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International Trade Administration
Washington, D.C. 20230

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Investigation
POI 1/1/12 – 12/31/12
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December 8, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Countervailing Duty Investigation of Calcium
Hypochlorite from the People's Republic of China

I. SUMMARY

The Department of Commerce ("Department") determines that countervailable subsidies are being provided to producers and exporters of calcium hypochlorite ("calhypo") in the People's Republic of China (the "PRC"), as provided in section 705 of the Tariff Act of 1930, as amended ("the Act").

II. BACKGROUND

A. Case History

On May 27, 2014, the Department published the Preliminary Determination for this investigation.¹ On June 26, 2014, China Petrochemical International (Wuhan) Co., Ltd. ("CPIW") and Jiangnan Salt Chemicals Complex ("JSCC") filed a case brief. On July 1, 2014, Petitioner² filed its rebuttal brief.

B. Period of Investigation

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

¹ See Calcium Hypochlorite from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 79 FR 30082 (May 27, 2014) ("Preliminary Determination"), and the accompanying Preliminary Decision Memorandum.

² Arch Chemicals, Inc.

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, and as noted in the Initiation, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the Initiation.³ We received no comments concerning the scope of this investigation.

IV. SCOPE OF THE INVESTIGATION

The product covered by this investigation is calcium hypochlorite, regardless of form (e.g., powder, tablet (compressed), crystalline (granular), or in liquid solution), whether or not blended with other materials, containing at least 10 percent available chlorine measured by actual weight. The scope also includes bleaching powder and hemibasic calcium hypochlorite.

Calcium hypochlorite has the general chemical formulation $\text{Ca}(\text{OCl})_2$, but may also be sold in a more dilute form as bleaching powder with the chemical formulation, $\text{Ca}(\text{OCl})_2 \cdot \text{CaCl}_2 \cdot \text{Ca}(\text{OH})_2 \cdot 2\text{H}_2\text{O}$ or hemibasic calcium hypochlorite with the chemical formula of $2\text{Ca}(\text{OCl})_2 \cdot \text{Ca}(\text{OH})_2$ or $\text{Ca}(\text{OCl})_2 \cdot 0.5\text{Ca}(\text{OH})_2$. Calcium hypochlorite has a Chemical Abstract Service ("CAS") registry number of 7778-54-3, and a U.S. Environmental Protection Agency ("EPA") Pesticide Code ("PC") Number of 014701. The subject calcium hypochlorite has an International Maritime Dangerous Goods ("IMDG") code of Class 5.1 UN 1748, 2880, or 2208 or Class 5.1/8 UN 3485, 3486, or 3487.

Calcium hypochlorite is currently classifiable under the subheading 2828.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The subheading covers commercial calcium hypochlorite and other calcium hypochlorite. When tableted or blended with other materials, calcium hypochlorite may be entered under other tariff classifications, such as 3808.94.5000 and 3808.99.9500, which cover disinfectants and similar products. While the HTSUS subheadings, the CAS registry number, the U.S. EPA PC number, and the IMDG codes are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES⁴

The Department is making no changes with respect to the use of "facts otherwise available" pursuant to sections 776(a)(1) and (2) of the Act, used in the Preliminary Determination with respect to all of the programs under investigation, for which the three mandatory respondents--Hubei Dinglong Chemical Co., Ltd. ("Hubei Dinglong"), W&W Marketing Corporation ("W&W Marketing"), and Tianjin Jinbin International Trade Co., Ltd. ("Tianjin Jinbin")--and the Government of the People's Republic of China ("GOC") failed to provide information necessary to the Department's analyses. Moreover, the Department is making no changes to its reliance on

³ See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997); see also Calcium Hypochlorite from the People's Republic of China: Initiation of Countervailing Duty Investigation, 79 FR 2417 (January 14, 2014) ("Initiation").

⁴ See Preliminary Determination and the accompanying Preliminary Decision Memorandum at pages 5-10.

adverse inferences pursuant to section 776(b) of the Act in applying the facts otherwise available to the three mandatory respondents and the GOC, which failed to cooperate by not acting to the best of their ability to comply with a request for information. However, we are making changes to the rate we applied as AFA as discussed below in Comment 2. For details regarding the selection of the adverse facts available rate, see the Preliminary Determination and accompanying Preliminary Decision Memorandum at pages 6-10.

