the Preliminary Determination, in response to our questions and requests for information regarding the role that CCP officials may have played in any of the acidspar supplier's operations, we continue to find that the GOC unreasonably restricted its search and review of information to an incomplete and inadequate set of documents provided by only 10 out of 55 suppliers in response to a different set of questions we asked in the Input Supplier

[225] See Department's Post-Preliminary Benchmark Memorandum, dated July 25, 2014, at 1.
[226] See JUHUA QR at 5, stating that Juhua Mining purchased fluorspar and processed it into acidspar for the production of hydrogen fluoride.
[227] See GOC NSA response at 73.
[228] See Preliminary Determination, and accompanying Issues and Decision Memorandum at "Use of Facts Otherise Available And Adverse Inferences."
[229] See GOC Supplemental Response, March 24, 2014, at pp.21-28.
[230] See, e.g., Solar Cells from the PRC, and accompanying Issues and Decision Memorandum at Comment 6.
[231] Id.

Appendix.[232] We remain unpersuaded that, in responding to questions regarding the role played by the government or by organs of the CCP, the GOC has no access to sources of information other than an incomplete set of documents provided by these ten suppliers, particularly given its additional efforts and submissions of information it provided in other cases.[233]

While the GOC did provide copies of capital verification reports and similar pro forma documents available from the relevant local levels of government, such documents provide only minimal information regarding the shareholding structure of companies, and do not provide other key information we requested regarding, e.g., the roles played by CCP officials on the companies' boards of directors or in senior management positions, or by the government in making any appointments to these positions. Additionally, the data from the Fluorspar Professional Committee were based on its limited membership, constituting only a subset of the market, and were not supported with underlying data.[234] The Department cannot make findings based on unsupported statements regarding the supply chain of acidspar being dominated by private parties with no ties to the GOC or CCP of the GOC alone,[235] without sufficient supporting evidence that the Department considers necessary and relevant for a complete analysis.

Regarding the Court of Appeals ruling in Mueller, we agree with Petitioner that the facts in that case, where the cooperating party and the supplier were indisputably unrelated, are not analogous to the facts in this proceeding, in which the nature of the government's relationship to the suppliers is the actual issue to be clarified.[236] Moreover, in another recent case with facts more squarely relevant to this proceeding, the Court of Appeals unequivocally upheld the Department's authority to apply AFA to a non-cooperating party even if doing so subjected a cooperating party to collateral effects.[237] In Fine Furniture, the Court addressed this issue directly, stating as follows:

> Commerce in this case did not choose the adverse rate to punish the cooperating plaintiff, but rather to provide a remedy for the government of China's failure to cooperate… Although it is unfortunate that cooperating respondents may be subject to collateral effects due to the adverse inferences applied when a government fails to respond to Commerce's questions, this result is not contrary to the statute or its purposes, nor is it inconsistent with this court's precedent.[238]

The Court in Mueller made a point to distinguish the facts of the underlying proceeding from the facts in Fine Furniture, and the facts in Fine Furniture clearly provide the better analogy to the

[232] See GOC Supplemental Response, March 24, 2014, at pp.21-28.
[233] 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), and accompanying Issues and Decision Memorandum at 13; see, also, Citric Acid and Certain Citrate Salts: Preliminary Results of Countervailing Duty Administrative Review; 2012, 79 FR 36013 (June 25, 2014), and accompanying Issues and Decision Memorandum at 15.
[234] See the GOC's March 21, 2014 1st Supplemental Response, at 6-7.
[235] Id.
[236] See Mueller, 753 F.3d at 1235.
[237] See Fine Furniture (Shanghai) Limited v. United States, 748 F.3d 1365 (Fed. Cir. 2014) (Fine Furniture).
[238] Id. at 1373.

situation in this proceeding where, as in Fine Furniture, the Department is applying AFA to remedy a deficiency of necessary information due to the GOC's lack of cooperation.[239] Indeed, in concluding, the Mueller Court was careful to uphold the same principle behind the Court's ruling in Fine Furniture:

> Finally, we wish to be clear that under subsection {776(b) of the Act} we do not bar Commerce from drawing adverse inferences against a non-cooperating party that have collateral consequences for a cooperating party.[240]

Thus, in selecting from among the facts available with regard to government involvement in the operations of the acidspar suppliers, the Department's application of an adverse inference was warranted under section 776(b) of the Act and in accordance with the Court of Appeals' interpretations of that section of the statute. Accordingly, the Department does not have complete information to determine whether the acidspar/fluorspar market is sufficiently free from government involvement such that the Chinese prices may be used for benchmark purposes. While the GOC provided information on a limited number of suppliers, it is impossible for the Department to determine the percentage of the PRC acidspar/fluorspar market these companies represent. Therefore, we relied on facts otherwise available in accordance with section 776(a)(2)(A) and (C) of the Act. Consequently, we determine that fluorspar purchased by Respondents during the POI constitutes a government-provided good and a financial contribution under section 771(5)(D)(iii) of the Act.

We also disagree with the GOC that acidspar/fluorspar must be classified as an "essential good" as outlined in the Georgetown Applicability Memorandum in order for the Department to find government interference in the market. In the first place, the GOC's claim is misplaced, as the relevant discussion in the Georgetown Applicability Memorandum pertained specifically to formal, i.e., de jure, price controls, which are not essential to an LTAR analysis that, by necessity, examines factual and circumstantial evidence regarding the adequacy of remuneration for the good in question. As we noted in the Preliminary Determination,[241] information on the record provided by the GOC also indicates that it placed great emphasis on encouraging the development of the fluoride chemical industry in recent years.[242] Specifically, in the "2011 Catalogue for Guiding Industrial Restructuring," fine fluorine-containing chemicals are listed as "encouraged."[243] Further, in the "Decision of the State Council on Promulgating the 'Interim Provisions on Promoting Industrial Structure Adjustment' for Implementation (No. 40 (2005) (Decision 40)," which emphasizes industries encouraged by the GOC for further development through loans and other forms of assistance,[244] the chemical industries are among the favored industries listed.[245]

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[239] See Mueller, 753 F.3d at 1234.
[240] Id. at 1236.
[241] See id. at 20.
[242] See GOC's February 24, 2014, response at Exhibit A-7, and Memorandum to the File, from Alexis Polovina, Case Analyst, "Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Translation of 2011 Catalogue for the Guidance of Industrial Structure Adjustment," dated April 11, 2104.
[243] See GOC's February 24, 2014, response at Exhibit A-7.
[244] Id., at Exhibit A-6
[245] Id.

Regarding specificity, the Department has addressed the GOC's concerns before. In Kitchen Racks from the PRC, we examined information supplied by the GOC regarding the end uses for wire rod and concluded that, while numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on either an industry or enterprise basis.[246] In that case, we concluded that the industries named by the GOC were limited in number and, hence, the subsidy was specific.[247] Similarly, in this case the GOC has limited the industries to fluoride chemical industry.[248] With regard to the GOC's claim that the record lacks evidence that "PRC suppliers price acidspar differently when selling to the refrigerant industry," such a showing of preferentiality is neither necessary to nor required by our LTAR analysis under our regulations. In particular, the LTAR analysis set forth under our regulations centers on an examination of whether remuneration for the good in question was adequate based on a comparison to available benchmark prices. Thus, whether inadequate remuneration was the result of differential pricing for the good is immaterial to the analysis. Similarly, a showing of preferentiality in the form of differential pricing among potential customers of the good in question is not required by or essential to what is usually a de facto specificity analysis for LTAR programs. Such an analysis, by definition, looks to the facts regardless of the stated intentions or lack of stated intentions of the supplier. We only need to find that the subsidy is limited in some way, whether or not the limitation can actually be traced to any intentions explicitly stated. Therefore, we continue to find this program was specific within the meaning of 771(5A)(D)(iii)(II), based on the GOC's response that fluorite is predominantly used by the refrigerant industry.[249]

Finally, with regard to the GOC's contention that our AFA finding of suppliers to be public authorities is incompatible with the Georgetown Applicability Memorandum findings, we find the contention to be specious. In the first place, the case-specific facts, or lack thereof, in this proceeding cannot be the basis for negating our Georgetown Applicability Memorandum findings, which were based on a broad, systemic analysis of the overall Chinese market. In any case, the GOC grossly mischaracterizes our Georgetown Applicability Memorandum findings. The main thrust of those findings was that, notwithstanding a few exceptional instances of de jure market-oriented reforms, the state continues to exercise effective control overall. For example, the Georgetown Applicability Memorandum states that while China's non-market economy today is more flexible than Soviet-style economies of the past, it nevertheless remains "riddled with the distortions attendant to the extensive intervention of the PRC Government," and that while private enterprises may generally be free to pursue entrepreneurial activities, they "still conduct all business within the broader, distorted economic environment over which the PRC Government has not ceded fundamental control."[250] Second, our findings in this proceeding rely on adverse inferences precisely because the GOC failed to cooperate to the best of its ability by not providing complete responses as to the nature and extent of government

[246] See Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009) ("Kitchen Racks from the PRC") and accompanying Issues and Decision Memorandum at "Provision of Wire Rod for Less than Adequate Remuneration."
[247] Id.
[248] See GOC's February 24, 2014, response at Exhibit A-7.
[249] See the GOC's February 24, 2014, submission at 19.
[250] See Georgetown Applicability Memorandum at 5.

ownership and control of the suppliers, necessitating our resort to a facts available remedy that is provided for under U.S. law, as well as WTO rules. As such, the GOC has no factual basis for its claim that these suppliers do not meet the definition of public entity under U.S. law.