A. Subsidy Rate Chart

<u>Program Name</u>	<u>AFA Rate (percent)</u>
Preferential Lending for Industrial Readjustments ⁵	10.54
Preferential Loans Provided by the Export-Import Bank “Going-Out” for Outbound Investment	1.06
Export Credits from China’s Export-Import Bank	1.06
Policy Loans	*
Shareholder Loans (Debt Forgiveness)	2.32
Discounted Loans for Export-Oriented Enterprises	1.06
Loans for State-Owned Enterprises (“SOEs”)	*
Corporate Income Tax Law Article 33	25.00
Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies	0.51
Stamp Tax Exemption on Share Transfers under Non-Tradable Share Reform (“NTSR”)	0.51
VAT and Tariff Exemptions on Imported Equipment for Favored Industries	1.14
VAT Rebates on Domestically Produced Equipment	0.51
Provision of Land-Use and Land Rents to SOEs - Free Allocation of Land	2.55
Provision of Land-Use and Land Rents to SOEs - Land Acquisition Through Agreement	2.55
Provision of Shipping for LTAR	5.34
Provision of Electricity for LTAR	5.34
The State Key Technology Renovation Fund	0.55
Funds for Clean Production and Water Treatment	0.55
Special Fund for Energy Saving Technology Reform	0.55
Export Credit Insurance from China Export and Credit Insurance Corporation (Sinosure)	1.06
Provision of Land-Use and Land Rents to SOEs - Retention of Land Rents	2.55
Famous Brands Program	0.55
Foreign Trade Development Fund	0.55
Total Estimated Countervailable Subsidy =	65.85

⁵ For the Policy Loans, Preferential Lending for Industrial Readjustments, and Loans for State-Owned Enterprises (“SOE”) programs, we are using a single AFA rate because the three allegations in this investigation encompass the same loans provided by state-owned commercial banks. See Issue 2 below.

VI. ANALYSIS OF COMMENTS

Issue 1: Whether the Department Correctly Denied CPIW/JSCC Voluntary/Mandatory Respondent Status

CPIW's and JSCC's Case Brief:

- CPIW and JSCC argue that the Department's preliminary refusal to grant voluntary/mandatory respondent status to CPIW based on the fact that CPIW did not file a timely voluntary response to the Department's questionnaire should be reversed because CPIW met the requirements of section 782(a)(1)(A) of the Act by virtue of JSCC's timely participation in the review. Specifically, because CPIW and JSCC are cross-owned, the Department should treat the two companies as a single entity, consistent with 19 CFR 351.525(b)(v). When viewed as a single entity, CPIW and JSCC collectively met the deadlines set forth in section 782(a)(1)(A) of the Act.
- In any event, CPIW's questionnaire response was timely because the Department continued to accept and solicit additional information after JSCC's original March 17, 2014 submission, suggesting that the Department treated those responses as timely.
- To individually investigate CPIW/JSCC would not have caused undue delay, as it would have resulted only in the investigation continuing in accordance with the original schedule before the withdrawal of Tianjin Jinbin. Indeed, the facts of this case are analogous to those presented in the Department's preliminary determination in CVD Tetraflouroethane (79 FR 21895, April 18, 2014), with respect to Jiangsu Bluestar Green Technology Co., Ltd. ("Bluestar").
- Because of the difficulties JSCC was faced with in providing a complete questionnaire response for its cross-owned companies, CPIW and JSCC believe the Department should limit the scope of the investigation to just CPIW/JSCC.

Petitioner's Rebuttal Brief:

- The Department should maintain its preliminary decision to deny CPIW voluntary respondent status because CPIW did not meet the statutory requirements to be considered a voluntary respondent.
- JSCC's March 17, 2014, response does not contain any information about CPIW and cannot be considered timely for CPIW. Furthermore, even if JSCC's March 17, 2014, submission could be construed as a timely initial questionnaire submission for CPIW, it does not serve as a voluntary respondent request according to Department regulations.

Department's Position: The Department continues to find that it was correct in not selecting CPIW as a voluntary or mandatory respondent in this investigation. As an initial matter, CPIW did not seek voluntary respondent treatment through the proper voluntary respondent process, and failing to do so, the Department continues to find, as it did in the Preliminary Determination, that it is inappropriate to select them as a voluntary respondent in this investigation.