Comment 4: Whether a Countervailable Subsidy has been Provided Related to Fluorspar Mining Rights and Whether Partial AFA is Warranted For the Mining Rights for LTAR Program

GOC's Comments:

- The Georgetown Accountability Memorandum states that SOEs have the right and obligation to act as independent economic entities under the 1994 Company Law (as amended 2006), including import and export decisions on amount and price.[251] Therefore, the Public Body Analysis memorandum is not sufficient to sustain a finding that the transferor of Juhua Mining's fluorspar mining rights was a public authority because there is no case-by-case analysis regarding the local government-owned entity.
- The Petitioner did not provide any evidence of government or CCP involvement in the transferor's day-to-day management of business decisions.
- Therefore, the Georgetown Accountability Memorandum should apply absent any rebuttal evidence showing de facto government control.
- Regarding the benefit element, the GOC noted acidspar was not one of the 34 key minerals,[252] and it provided detail on how the granting of mining rights for fluorspar in the PRC is a legal process, governed by published administrative procedures and subject to merit-based assessment.[253] This is the same process used to grant mining rights for other non-key minerals.
- The GOC submitted the Mining Right Assignment/Transfer Agreement for all relevant transactions for the Respondents, whereas the Petitioner did not provide any record evidence showing a de jure or de facto practice in the PRC of granting preferential treatment for fluorspar mining rights, as compared to other minerals of the same type.
- As in the fluorspar for LTAR program, the Department has applied a flawed product-specific analysis of the specificity element in the mining rights for LTAR program based on end use of the input in question.
- Without finding that the GOC failed to act in to the best of its ability, the Department nonetheless applied an adverse inference under the guise of an FA call in determining that the transferors of Xingguo County Zhongying Mining Co. Ltd.'s ("Zhongying Mining") mining rights in 2005 and 2006 were government authorities, which is not supported by the record or legal basis.
- The GOC made multiple attempts to obtain the requested information, and the record contains sufficient evidence for the Department to do a complete analysis of the government authority issue. While two of the transferor companies no longer exist, the GOC worked with Zhongying Mining to provide a GOC-certified statement that they were owned by individuals. Further, one of the transferors, Shengyuan Fluorite Co., Ltd. ("Shengyuan"), was issued a notice for operating without a government safety

[251] Id., at 8.
[252] See GOC CVD QR at 25.
[253] Id. at 23-27.

certificate,[254] making it unlikely that it was a government authority. The other transferor, Xingguo County Jinxinglong Fluorite Mine ("Jinxinglong"), was issued a safety certificate from the local branch of the GOC stating that it was owned by individuals.

- The Department disregarded this direct evidence and instead relied on Article 3 of the Mineral Resources Law of the PRC, which states that all mineral resources belong to the state in order to support an FA call that the two transferors are authorities.
- Thus, the Department selected the less probative evidence on the record in applying an adverse inference to find an element of subsidy exists.
- The adverse inference is precluded by the statute as the Department itself does not argue that the GOC did not cooperate to the best of its ability.
- The two mining rights agreements placed on the record by the GOC demonstrate that neither was transferred directly by a branch of the GOC, but rather an enterprise acting as a market participant.
- If the Department, without any evidence, can presume government control over and PRC enterprise, then the Georgetown Applicability rationale must be overturned and the GOC requests this investigation be terminated.

Petitioner's Rebuttal Comments:

- The evidence the GOC points to in order to demonstrate that the two companies from which Zhongying Mining purchased mining rights were not authorities under section 771(5)(B) of the Act only shows that they were "owned by individual respectively"[255] but does not state whether they were controlled by the GOC and thus does not demonstrate that they were not government authorities.
- While one of the companies was cited for operating without a safety permit, this does not by itself mean that the company is not an authority.
- The GOC's argument that answering questions regarding a company is not required does not address the issue as to whether the GOC cooperated with the Department to the best of its ability.
- While the evidence on the record shows that the GOC owns all mining resources, and therefore the mineral resources in this case were granted by an authority, the Department was still justified in using an adverse influence.

Department's Position: We disagree with the GOC that partial AFA was not warranted. Contrary to the GOC's argument that there was no case-by-case analysis of the entity that transferred mining rights to Juhua Mining, we noted, based on record evidence, that the transferor was 100 percent owned by a local government agency.[256] We also noted that under the Mineral Resources Law of the PRC, all mineral resources belong to the State and the rights to mine state-owned resources were provided by a wholly owned government entity.[257] As such, we determined that the conferral of the right to mine State-owned resources by an entity wholly owned by the government provided a subsidy from an "authority" as defined under section

[254] See GOC's questionnaire response, dated July 22, 2014.
[255] See GOC Case Brief dated September 2, 2014, at 22 ("GOC Case Brief").
[256] See Post-Prelim Determination at 7, citing the GOC's June 10, 2014 Questionnaire Response at page 1.
[257] See Post-Prelim Determination at 7.

771(5)(B) of the Act.[258] As we noted in Comment 1 above, under section 782(c)(1) of the Act, the burden is on the GOC, not the Department, to present information to support claims that contradict the record evidence.[259] In this case, the GOC provided no substantive evidence that detracts from the record information indicating that the entity that transferred mining rights to Juhua Mining was an authority.

With regard to the mining rights obtained by Sinochem Taicang's cross-owned affiliate Zhongying Mining in 2005 and 2006, the GOC did not provide a response to the Input Producer Index for the transferor companies,[260] and instead simply claimed that Shengyuan Fluorite Co., Ltd. and Xingguo County Jinxinglong Fluorite Mine were owned by individuals and no longer in existence, but provided no documentary support for these claims.[261] We then issued a supplemental questionnaire to the GOC, requesting again that it provide responses to the Input Producer Appendix.[262] In response, the GOC stated that because the companies are no longer in existence, the GOC was unable to locate "the type of information requested in the Input Producer Appendix."[263] In the Preliminary Determination, we noted that the GOC declined to respond to any of the questions in the Input Producer Appendix, and instead continued to argue that two of the companies no longer existed, whereas the request for information pertained specifically to the time period during which the companies were in existence.[264] Additionally, the Department provided the GOC with an opportunity to remedy the deficiency, pursuant to section 782(d) of the Act, and the GOC continued to submit incomplete information regarding the transferor companies. Based on the GOC's repeated failures to provide even partial information for any of the questions in the producer index, we find that it failed to cooperate to the best of its ability when failing to respond to our repeated requests for information.

The resulting lack of information impeded our ability to conduct a full analysis as to the legal status of the companies at the time these mining rights were transferred and, thus, necessitated the application of facts available and adverse inferences under section 776(b) of the Act. In particular, we relied on the Mineral Resources Law of the PRC,[265] which states under Article 3 that "Mineral resources belong to the State… State ownership of mineral resources, either near the earth's surface or underground, shall not change with the alteration of ownership or right to

[258] As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority. 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. See Memorandum to the File, from Alexis Polovina, Case Analyst, Re: Analysis of Public Bodies in the PRC in Accordance with the WTO Findings, dated April 11, 2014, at page 37.
[259] See e.g., Certain Oil Country Tubular Goods From the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 79 FR 41964 (July 18, 2014) ("OCTG from Turkey") and accompanying Issues and Decision Memorandum at Comment 2, stating, "as directed by section 782(c)(1) of the Act, the responsibility was with the GOT, and not the Department, to propose and present alternative data that we could use to analyze the Turkish HRS market."
[260] See Supplemental Questionnaire Response for MOFCOM, dated June 27, 2014, at pages 2-3.
[261] See id.
[262] See Letter to MOFCOM, from the Department, dated July 18, 2014.
[263] See Supplemental Questionnaire Response from MOFCOM, dated July 22, 2014, at page 3.
[264] See Post-Prelim Determination at 6.
[265] See JUHUA's February 24, 2014, questionnaire response at Exhibit P.D.7.

the use of the land which the mineral resources are attached to."[266] Contrary to the GOC's contention that we selected the less probative evidence on the record, we found and continue to find that the plain language in this law amply points to the State as the ultimate holder and transferor of all mining rights. In this light, we find unpersuasive the points made by the GOC with regard to certain details about the safety certifications for Shengyuan and Jinxinglong, because they provide no dispositive evidence that these companies were private entities or otherwise free of government control. Otherwise, the GOC would have us make dubious inferences regarding these transferor companies based on scant evidence that, in our view, is insufficient to overcome the implications of the Mineral Resources Law. In effect, the GOC is arguing that more probative value be given to two local safety certifications than to the national law of the PRC, which the Department finds unpersuasive.

As noted in detail in Comment 3, with regard to the GOC's contention that our AFA finding of transferors of the mining rights to be public authorities is incompatible with the Georgetown Applicability Memorandum findings, we find the contention to be misplaced. The case-specific facts are not a basis for negating our Georgetown Applicability Memorandum findings, which were based on an analysis of the overall Chinese market. Further, our findings in this proceeding rely on adverse inferences precisely because the GOC has failed to cooperate to the best of its ability by not providing complete responses as to the nature and extent of government ownership and control of the suppliers, necessitating our resort to a facts available remedy that is provided for under U.S. law, as well as WTO rules.

Additionally, we do not find it relevant that acidspar is not considered a key mineral by the GOC. As noted above, information on the record provided by the GOC also indicates that it placed great emphasis on encouraging the development of the fluoride chemical industry in recent years.[267] Specifically, in the "2011 Catalogue for Guiding Industrial Restructuring" fine fluorine-containing chemicals are listed as "encouraged."[268] Further, in the "Decision of the State Council on Promulgating the 'Interim Provisions on Promoting Industrial Structure Adjustment' for Implementation (No. 40 (2005) (Decision 40)," which emphasizes industries encouraged by the GOC for further development through loans and other forms of assistance,[269] the chemical industries are among the favored industries listed.[270]

Regarding specificity, the Department has addressed the GOC's concerns above. In Kitchen Racks from the PRC, we examined information supplied by the GOC regarding the end uses for wire rod and concluded that, while numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on either an industry or enterprise basis.[271] In that case, we concluded that the industries named by

[266] See id.
[267] See GOC's February 24, 2014, response at Exhibit A-7, and Memorandum to the File, from Alexis Polovina, Case Analyst, "Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Translation of 2011 Catalogue for the Guidance of Industrial Structure Adjustment," dated April 11, 2104.
[268] See GOC's February 24, 2014, response at Exhibit A-7.
[269] Id., at Exhibit A-6.
[270] Id.
[271] See Kitchen Racks from the PRC, and accompanying Issues and Decision Memorandum at "Provision of Wire Rod for Less than Adequate Remuneration."

the GOC were limited in number and, hence, the subsidy was specific.[272] Similarly, in this case the GOC has limited the industries to fluoride chemical industry.[273] Therefore, we continue to find this program was specific within the meaning of 771(5A)(D)(iii)(II), based on the GOC's response that fluorite is predominantly used by the refrigerant industry.[274]

Comment 5: Whether the Department Should Calculate a Separate Combination Rate for Weitron

Weitron's Comments:

- The Department failed to calculate a combination rate in the Preliminary Determination for Weitron's purchases of subject merchandise from producer JUHUA.[275]
- Alternatively, the Department failed to state clearly in its instructions to U.S. Customs and Border Protection ("CBP") that the manufacturer's rate should be used for exporters such as Weitron, which do not have their own rates.
- Therefore, the Department should calculate a combination rate for JUHUA and Weitron, or provide clear instructions to CBP to collect CVD cash deposits on Weitron's exports of subject merchandise produced by the mandatory Respondents at the rate of those producers, and the subject merchandise produced by other non-mandatory Respondents at the all others rate.
- The Department's regulations at 19 CFR 351.525(c) states that benefits from subsidies provided to trading companies, which export subject merchandise, will be cumulated with benefits from subsidies from the firm, which produces the subject merchandise that is sold through the trading company, regardless whether the two companies are affiliated.
- The Department's regulations at 19 CFR 351.107(b)(1) states that the Department may establish a "combination" cash deposit rate for each combination of exporter and its supplying producer(s).
- The Department has a complete CVD questionnaire from JUHUA and company specific-rates calculated in the Preliminary Determination. The Department has all the relevant information to combine Weitron's subsidy rate with that of its individual suppliers, as JUHUA provided Weitron's data in a supplemental questionnaire.[276]
- This is the same set of facts as in DSSS, where the Department calculated a combination rate for a trading company not affiliated with the respondent, rather than the "all others" rate applied to exports of subject merchandise from other vendors.[277]
- The Department acknowledges that "rates established for particular combinations of exporters and producers are the most accurate rate."[278]

[272] Id.
[273] See GOC's February 24, 2014, response at Exhibit A-7.
[274] See the GOC's February 24, 2014, submission at 19.
[275] See Preliminary Determination.
[276] See JUHUA's Fourth Supplemental Questionnaire Response, dated June 3, 2014, at 1-3.
[277] See Drawn Stainless Steel Sinks from the People's Republic Of China: Preliminary Affirmative Countervailing Duty Determination, 77 FR 46717, 46721-46722 (August 6, 2012) ("DSSS").
[278] See Antidumping Duties; Countervailing Duties, 62 FR 27303-27304.

- Even in cases where a combination rate is not calculated, the Department has instructed CBP to require that exporters, which do not have their own rates, be required to deposit the CVD rate at the rate applicable to its supplying manufacturer.[279]
- These instructions conform to the Department's regulations and policy that subsidies received by the manufacturer accrue to the benefit of the trading company that sells the goods to the United States.

Department's Position: We agree with JUHUA that the facts in this case are similar to those in DSSS.[280] Specifically, in this case, JUHUA submitted a complete CVD questionnaire and company-specific supplemental questionnaire responses from Weitron, and we calculated company-specific subsidy rates in the Preliminary Determination and Post-Prelim Determination.[281] As explained in the comments above, we expensed the benefit from two grants Weitron received to pre-POI years, thus allocating zero to the POI. Therefore, the cash deposit rate for Weitron exports will simply be the rate applicable to the producer of the merchandise under consideration.

Comment 6: Whether the Department Correctly Treated the Tax and VAT Programs as Recurring Subsidies

Bluestar's Comments:

- In the Post-Prelim Determination, the Department included benefits received by Bluestar under the Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies in Bluestar's subsidy rate. However, this type of program is usually treated by the Department as a recurring subsidy, and the benefits are therefore normally allocated in the year in which the benefit was received.
- This benefit was reported on Bluestar's tax return filed in 2007, and there is no evidence that any benefits accrued to Bluestar during the POI. Therefore, it was contrary to the regulations for the Department to have allocated this benefit to the POI.

Sinochem's Comments:

- In the Post-Prelim Determination, the Department treated the VAT exemption on imported equipment as a non-recurring subsidy, and the programs regarding VAT exemption on domestic equipment and income tax reductions for purchases of domestically produced equipment as recurring subsidies.
- The Department's questionnaire states that when an indirect tax or import charge exemption is provided for or tied to capital structure or assets, the Department may treat it as a non-recurring benefit. Therefore, the Department should treat the VAT refund and income tax reductions on purchases of domestically produced equipment as non-recurring subsidies, consistent with its treatment of the VAT exemption on imported equipment.

[279] See, e.g., Drill Pipe From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 75 FR 33245 (June 11, 2010), Message 0167301 (June 16, 2010).
[280] See DSSS, 77 FR at 46721-46722.
[281] See Department's JUHUA Preliminary Calculation Memo, dated April 11, 2014, and JUHUA Post-Prelim Calc. Memo.

Department's Position: We agree with Bluestar that the Department should have treated its tax benefits under the Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies program as a recurring subsidy, and, as such, any benefits should have been allocated in the year in which the benefit was received.[282] Specifically, in the Post-Prelim Determination, in the description for this program, the Department stated that "we treated the tax savings as recurring subsidies consistent with 19 CFR 351.509(c)(1)."[283] Additionally, Bluestar reported, and we were able to verify, that its benefits under this program were received in 2006 and were included in its tax return filed in 2007.[284] Therefore, consistent with 19 CFR 351.509(c)(1), for this final determination we have allocated Bluestar's benefits received under this program entirely to the year they were received, i.e., "expensed" to 2007.