Section 782(a) of the Act requires that a company seeking treatment as a voluntary respondent submit questionnaire responses by the deadlines established for mandatory respondents. 19 CFR 351.204(d)(4) further requires that a company indicate its desire to proceed as a voluntary respondent by "including as a title on the first page of the first submission, 'Request for

Voluntary Respondent Treatment.” Contrary to the requirements of section 782(a) of the Act, CPIW did not submit any information by the deadline for initial questionnaire responses (i.e., March 17, 2014). CPIW/JSCC contend that they are cross-owned and, therefore, meet the requirements of section 782(a) of the Act through JSCC’s submission. CPIW’s purported cross-owned affiliate, JSCC, did submit a partial questionnaire response on March 17, 2014, but that response (a) did not contain data pertaining to CPIW and JSCC cross-owned entities, and (b) did not request voluntary respondent treatment on behalf of JSCC, CPIW, or any other company (as required by 19 CFR 351.204(d)(4)). While CPIW eventually requested that it be investigated individually a month later and just over a month before the Department issued its Preliminary Determination, the Department disagrees that CPIW’s belated submission could somehow be construed as fulfilling the unambiguous statutory and regulatory requirements for consideration as a voluntary respondent. Though JSCC and CPIW believe that the Department waived or relaxed these requirements by accepting CPIW’s questionnaire response, the Department made no determination that CPIW submitted a timely voluntary response. To the contrary, the Department preliminarily determined that CPIW “did not file a timely voluntary response to the Department’s questionnaire in accordance with section 782(a)(1)(A) of the Act.”⁶

The Department also disagrees that this investigation is inconsistent with its determination in CVD Tetrafluoroethane.⁷ In CVD Tetrafluoroethane, we selected Bluestar, a producer of subject merchandise and which was also a supplier to a participating mandatory respondent, as a voluntary respondent based on its timely request to be a voluntary respondent and timely responses to the Department’s initial and supplemental questionnaires. The facts in this case are not analogous, because unlike Bluestar, as stated in the Preliminary Determination and above CPIW did not submit a timely request to be a voluntary respondent and voluntary response.

Finally, as explained in the Preliminary Decision Memorandum, if the Department had found that there were sufficient time to select another mandatory respondent, we would have chosen the next largest producer/exporter by volume based on CBP data in accordance with section 777A(e)(2)(A)(ii) of the Act. In this case, CPIW did not meet that criterion.⁸ Thus, selection of CPIW as a mandatory respondent would have been both a departure from agency practice and inconsistent with section 777A(e)(2)(A)(ii) of the Act.⁹

Issue 2: Whether the Department Correctly Calculated the CVD Rate Applied to CPIW/JSCC

CPIW’s and JSCC’s Case Brief:

- CPIW and JSCC argue that section 776(b) of the Act does not allow the Department to apply an AFA rate to a cooperating party based on the non-cooperation of an unaffiliated third

⁶ See Preliminary Determination and the accompanying Preliminary Decision Memorandum at page 3.

⁷ See Countervailing Duty Investigation of 1,1,1,2-Tetrafluoroethane from the People’s Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Determination, 79 FR 21895 (April 18, 2014), and accompanying Issues and Decision Memorandum (“CVD Tetrafluoroethane”) at pages 3-4.

⁸ See Preliminary Decision Memorandum at pages 3-4.

⁹ For a complete discussion of the Department’s decision not to select CPIW as a mandatory respondent, see Preliminary Decision Memorandum at pages 3-4.

party. The record reflects that JSCC and CPIW have been cooperative throughout this investigation.

- Furthermore, the Department's decision to not use JSCC's alternative reporting methodology as the basis to calculate a CVD rate for CPIW/JSCC should be reversed because the questionnaire response submitted by JSCC provided sufficient information for the Department to calculate a CVD rate for CPIW/JSCC (e.g., data on grants and sales revenue prior to the POI, export and other sales data, and information pertaining to bank loans and land).
- The Department triple counted the benefits received under the three loan programs (i.e., Policy Loans, Preferential Lending for Industrial Readjustments, and Loans to SOEs). Department practice dictates that benefit should be calculated based on the interest rate on each loan, regardless of whether a respondent received a loan under one or multiple programs.
- Moreover, the Department should not apply the 10.54 percent CVD rate calculated in Coated Paper to the loan programs because that rate was applied to a company that was found to be uncreditworthy, and a benchmark interest rate from an uncreditworthy company is much higher than the rate for creditworthy companies. Because no one has alleged that the respondents in this investigation are uncreditworthy, the Department should not have used the 10.54 percent CVD rate as the AFA rate for the policy loans in this investigation.
- The Department calculated an AFA subsidy rate for Corporate Income Tax Law Article 33 which is not supported by the facts of this case. The maximum tax benefit possible under this program is 2.5 percent of sales revenue.