With regard to Sinochem's comments, we agree in part. When an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL, consistent with 19 CFR 351.509(c)(2).[285] In the Post-Prelim Determination, we stated that we intended to treat the benefits received under both the VAT and Tariff Exemptions on Imported Equipment for Favored Industries and the VAT and Tariff Rebates on Domestically Produced Equipment for Encouraged Projects programs as non-recurring. However, in the company-specific calculation for Sinochem we erroneously treated the benefits received under the VAT and Tariff Rebates on Domestically Produced Equipment for Encouraged Projects program as recurring.[286] For this final determination, we are correcting our calculation for Sinochem under this program by treating the benefit as non-recurring and allocating the benefit over the AUL to determine the amount allocable to the POI.[287] However, regarding the income tax reductions for purchases of domestically produced equipment, we disagree with Sinochem that we should similarly treat the benefits as non-recurring. In contrast to our practice with regard to VAT and tariff incentives for the purchase or import of equipment, we have normally continued to treat the benefits from direct taxes as recurring subsidies, consistent with 19 CFR 351.509(c)(1).[288] Therefore, for the final determination, we are continuing to treat Sinochem's benefits from income tax reductions for purchases of domestically produced equipment as recurring benefits, and allocating all such benefits received in the POI entirely to the POI. This is consistent with our treatment of similar benefits for Bluestar, as well as with our normal practice.

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[282] See, e.g., Warmwater Shrimp.
[283] See Post-Prelim Determination at page 14.
[284] See Bluestar's Response to the New Subsidy Questionnaire, dated May 21, 2014, at page 3. See also Memorandum to The File, Through Catherine Bertrand, Program Manager, Office V, from Katie Marksberry and Josh Startup, Case Analysts; Re: Verification Report of Jiangsu Bluestar Green Technology Co., Ltd., dated August 20, 2014, ("Bluestar Verification Report") at page 8.
[285] See 19 CFR 351.524(c)(2)(iii); see also 19 CFR 351.524(d)(2).
[286] See T.T. International Post-Preliminary Analysis Memo at pages 4-5.
[287] See T.T. International Final Analysis Memorandum, dated concurrently with this memorandum.
[288] See, e.g., Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011, 79 FR 106 (January 2, 2014) ("Aluminum Extrusions"), and accompanying Issues and Decision Memorandum at Comment 1.; see also Certain Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 45472 (August 2, 2010), and accompanying Issues and Decision Memorandum at Comment 1, 4 and 11; see also Pre-Stressed Concrete Steel Wire, and accompanying Issues and Decision Memorandum at sections C. and O.

Comment 7: Bluestar's Minor Corrections With Regard to Electricity

Bluestar's Comments:

- The Department accepted Bluestar's minor corrections with respect to its electricity calculation at verification, and the Department should use these revised per-unit amounts to calculated benefits under this program for the final determination.

Department's Position: The Department may determine under certain circumstances to accept information that a respondent, in preparing for verification, realizes it omitted or incorrectly reported.[289] As Bluestar has correctly noted, at verification in this case, the Department accepted and verified Bluestar's minor corrections with regard to its electricity calculation.[290] Therefore, for the final determination, we have revised our calculation of Bluestar's electricity benefit accordingly.

Comment 8: Whether the Department Correctly Calculated the Electricity Benchmark

Bluestar's Comments:

- The Jiangsu Province benchmark electricity rates used by the Department are inclusive of VAT, which can be demonstrated by comparing those rates with the VAT-exclusive rates reported by Bluestar.
- Even if the Department selects electricity rates based on AFA, it must do so fairly, by ensuring that the benchmark rate that is compared to the VAT-exclusive rate reported by Bluestar is also VAT-exclusive.

Petitioner's Rebuttal Comments:

- Bluestar should have demonstrated when and how much VAT tax it paid and that Jiangsu province actually levied a 17 percent VAT tax on other users.
- If the Department adjusts the AFA electricity benchmark to exclude VAT, it should consider whether the resulting rate is sufficient to encourage responsiveness.

Department's Position: In accordance with 19 CFR 351.511(a)(2)(iv), the Department adjusts the comparison prices to reflect the price that a firm actually paid or would have paid if it imported the product, including delivery charges and import duties. In other words, the Department must make an apples-to-apples comparison in determining whether the provision of a good provides a benefit.[291] Bluestar demonstrated on the record, and the Department verified that the electricity prices paid by Bluestar were exclusive of VAT.[292] Additionally, through a comparison of the prices paid by Bluestar and the electricity schedules submitted by the GOC, Bluestar demonstrated that the electricity prices placed on the record by the GOC are inclusive of

[289] See, e.g., Welded Stainless Pressure Pipe From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value, 79 FR 31092, 31093 (May 30, 2014).
[290] See Bluestar Verification Report at pages 2-3 and 7.
[291] 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) and accompanying Issues and Decision Memorandum at Comment 9.
[292] See Bluestar Verification Report at page 7.

VAT.[293] Therefore, in order to ensure an "apples-to-apples" comparison between the prices paid by Bluestar and the VAT-exclusive benchmark, and therefore avoid a distorted benefit calculation, for this final determination we have adjusted Blustar's reported electricity purchases to include the 17 percent VAT tax paid by Bluestar. Additionally, we disagree with Petitioner's argument that Bluestar should have demonstrated that the Jiangsu province levied a 17 percent tax on other users. Using the information available on the record, we find that Bluestar reasonably demonstrated that its payments were exclusive of VAT and that the rate schedule submitted by the GOC was exactly 17 percent lower. Petitioner has not provided any evidence or argument that demonstrates that Bluestar's assertion is unreasonable or unsupported by the record evidence.

Comment 9: Whether the Department Correctly Included Purchases Made for Trading Purposes in its Fluorspar Calculation for JUHUA

JUHUA's Comments:

- The Department erred in countervailing Kaisheng's purchases of acidspar for sale to unaffiliated companies.
- The Department's practice of handling trading companies in LTAR transactions is to calculate a benefit only between the trading company and purchaser. The Department is not concerned with whether the trading company itself received a benefit in its purchase from a government-owned producer.[294]
- Kaisheng does not produce acidspar or subject merchandise, therefore its purchases of acidspar for trading purposes sold to unaffiliated companies should not be countervailed. This situation is akin to Aluminum Extrusions, where the Department found the inputs purchased by an affiliated supplier of the respondent/subject merchandise producer were not countervailable.[295]

Petitioner's Rebuttal Comments:

- Because Kaisheng is affiliated with a manufacturer of subject merchandise and received a subsidy, it is irrelevant under 19 CFR 351.525(b)(6) how Kaisheng actually used that subsidy.
- Unlike Aluminum Extrusions, where the Department found the government provided discount aluminum to a company that used a portion of it to produce non-subject merchandise, here JUHUA does not argue that Kaisheng used the acidspar to make non-subject merchandise. In this case, JUHUA argues that Kaisheng sold the acidspar to other companies, and therefore passed some portion of the benefit on to these other companies; however, there is no evidence on the record to support this contention, nor how much of the benefit Kaisheng provided.

Department's Position: As noted above in the Attribution of Subsidies section, in this case Kaisheng, together with other cross-owned subsidiaries of Juhua Stock, is being treated as part of

[293] See Bluestar's Case Brief at page 4.
[294] See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011, 79 FR 108 (January 2, 2014) ("Citric Acid").
[295] See Aluminum Extrusions, and accompanying Issues and Decision Memorandum at Comment 16.

respondent JUHUA in accordance with 19 CFR 351.525(b)(6)(i). Therefore, the facts in this case are not analogous to those in Citric Acid which involved a non-respondent trading company within the meaning of 19 CFR 351.525(c). Nor are they analogous to the facts in Aluminum Extrusions, in which the Department found a portion of the subsidy to be tied to non-subject merchandise and, thus, categorically conferred no countervailable benefit. Here, we determine that a respondent received the provision of a good from the government that we find to be specific, and that the good was provided for less than adequate remuneration.[296] Therefore, the respondent received a countervailable subsidy.

Under the Department's long-standing practice, we do not trace the use of a subsidy after the subsidy has been received by a respondent, and we have rejected arguments to tie the benefit from an LTAR input subsidy to specific products.[297] As noted in the Preamble to our regulations, except for particular instances such as a change in ownership of the subsidy beneficiary, we normally will not consider "subsequent events in the calculation of a subsidy," a principle arising from the provision under section 771(5)(c) of the Act against considering the effect of the subsidy in determining whether a subsidy exists.[298] Accordingly, under our normal practice, we consider the benefit from a subsidy to have been received by the beneficiary at the point of conferral and generally will not examine, and will make no adjustments for, what occurs subsequently. Kaisheng's resale of acidspar is the type of "subsequent event" for which we make no adjustments in our benefit calculation. Therefore, for the final determination we continue to countervail all Kaisheng's purchases of the acidspar, including acidspar that Kaisheng subsequently resold.

Comment 10: Whether the Department Correctly Included Purchases Made From Trading Companies in its Fluorspar Calculation for JUHUA

JUHUA's Comments:

- The Department erred in countervailing fluorspar purchases made from trading companies.
- The Department failed to make the requisite finding that the benefit to JUHUA was the result of a financial contribution made from the government authority to the trading company—the record does not show that the trading company received the fluorspar from the government authority at LTAR prices. The record only shows JUHUA purchased these inputs from trading companies at LTAR prices.

[296] See supra at Provision of Acidspar and Fluorspar for Less Than Adequate Remuneration.

[297] See e.g., Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 8, where we stated that purchases of an input for LTAR were countervailable because we do not trace subsidized inputs through a company's production process; see also OCTG from the PRC and accompanying Issues and Decision Memorandum at Comment 13.B; see also Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 76 FR 1971 (January 11, 2011), and accompanying Issues and Decision Memorandum at Comment 6.

[298] See Preamble to Countervailing Duties Final Rule, 63 FR at 65354.

- The preamble to the Final Rule indicates that inputs for LTAR are only countervailable as indirect subsidies when the private actor is entrusted or directed by the government to provide the financial contribution.[299]
- The statute permits indirect subsidies, but the statute does not permit a financial contribution to one party and a benefit to another party with no showing of a connection between the two.[300] There must be causality between the government authority, financial contribution and benefit conferred,[301] and the Department cannot presume that a trading company received an input at an LTAR price.[302]
- It does not matter if the subsidy is direct or indirect, the benefit conferred must be "in consequence of" or "by means of" the financial contribution made by the government authority.[303]
- A private trading company can adjust its price up or down independent of receipt of a government's financial contribution.
- Without establishing a benefit to a trading company, the Department cannot establish the benefit was a result of the alleged subsidy program.
- In this case there is no record evidence that the first transaction between the government authority and the trading company resulted in a benefit, nor that the trading company was entrusted or directed to apply that financial contribution to JUHUA's benefit.

Petitioner's Rebuttal Comments:

- The Department has repeatedly rejected the argument that purchases of inputs from trading companies not affiliated with government suppliers cannot be countervailed.[304]

Department's Position: We disagree with JUHUA, and continue to find that its purchases of acidspar/fluorspar from trading companies are countervailable. In prior CVD proceedings, the Department has determined that when a government's financial contribution (e.g., the provision of a good) is made through non-respondent trading company suppliers that purchase the input at issue, we attribute all of the benefit to the Respondents who purchase the input from the trading company suppliers, in order to capture the full subsidy.[305] The Department's practice in this regarded has been affirmed by the Court.[306] In such instances, when the price paid by the producer of subject merchandise is less than the benchmark price, the producers receive a benefit

[299] See Final Rule, 63 FR at 65351.
[300] See sections 771(5)(B)(i) and (iii) of the Act, stated that an authority "provides a financial contribution . . . and benefit is thereby conferred."
[301] See Stainless Steel Sheet and Strip in Coils from France: Final Results of Countervailing Duty Administrative Review, 67 FR 62098 (October 2, 2002), and accompanying Issues and Decision Memorandum at Comment 1.
[302] See Lucent Techs., Inc., v. Gateway, Inc., 580 F.3d 1301, 1327.
[303] See AK Steel Corp. v. United States, 192 F.3d 1367, 1372 (Fed. Cir. 1999) ("AK Steel").
[304] See, e.g., Citric Acid, and accompanying Issues and Decision Memorandum at Comment 5.
[305] 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), and accompanying Issues and Decision Memorandum at 10 and referencing, Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company – Specific Reviews: Certain Softwood Lumber from Canada, 69 FR 75917 (December 20, 2004) and accompanying Issues and Decision Memorandum at Comment 47.
[306] See Guangdong Wireking Housewares & Hardware Co. v. United States, 900 F. Supp. 2d 1362, 1380 (CIT 2013).

when they purchase these government-provided goods and, accordingly, receive these inputs for LTAR. Accordingly, we adopted this same approach in the instant review with respect to inputs produced by GOC authorities that JUHUA acquired through trading companies.

We disagree with JUHUA that a causal nexus, as referenced in AK Steel, is required in order for the Department to determine that inputs produced by GOC authorities and sold through trading companies to the respondent constitute a financial contribution and confer a benefit under the statute. At issue in AK Steel was the Department's determination that the Government of Korea ("GOK") entrusted or directed private Korean banks to lend to the steel industry in a manner that conformed to the GOK's industrial policies. In AK Steel, the Court determined that such a finding required evidence indicating that the GOK, in fact, pressured the private banks to lend to Korean steel producers.[307] Thus, in AK Steel, the issue centered on whether a financial contribution (in an indirect form), in fact, existed such that the Department would be able to countervail loans issued by private banks.[308] The facts of this case are different from AK Steel because we are treating the provision of the good as a direct financial contribution from government authorities based in part on AFA, as explained under Comments 3 and 4.

Comment 11: Whether Certain Types of Financing are Countervailable

JUHUA's Comments:

- The Department erred in countervailing JUHUA's bills of exchange discounting and letters of credit negotiation.
- The Department has stated that "{l}oans typically have a specified date on which the last remaining payments will be made and the obligation of the company to the creditor is fulfilled."[309]
- JUHUA's bills of exchange and letters of credit are sold to the banks prior to the maturity date and the bills of exchange and letters of credit are not used as collateral for loans.[310] The banks purchase the bills of exchange and letters of credit for less than the face value of the instruments and deduct interest and fees.[311]
- The banks do not issue loans to JUHUA that include principal amounts that must be repaid, as the Department itself verified.[312]
- For each of these types of financing, the bank did not issue money to JUHUA that JUHUA had to repay to the bank.[313]
- In a bill of exchange or a letter of credit, the instrument itself is the actual payment and not a promise to pay. Rather, the Juhua Group is selling its right to the customer's payment to the bank for a fee. When Juhua Group discounts its bills, it is not using the bill of exchange as collateral for a loan, and it does not receive any principal which must

[307] See AK Steel, 192 F.3d at 1370-1373.
[308] Id. at 1377-1378.
[309] See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, 37254 (July 9, 1993).
[310] See JUHUA's Section Supplemental Questionnaire Response, date March 28, 2014, ("JUHUA Second Supp. QR") at 4-7.
[311] Id.
[312] See JUHUA Verification Report dated August 20, 2014, at 6 ("JUHUA Verification Report").
[313] See JUHUA Second Supp. QR at 4-7.

be repaid. In this arrangement, Juhua Group is only receiving early payment on money owed to it, not receiving a loan. The result is that Juhua Group's customer's debt is transferred to the bank, and the customer must pay the bank the amount of the bill.

Sinochem's Comments:

- The Department erred in treating entrusted loans as subsidized policy loans.
- Entrusted loans were not loans provided by state-owned commercial banks but rather by an affiliated sister company of Sinochem. The Department did not countervail most of these entrusted loans, but did countervail some (e.g., loan #5 provided by Baowen Factory to Sinochem Lantian). These entrusted loans should not be treated as subsidized loans.

Petitioner's Rebuttal Comments:

- Whether or not JUHUA's financial instruments are actual "loans" as such is irrelevant, so long as they constitute a financial contribution provided on non-market terms. Under Section 771(5(D)(i) of the Act if the bank "pays" more for these rights than a market actor would, then it is providing a financial contribution through a direct transfer of funds, regardless of whether it is foregoing revenue due under Section 771(5(D)(ii).
- The record is also not clear as to whether the bank has a course of action against JUHUA should the customer fail to pay the bank.

Department's Position: We agree with Petitioner. It is irrelevant to our subsidization analysis whether bills of exchange discounting and letters of credit negotiation can be considered to be "loans" in the strict sense suggested by JUHUA. However they may be characterized, e.g. as cash advances, these are financing instruments that provide a financial contribution, confer a benefit and are specific within the meaning of sections 771(5)(D), 771(5)(E), and 771(5A), respectively. While there is no "principal" as such, the cash advance is a form of contingent funding in which the company receives money it would not otherwise have. In a sense, the bank is lending to the company for the time period before the bills and letters become due and payable by the third party customer of the company. In this arrangement, the discounts on the face value of the instruments function as the "interest" payments, albeit paid entirely in advance. Thus, such instruments can be compared to standard loans for the purposes of determining if and to what extent they provide a subsidy.

With regard to entrusted loans, we agree with Sinochem. Consistent with our practice in prior cases,[314] we agree that entrusted loans are generally not countervailable. Therefore, we have removed all of Sinochem's entrusted loans from the calculations for this final determination.

[314] See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses Final Affirmative Countervailing Duty Determination, 75 FR 59217 (September 27, 2010) and accompanying Issues and Decision Memorandum at Comment 38.