Petitioner's Rebuttal Brief:

- Assuming, *arguendo*, that CPIW/JSCC should have been selected as a voluntary respondent, court opinions in Fine Furniture (Shanghai) Ltd. v. United States, 748 F.3d 1365, 1371 (Fed. Cir. 2014), Archer Daniels Midland Co. v. United States, 917 F.Supp.2d 1331, 1342 (CIT 2013), and GPX International Tire Corp. v. United States, 37 CIT, 893 F.Supp.2d 1296, 1333 (2013), confirm that the Department may apply AFA to the detriment of a cooperating company when the GOC fails to respond to the Department's questionnaire.
- In any event, CPIW/JSCC was not a cooperating respondent. CPIW/JSCC failed to properly answer the Department's requests for information even after being given a second opportunity to do so, which impeded the investigation. Thus, the Department would have been reasonable in applying AFA to CPIW/JSCC pursuant to 19 USC 1677e(b).

Department's Position: As described above, we are relying on AFA to determine the countervailable subsidy rate for individually investigated respondents Hubei Dinglong, W&W Marketing, and Tianjin Jinbin. Consistent with section 705(c)(5)(A)(ii) of the Act, we are deriving an all-others rate --the rate applicable to CPIW--in this investigation from the rates calculated for the individually investigated respondents. We disagree with JSCC and CPIW that section 776(b) of the Act precludes the Department from applying the methodology that it used here to calculate the all-others rate.

Section 705(c)(5)(A)(i) of the Act states that the all-others rate shall be an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis rates and any rates determined

entirely under section 776 of the Act. However, section 705(c)(5)(A)(ii) of the Act states that if the countervailable subsidy rates for all exporters and producers individually investigated are zero or de minimis rates, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated.

In this investigation, the rates for the individually investigated exporters/producers are determined entirely under section 776 of the Act. Accordingly, consistent with section 705(c)(5)(A)(ii) of the Act, we are using “any reasonable method” to establish the all-others rate. We find that it is reasonable to use the rates established for the mandatory respondents to calculate the all-others rate. Indeed, section 705(c)(5)(A)(ii) of the Act expressly states that when the rates for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may average the weighted average countervailable subsidy rates determined for individually investigated exporters and producers. Thus, where all of the individually investigated exporters/producers in this investigation received rates determined entirely under section 776 of the Act, Congress expressly authorized the Department to base the all-others rate on an average of those section 776 rates. Thus, our methodology is consistent with the statute. Thus, CPIW’s and JSCC’s reliance on section 776(b) of the Act in this context is misplaced. The Department determined the all others rate pursuant to section 705(c)(5)(A)(ii) of the Act. And, as discussed above, section 705(c)(5)(A)(ii) of the Act explicitly permits use of a rate determined under section 776 of the Act in determining the all others rate.

This method is reasonable when viewed against the record in this investigation. Because this is an investigation and there are no cooperating mandatory respondents, the Department has never calculated a rate for a mandatory respondent in this proceeding based on a mandatory respondent’s own reported data. Thus, consistent with section 705(c)(5)(A)(ii), the Department based the all-others rate on the rates calculated for the non-cooperating mandatory respondents which were determined pursuant to section 776 of the Act. Those rates were based on actual rates calculated for the same or similar programs in other CVD proceedings.

Although CPIW argues that the questionnaire responses submitted by JSCC provided sufficient information for the Department to calculate a CVD rate for CPIW/JSCC, neither JSCC nor CPIW was selected as a mandatory or voluntary respondent in this case and, thus, we have not individually investigated them. In any case, the responses submitted by JSCC from the investigation were not complete and therefore do not provide a sufficient basis for calculating a reliable subsidy rate. Specifically, as described by CPIW/JSCC in its case brief, JSCC never submitted complete responses to the Department’s countervailing duty questionnaire, instead asserting that the Department should limit the scope of the investigation to only certain cross-owned affiliates. However, per the Department’s attribution regulation (19 CFR 351.525(b)), the Department requires questionnaire responses from cross-owned affiliates, including parent companies. Accordingly, the program usage and amount information reported by CPIW/JSCC is unusable for purposes of determining a countervailable subsidy rate for CPIW/JSCC.