Comment 12: Whether the Department Used the Correct Denominator for Juhua Mining

JUHUA's Comments:

- The Department erred when it calculated Juhua Mining's ad valorem rate for the electricity for LTAR subsidy program when it divided the total benefits by Juhua Mining's combined POI sales.[315]
- Juhua Mining is a cross-owned input supplier, under 19 CFR 351.525(b)(6)(iv), which states that the benefit for subsidies received for input suppliers should be attributed to the combined sales of the input and downstream products produced by both corporations.
- Therefore the benefit should be attributed to Juhua Stock's (the producer of the subject merchandise) consolidated sales, plus Juhua Mining's total sales, minus sales between the two companies.

Department's Position: We agree with JUHUA that we used the incorrect denominator to calculate the electricity LTAR ad valorem rate for Juhua Mining. Therefore, consistent with our allocation methodology described above, for the final determination we have using Juhua Stock's consolidated sales, plus Juhua Mining's sales, minus the sales between the two companies.

Comment 13: Whether the Department Correctly Attributed the Subsidies for Sinochem Taicang

Sinochem's Comments:

- The Department should be consistent in using the combined sales of Sinochem Taicang and Sinochem Xi'an as the denominator for Sinochem Taicang, in accordance with 19 CFR 351.525(b)(6)(ii). Although it does not supply subject merchandise to T.T. International, Sinochem Xi'an is a producer of subject merchandise. The Department's regulations specify that if one or more cross-owned companies produce subject merchandise, the Department will attribute the subsidies received by either or both to the products produced by both companies.
- The fact that Sinochem Xi'an is a parent of Sinochem Taicang should not disqualify the application of 19 CFR 351.525(b)(6)(ii), and the Department has previously applied 19 CFR 351.525(b)(6)(ii) when one of the producers of subject merchandise was also a parent of another producer.[316]
- Although the regulations discusses only subsidies received by producers, subsidies attributed to Taicang should be treated similarly, as a subsidy benefit attributed to Taicang is a subsidy benefit deemed to have been received by Taicang. In Certain Steel Wheels from the PRC, the Department applied 19 CFR 351.525(b)(6)(ii) to subsidies received by an input supplier and attributed to the subject merchandise producers.

[315] See JUHUA's Post-Prelim Calculation Memorandum, dated July 25, 2014, at 3 ("JUHUA Post-Prelim Calc. Memo").

[316] Citing Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 77 FR 17017 (March 23, 2012) ("Certain Steel Wheels from the PRC"), and accompanying Issues and Decision Memorandum at 5-6.

- As Sinochem Xi'an is a parent company, 19 CFR 351.525(b)(6)(iii) directs the Department to use its consolidated sales as the denominator. Sinochem Xi'an's consolidated sales incorporate the sales of Sinochem Taicang, therefore the Department should use Sinochem Xi'an's consolidated sales as the combined sales of Sinochem Xi'an and Sinochem Taicang.

Petitioner's Rebuttal Comments:

- The Department did not calculate subsidy benefits for loans received by Sinochem Xi'an. Therefore, if subsidies received by Sinochem Xi'an are not included in the benefit calculation for T.T. International, because Sinochem Xi'an did not supply T.T. International, then including Sinochem Xi'an in the subsidy denominator would result in a mismatch between the numerator and denominator.
- 19 CFR 351.525(c) states that "{b}enefits from subsidies provided to a trading company which export subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company." Thus, the Department should not consider the sales of subject merchandise producers that do not supply subject merchandise to the trading company and whose subsidies are not included in the subsidy rate calculation.

Department's Position: We agree with Sinochem Taicang that under 19 CFR 351.525(b)(6)(ii), the Department should use the combined sales of Sinochem Taicang and Sinochem Xi'an as the denominator for subsidies received by Sinochem Taicang, as they are both producers of subject merchandise. However, with regard to subsidies that are provided to Sinochem Taichang, rather than to Sinochem Xi'an, the appropriate denominator sales for Sinochem Xi'an are its unconsolidated sales, i.e., its sales as a producer of subject merchandise rather than as a parent company, consistent with the attribution construct under 19 CFR 351.525(b)(6)(ii). Therefore, for subsidies received by Sinochem Taicang, we will use the combined sales of Sinochem Taicang and the unconsolidated sales of Sinochem Xi'an as the denominator. On the other hand, where the subsidy is received by Sinochem Xi'an, then its consolidated sales as a parent company become the relevant denominator under 19 CFR 351.525(b)(6)(iii).. Therefore, we will use Sinochem Xi'an's consolidated sales as the denominator for subsidies received by Sinochem Xi'an.

Comment 14: Whether the Department Correctly Calculated the Benchmark for Loan Programs

Sinochem's Comments:

- In the Preliminary Determination, the Department stated that it determined the benchmark interest rate based on the year of the loan agreement, and applied this method regardless of whether the interest rate was fixed or variable.
- For variable interest rate loans where the interest rate is determined by the prevailing interest rate maintained by a third bank when the interest payment is due, the Department should use the benchmark interest rate as of the date of the interest payment, not the date of the loan contract.
- For the reported variable interest loans, the actual interest paid was not known at the time when the loan contract was signed, but at the date when the interest payment was due. However, the Department used the interest rate in effect when the loan contact was signed

(e.g. the 2011 interest rate), even though the actual interest payments were all made in 2012. This is unreasonable and the Department should use the benchmark interest rate for the date when the interest payment was due.

Petitioner's Rebuttal Comments:

- The Department's practice in this case was consistent with its earlier approach in Carbon Steel Flat Products from Korea, which was reasonable. The Department should not change its practice here.[317]

Department's Position: We agree with Sinochem, in part. With respect to short-term loans, the CVD regulations are explicit. Under 19 CFR 351.505(a)(2)(iv), for short-term loans, the Department will normally use an interest rate on comparable commercial loans based on "the year in which the government-provided loan was taken." In CVD proceedings for Chinese products, as described at length in the Preliminary Determination, the Department has followed a long-established methodology for benchmarking RMB-denominated short-term loans (whether with fixed or variable rate) using an external benchmark derived from a regression analysis of interest rates in similar-income countries, adjusting for inflation and certain other factors.[318] We continue to follow this methodology in this proceeding. Therefore, consistent with this methodology and as required under 19 CFR 351.505(a)(2)(iv), we continue to base the short-term loan benchmark on interest rates in the same year as the loans were taken out by Sinochem.[319]

With regard to long-term variable loans, however, upon closer examination of the record and our regulations, we agree with Sinochem. Under the Department's regulations, we are to take a bifurcated approach to identifying and measuring the benefit from a long-term variable loan provided by the government (or government authorities). Specifically, under 19 CFR 351.505(a)(5), we are instructed to determine first whether such a loan confers a benefit by comparing the interest rates "for the year in which the terms of the government-provided loan were established," generally the year the loan is issued. If, based on this comparison, we find that the loan conferred a benefit in the year the loan was issued, then in calculating the actual amount of the benefit in the POI, we are instructed to go to subsection (c)(4) of the regulation. Under 19 CFR 351.505(c)(4), the Department is to calculate the amount of benefit from a long-term variable-interest loan that is "attributable to a particular year by calculating the difference in payments for *that* year." (Emphasis added.) This means that the POI benefit is to be calculated by a comparison of payments in the POI year, i.e., a comparison between actual interest payments and interest payments otherwise payable under a benchmark rate in the POI year. Therefore, consistent with 19 CFR 351.505(c)(4), we recalculated the benefit for Sinochem's long-term, variable-interest rate loans using the benchmark as of the date of the payment, i.e., in the POI or 2012, rather than the date of the loan agreement, 2011.

[317] Citing Corrosion- Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 77 FR 13093 (March 5, 2012) ("Carbon Steel Flat Products from Korea").
[318] See Preliminary Determination, and accompanying Issues and Decision Memorandum at 13-15.
[319] See id. and accompanying Issues and Decision Memorandum at Comment 1.

As to Petitioner's comment regarding the final results in Carbon Steel Flat Products from Korea, because the Petitioner provided no specific page citation to the relevant discussion in those results, we are uncertain as to precisely how Petitioner believes this case supports its argument. In any event, the benchmarking methodology we have adopted for loans in the non-market economy context in the PRC differs from our loan benchmarking approach for loans in market economy countries, e.g., Korea, in that the benchmarks for PRC loans are derived from a regression analysis of interest rates from a set of countries with a similar level of income as the PRC. See above under "Benchmark Interest Rates" at page 11 for the full description. In any case, the loans at issue in Carbon Steel Flat Products from Korea were short-term loans, whereas the loans in question here are *long-term* loans, which are subject to a different benchmarking methodology under our practice.