Finally, although we agree that we may apply AFA to a non-cooperating government even if doing so has a collateral impact on a cooperating individually examined respondent,¹⁰ we do not consider the cases cited by Petitioner supporting that proposition to be relevant here. Here, for reasons explained above, the Department has not individually investigated CPIW/JSCC.

With respect to CPIW's argument that the Department should not have applied separate AFA subsidy rates to the three loan programs (*i.e.*, Policy Loans, Preferential Lending for Industrial Readjustments, and Loans to State-Owned Enterprises), we agree. Consistent with Department practice, the Department is now applying a single subsidy rate to these three loan programs because the three program allegations in this investigation encompass the same loans provided by state-owned commercial banks.¹¹

CPIW also argues that because the rate used by the Department as the AFA rate for the loan programs was based on a rate that was calculated for a company that was found to be uncreditworthy, it is inappropriate to apply that rate in this investigation because there are no allegations that the respondents are uncreditworthy.¹² However, it is the Department's practice in a CVD investigation to select, as AFA, the highest calculated rate for the same or similar program,¹³ and the Department has previously found that this rate is an appropriate rate to use as AFA for policy loan programs.¹⁴ Additionally, as a result of the mandatory respondents' failure to cooperate in this investigation the record lacks the necessary information,¹⁵ to calculate a rate. Therefore the rate calculated in another proceeding provides the most reliable and relevant information about the government's practices regarding these kinds of loans.

The Department disagrees with CPIW's argument that the AFA subsidy rate of 25 percent for the income tax program under Corporate Income Tax Law Article 33 is contrary to law. Consistent with Department practice, as AFA, we have determined that the non-cooperating mandatory respondents paid no income tax during the POI.¹⁶ As the income tax rate in the PRC during the POI was 25 percent, the highest possible benefit for the income tax program is 25 percent.¹⁷ Absent verifiable evidence related to the actual tax rates paid and benefits received by the mandatory respondents, and absent any response from the GOC regarding this program, the Department continues to determine that the use of the highest possible income tax rate is appropriate as AFA.

¹⁰ See Fine Furniture (Shanghai) Limited v. United States, 748 F.3d 1365 (Fed. Cir. 2014) ("Fine Furniture").

¹¹ See GOES from the PRC, and accompanying Issues and Decision Memorandum at footnote 44.

¹² See Coated Free Sheet Paper from the People's Republic of China, 72 FR 60645 (October 25, 2007).

¹³ See, *e.g.*, Woven Sacks Investigation, and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available"; Aluminum Extrusions Investigation at "Application of Adverse Inferences: Non-Cooperative Companies"; Steel Wire Investigation, and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences."

¹⁴ See NOES from the PRC.

¹⁵ See "Selection of the Adverse Facts Available Rate" section above.

¹⁶ See, *e.g.*, NOES from the PRC and accompanying Issues and Decision Memorandum.

¹⁷ See, *e.g.*, *id.*

VII. CONCLUSION

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.

✓
Agree

Disagree

Pe P.
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

8 DECEMBER 2014
Date

Attachment I
Description of Programs Being Investigated

Below is a description of the programs initiated on by the Department and described by Petitioners.

1. **Provision of Electricity for Less Than Adequate Remuneration**

Description: The GOC, through the National Development and Reform Commission (“NDRC”), regulates the power rates for certain industries, including the chemical industry.

Financial Contribution: The provision of electricity is a government financial contribution in the form of a provision of a good or service. 19 USC 1677(5)(D)(iii)

Specificity: The GOC has provided preferential electricity pricing for companies located within a defined geographic area. Subsidy programs limited to certain geographic areas within a government’s jurisdiction are specific under section 771(5A)(D)(iv) of the Act.

Benefit: This program confers a benefit to recipients to the extent that electricity is being sold for less than adequate remuneration (“LTAR”), pursuant to section 771(5)(E)(iv) the Act.