Comment 15: Whether the Department Double Counted Loans Received by Sinochem Lantian

Sinochem's Comments:

- In the Post-Prelim Determination the Department found that both Sinochem Lantian and Sinochem Taicang received loans from the China Export & Import Bank and calculated subsidy rates for both companies. However, Sinochem Taicang reported that Sinochem Lantian was the original borrower on these loans, but they were used by Sinochem Taicang. These loans were reported in the loan templates of both Sinochem Lantian and Sinochem Taicang.
- The Department should not double count the benefit by calculating a subsidy rate for both Sinochem Lantian and Sinochem Taicang for the same loan which was extended by a commercial bank to Sinochem Lantian and then from Sinochem Lantian to Sinochem Taicang.

Department's Position: We agree with Sinochem Taicang that we should have calculated a benefit only once for the loans borrowed from the China Export & Import Bank and used by Sinochem Taicang. The Department inadvertently calculated the benefit for these loans twice as they were included in both Sinochem Taicang and Sinochem Lantian's submitted loan templates. Therefore, for this final determination the Department has only calculated a subsidy rate for the loans as originally borrowed by Sinochem Lantian from the China Export & Import Bank, and has excluded the reported entrusted loans from Sinochem Lantian to Sinochem Taicang, which represent the same loans, from the subsidy rate calculation.

Comment 16: Whether the Department Correctly Calculated the Acidspar Benchmark

Sinochem's Comments:

- In the Preliminary Determination and the Post-Prelim Determination, the Department added international freight and import duty to the GTA freight-on-board ("FOB") price.
- The Department's regulations provide that the Department will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question. Therefore, the benchmark selected by the Department for acidspar must be for acidspar sold in the prevailing market condition, including transportation.

- The three AHF producers, which purchased acidspar, did so locally, and did not import acidspar during the POI. Therefore the price they paid for acidspar did not include international freight or import tax. This was the prevailing market conditions under which these AHF producers purchased acidspar.
- Even though the Department rejected domestic purchase prices as a benchmark, the benchmark price based on the world price could be used to measure the ex-factory price of the acidspar purchased locally by the AHF producers.
- The Appellate Body has cautioned that countervailing measures must not be used to offset differences in comparative advantages between countries. Since the PRC has a comparative advantage in having an abundant local supply of acidspar, which negates the need to pay international freight and import tax, including those costs in the benchmark eliminates the PRC's companies' comparative advantage.

Petitioner's Rebuttal Comments:

- The Department's regulations at 19 CFR 351.511(a)(2)(iv) explicitly require it to include import duties and freight in world benchmark prices.[320]

Department's Position: We agree with Petitioner that under the relevant regulation at 19 CFR 351.511(a)(2)(iv) the Department is to include international freight and import duty in the benchmark prices in calculating the benefit under the fluorspar for LTAR program. Specifically, this section of our regulations directs the Department to adjust the comparison price, i.e., the benchmark price, "to reflect the price a firm actually paid or would pay if it imported the product." Thus, as long as the ocean freight costs are reflective of market rates for international ocean freight, and the import duties are reflective of actual import duties, and representative of the rates an importer – and not necessarily the respondent specifically – would have paid, then the prices are appropriate to include in our benchmark, consistent with the Department's practice.[321] Because these prices are for shipping acidspar/fluorspar from the countries included in our benchmark to the PRC, the prices are appropriate to include in our benchmark.

Comment 17: Whether the Department Should Cumulate the Subsidy Rates of Three AHF Suppliers to Sinochem

Sinochem's Comments:

- In the Preliminary Determination, the Department investigated subsidies to three cross-owned suppliers of AHF. The Department then calculated a subsidy rate for each supplier by dividing the subsidy received by the combined sales of that producer and Sinochem Taicang. The Department then aggregated the three subsidy rates calculated for the individual suppliers to calculate a combined subsidy rate for Sinochem Taicang.

[320] Citing, e.g., OCTG from Turkey.

[321] See, e.g., Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination, 74 FR 64045 (December 7, 2009), and accompanying Issues and Decision Memorandum at Comment 13.D; see also Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 79 FR 54963 (September 15, 2014), and accompanying Issues and Decision Memorandum at Comment 2 at 25.

- 19 CFR 351.525(b)(c)(ii) directs the Department to calculate a subsidy rate for inputs received for LTAR by dividing the subsidy received by the input provider by the combined sales of the input producer and the downstream producer (less intercompany sales). The regulations do not explain how this rule should be applied when several cross-owned suppliers of a single input are involved.
- Because the three suppliers supplied a single input, which is not cumulated in production, they should be considered to be a joint supplier, because the situation for Sinochem Taicang would have been the same had the three suppliers been branches of a single legal entity. Therefore, the Department should aggregate the subsidy received by all three AHF suppliers and divided that amount by the combined sales of the three suppliers, Sinochem Taicang, and Sinochem Xi'an (less intercompany sales) to arrive at the subsidy rate for Sinochem Taicang.

Petitioner's Comments:

- Including Sinochem Xi'an's sales in the denominator would result in a mismatch between the numerator and denominator if the subsidies that Sinochem Xi'an received were not included in the calculation of T.T. International's benefit.
- The Department's regulations at 19 CFR 351.526(c) state that benefits to a trading company, which exports subject merchandise, shall be cumulated with the benefits from subsidies provided to the firm, which is producing subject merchandise that is sold through the trading company, regardless of if the trading company and producer are affiliated.
- Therefore, the Department should not include the sales of subject merchandise producers that do not supply subject merchandise to the trading company and whose subsidies are not includes in the subsidy rate calculation for the producer that supplies the trading company.

Department's Position: We disagree with Sinochem. In the first instance, Sinochem mischaracterized the attribution rule under 19 CFR 351.525(b)(6)(ii), which pertains to attribution between cross-owned producers of subject merchandise. To the extent that Sinochem was actually referring to 19 CFR 351.525(b)(6)(iv) pertaining to attribution for subsidies to an input supplier, contrary to Sinochem's argument, this regulation is clear in instructing the Department how to attribute a subsidy to a cross-owned input supplier. The regulation states:

> (iv) Input suppliers. If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

The regulation states that the Department will attribute subsidies to the combined sales of the input and downstream products produced by *both corporations*. (Emphasis added.) This rule thus envisions the benefit from a subsidy to an input supplier to flow down the production process to the producer(s) receiving the input and nowhere else. Specifically, 19 CFR 351.525 does not include a provision that the Department will treat all cross-owned suppliers of an input as a "joint supplier," as Sinochem requests at page 23 of the Sinochem Case Brief. The

regulations, which otherwise specify the rules for attribution of benefit under various cross-ownership configurations, do not provide for attribution in any way between input suppliers, which is essentially what Sinochem is suggesting. In particular, while the rules include a specific provision for a lateral attribution between subject merchandise producers, they make no provision for a similar attribution between input suppliers. Nor does the Preamble to these regulations even entertain such an attribution or such a notion as "joint supplier." Thus, given the level of specification and elaboration that the rules employ to define the various scenarios for attributing benefit, the conspicuous absence of what would otherwise be a simple rule for attributing between input suppliers cannot be read as inadvertent omission, much less space for making such an attribution outside any of the stated rules, but rather as intentional refrain from providing such a rule. Consequently, the Department has not attributed benefit between input suppliers in the past and doing so here would be inconsistent with both our practice and the Department's regulations.[322] Hence, we are not treating the three AHF suppliers as a "joint supplier," but will continue instead to attribute a subsidy received by each supplier to that supplier and the particular cross-owned downstream producer(s) to which the supplier is providing the primarily dedicated input.

However, with regard to the attribution rule under 19 CFR 351.525(b)(6)(ii), that rule states that if two (or more) corporations with cross-ownership produce the subject merchandise, the Department will attribute the subsidies received by either or both corporations to the products produced by both corporations. Because Sinochem Taicang and Sinochem Xi'an are cross-owned producers of the subject merchandise, we find it appropriate to apply the rule under 19 CFR 351.525(b)(6)(ii) in attributing the benefit from any subsidy going to either or both of these entities. Consistent with this approach, any benefit being attributed through an input supplier to either company under 19 CFR 351.525(b)(6)(iv) will also be attributed to the other.

In doing so, however, we find it is not appropriate to use Sinochem Xi'an's consolidated sales as a parent company; rather, in applying both 19 CFR 351.525(b)(6)(ii) and (iv), we are using Sinochem Xi'an's unconsolidated sales as a subject merchandise producer. The CVD Preamble specifically recognizes that more than one attribution rule may apply to a company's situation: "(D)epending on the facts, several of the different (attribution) rules may come into play at the same time."[323] The Department's regulations at 19 CFR 351.525(b)(6)(ii) direct the Department to attribute a subsidy to the combined production of the subject merchandise producers. As such, we have no basis to include Sinochem Xi'an's consolidated sales in the attribution under 19 CFR 351.525(b)(6)(iv), given our intent to attribute the subsidy to the products produced by the producers (i.e., Sinochem Taicang and Sinochem Xi'an). This is consistent with the Department's attribution methodology under similar scenarios in past cases.[324]

[322] See, e.g., Coated Paper from the PRC, and accompanying Issues and Decision Memorandum at "Attribution of Subsidies;" see also Shrimp from Vietnam and accompanying Issues and Decision Memorandum at "Attribution of Subsidies."
[323] See Countervailing Duties; Final Rule, 63 FR 65348, ("CVD Preamble") at 65399.
[324] See, e.g., Coated Paper from the PRC, and accompanying Issues and Decision Memorandum at Comment 35; see also Shrimp from Vietnam, and accompanying Issues and Decision Memorandum at "Attribution of Subsidies."

Comment 18: Whether the Department's Attribution of Subsidies Received by Authorities is a Departure from Department Practice and Results in Double Counting of Subsidy Benefits

Sinochem's Comments:

- In the Preliminary Determination the Department found that suppliers of acidspar powder, including Zhongying Mining and King's Mining, are authorities. Additionally, these companies provided acidspar to Zhejiang Lansol, Jiangxi Sanmei, and King's Florite the three AHF producers that are cross-owned with Sinochem Taicang, at LTAR.
- Additionally, in the Post-Prelim Determination, the Department found that Zhongying Mining and King's Mining, which had already been found to be authorities, received mining rights for LTAR from the GOC.
- The statute and regulations do not envision attribution of a subsidy received by an authority to downstream producers.
- The statute and the Department's regulations do not provide for attribution of subsidies received by an input producer that sold inputs to an intermediate input producer rather than directly to the subject merchandise producer, while at the same time attributing the subsidies received by the intermediate input producer to the subject merchandise producer.
- Attributing subsidies received by Zhongying Mining and Kings Mining, as well as subsidies received by the three AHF producers, to Sinochem Taicang, results in unlawful double counting of subsidy benefit to Sinochem Taicang.
- The benefit to the producers of AHF from purchasing acidspar from the two mining companies already incorporated the benefit that the miners received from mining rights for LTAR. Acidspar is the only channel for any subsidies received by producers of any inputs used to produce acidspar to pass to Sinochem Taicang, and therefore impact Sinochem Taicang's production cost for subject merchandise.
- Calculating a subsidy rate for acidspar using a benchmark price that reflects the market value of acidspar already offsets the benefits from the provision of mining rights at LTAR, as well as any other subsidies prior to the stage of acidspar production. Therefore, the Department should not attribute any subsidies received by Zhongying Mining or King's Mining to Sinochem Taicang.

Petitioner's Rebuttal Comments:

- Whether you consider an "authority" to be a an entity owned or controlled by the government, or one that performs commercial functions, it is possible to find one that performs commercial functions, yet receives funds on non-commercial terms.
- Where the government supplies benefits that a private enterprise would not, that is a subsidy, regardless of whether the recipient is also capable of subsidizing other unrelated enterprises.
- This is not double-counting. The fact that a subsidized SOE receives a subsidy in a certain amount, and later gives a subsidy to another entity in a different amount, does not mean that it makes sense to subtract the second from the first.

Department's Position: Sinochem mischaracterized our finding in the Preliminary Determination, and accompanying Decision Memorandum at 17 with regard to acidspar suppliers in saying that we found Zhongying Mining and King's Mining to be authorities. The finding, based in part on AFA, that PRC acidspar suppliers are government authorities applies to

such suppliers that are not cross owned with the Respondents. However, we agree with Sinochem that, consistent with that finding, we should not countervail the acidspar supplied by Zhongying Mining and King's Mining to Zhejiang Lansol, Jiangxi Sanmei, and King's Florite, all three of which we have found to be cross-owned with the two mining companies under the Sinochem Group.[325] It is the Department's practice to exclude inter-company sales from its benefit calculations. Therefore, for the final determination, we have removed from the benefit calculation under the provision of acidspar/fluorspar for LTAR program the purchases made by Zhejiang Lansol, Jiangxi Sanmei and King's Florite of acidspar from Zhongying Mining and King's Mining.

Comment 19: Whether the Department Properly Rejected Sinochem's August 1, 2014, Submission as Untimely

Sinochem's Comments:

- On August 1, 2014, Sinochem Taicang submitted information, which was rejected as untimely. This information is relevant to the Department's subsidy rate and attributions rule, and the Department should have requested this information. Additionally, this information is not untimely because it was submitted to clarify and rebut new information put on the record by the Department in the Post-Prelim Determination.
- The Department stated that there was no new information placed on the record in the Post-Prelim Determination, however, Sinochem Taicang contends that the Department could put new information on the record by using information already on the record.

Department's Position: We disagree with Sinochem Taicang. We continue to find that the submission in question was subject to the limitations under 19 CFR 351.302(d), which states that the "Secretary will not consider" any "untimely filed factual information, written argument, or other materials" that the Secretary rejects,[326] as well as 19 CFR 351.301(c)(1), which states that:

> Any interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party at any time prior to the deadline provided in this section for submission of such factual information. If factual information is submitted less than 10 days before, on, or after (normally only with the Department's permission) the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify or correct the factual information no later than 10 days after the date such factual information is served on the interested party or, if appropriate, made available under APO to the authorized applicant.

Pursuant to the regulation cited above, the Respondents were permitted to submit rebuttal factual information only if such information was: 1) in response to new factual information placed on the record by another interested party (i.e., not the Department); and, 2) submitted no more than

[325] See Preliminary Determination, and accompanying Issues and Decision Memorandum at 11-12.
[326] See 19 CFR 351.302(d).

ten days after the timely new factual information was placed on the record.[327] Additionally, as stated in the Department's letter rejecting Sinochem Taicang's submission, the Department did not place factual information on the record. The Department merely released data based on Sinochem Taicang's previously submitted responses.[328] Additionally, with respect to Sinochem Taicang's argument that the Department should have requested the submitted information because it was relevant to the Department's subsidy rate and attributions rule, we disagree. Sinochem Taicang could have included the relevant information in any of its submissions filed prior to the deadline for submission of factual information. The fact that the Department did not specifically anticipate and request every type of information available to Sinochem Taicang does not preclude the Department from enforcing its regulations with regard to deadlines for submissions of factual information.

Comment 20: Whether the Department Should Apply the Program-Wide Change Rule and Not Calculate a Subsidy Rate for the Two-Free Three-Half Program

Sinochem's Comments:

- The Department has continued to investigate the two-free, three half program. This program was terminated in 2008, and the last year that any company received a benefit was 2012, more than a year prior to the Preliminary Determination. Therefore, the Department should not include the rate for this program in the final CVD cash deposit rate.
- The Department's regulations state that it may consider a program wide change if: 1) a program-wide change has occurred subsequent to the POI but before the preliminary determination of an investigation; and 2) the Department is able to measure the change in the amount of subsidies provided under the program.[329]
- A program-wide change means a change that is not limited to an individual firm and is effectuated by an official act. As Sinochem Taicang and the GOC have both explained, the two-free, three-half program was terminated at the end of 2007. Therefore, the Department can measure the change in the amount of subsidies provided because there would be no benefit after termination.

Petitioner's Rebuttal Comments:

- If the two-free, three half program provided benefits after 2012, it is obviously false that the program terminated without future benefits in 2012. Additionally, even if a nominally different program replaced the two-free, three half program, there would be no justification for terminating duties.

Department's Position: We disagree with Sinochem. We find that its claim of program termination does not meet the requirements specified under 19 CFR 351.526(d)(1), which provide that the Department will not find a program to be terminated, and a program-wide

[327] See, e.g., Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 51309 (August 28, 2014), and accompanying Issues and Decision Memorandum at Comment 8.
[328] See Letter from the Department, to Sinochem Taicang, Re: Rejection of August 1, 2014, Submission and Removal from the Record, dated August 6, 2014.
[329] Citing 19 CFR 351.526.

change finding to be warranted, if it finds that the program continues to provide residual benefits. Consistent with the Department's methodology with regard to income tax subsidies, we countervailed this program in the Preliminary Determination based on the tax returns filed by the respondent companies during the POI, in 2012, but which actually covered the Respondents' 2011 tax year. Therefore, benefits under the program may still be reported in the Respondents' tax returns filed in 2013, which cover the 2012 tax year. As such, this program continues to provide countervailable benefits to eligible companies. Consequently, a finding of a program-wide change and making a corresponding adjustment to the cash deposit rate is not warranted at this time.

VII. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the Federal Register and will notify the U.S. International Trade Commission of our determination.

✓
Agree

_____
Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

14 OCTOBER 2014
(Date)