2. **Provision of Shipping for Less Than Adequate Remuneration**

Description: Due to the nature of calcium hypochlorite as an oxidizer, it requires careful handling during transport. Most major shipping companies insure through the Protection and Indemnity (“P&I”) Clubs, which require certain handling measures and restrictions (e.g. limiting containers to no more than 14 metric tons (“MT”) of calcium hypochlorite per container, and requiring that calcium hypochlorite be shipped in more expensive refrigerated containers, etc.). Cosco is a shipping company which is owned by the PRC government, and provides preferential shipping rates to certain PRC calcium hypochlorite producers.

Financial Contribution: Because Cosco, a state-owned enterprise, provides shipping, this program qualifies as a financial contribution pursuant to 19 U.S.C. § 1677(5)(D)(iii).

Specificity: This shipping is provided only to certain Chinese calcium hypochlorite manufacturers and is, thus, specific pursuant to 19 U.S.C. § 1677(5A)(D)(iii)(I). Moreover, because the shipping only pertains to exports, it is an export subsidy and specific pursuant to 19 U.S.C. § 1677(5A)(B).

Benefit: The benefit is the difference between the cost to ship on Cosco and the cost to ship through other means in accordance with 19 C.F.R. § 351.511.

3. Stamp Tax Exemption on Share Transfers under Non-Tradeable Share Reform (NTSR)

Description: The GOC waives stamp taxes otherwise due upon the transfer of tradable shares. The underlying criterion for participation in non-tradable share reform (“NTSR”) is that listed companies must have non-tradable shares, regardless of what entity issued the non-tradable shares.

Financial contribution: The waiver of stamp taxes constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone.

Specificity: In OTR Tires, the Department found that the NTSR, including the stamp tax exemption, is specific within the meaning of section 771(5A)(D)(i) of the Act, in that it is limited to only those that participated in the NTSR.¹⁸

Benefit: The GOC confers a benefit in the form of tax savings to the extent that the stamp tax was not paid, pursuant to section 771(5)(E) of the Act.

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

Description: A domestic PRC company may claim tax credits on the purchase of PRC made equipment if the project is compatible with the industrial policies of the GOC. A tax credit of up to 40 percent of the purchase price of domestic equipment may apply to the incremental increase in tax liability from the previous year. This tax measure was allegedly terminated at the end of 2007; however, in Steel Wheels the Department found that companies were still benefiting under this provision during 2010.¹⁹

Financial contribution: Income tax reductions constitute a financial contribution in the form of revenue forgone, under section 771(5)(D)(ii) of the Act.

Specificity: This program is specific because the receipt of the tax savings is contingent upon the use of domestic over imported goods under section 771(5A)(A) of the Act.

Benefit: The benefit is an amount equal to the tax savings under section 771(5)(E) of the Act.

¹⁸ See 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) (“OTR Tires”) and accompanying Issues and Decision Memorandum at Section IV.A.5.

¹⁹ See Certain Steel Wheels from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 17017 (March 23, 2012) (“Steel Wheels”), and accompanying Issues and Decision Memorandum at Section VII.D.

5. VAT Rebate on Domestically Produced Equipment

Description: For both domestic and foreign invested enterprise (“FIE”) projects, which are in the encouraged category, equipment purchased for self-use shall be exempted from tariff and VAT. This program was terminated at the end of 2008; however, in Solar Cells the Department found this program countervailable during 2010.²⁰

Financial contribution: These VAT exemptions provide a financial contribution in the form of government revenue forgone under section 771(5)(D)(ii) of the Act.

Specificity: The VAT exemptions are specific because they are limited to a group of encouraged enterprises or industries under section 771(5A)(D)(i) of the Act.

Benefit: The benefit is an amount equal to the amount of revenue forgone by the government under 19 CFR 351.510.

6. VAT and Tariff Exemptions on Imported Equipment for Favored Industries

Description: FIEs and certain domestic enterprises need not pay import tariffs and value added taxes (“VAT”) on imported equipment provided that these goods are not for resale. The objective of the program is to encourage foreign investment and to introduce foreign, advanced technology equipment, and industry technology upgrades. FIEs, and certain domestic enterprises, are exempted from the VAT and tariffs on imported equipment used for development projects, which are encouraged by the GOC in their production as long as the equipment does not fall into prescribed lists of non-eligible items.

Financial Contribution: This VAT and tariff exemption provides a financial contribution in the form of government revenue foregone under section 771(5)(D)(ii) of the Act.

Specificity: These exemptions are limited by law to encouraged enterprises with certain permitted imported equipment offsets by law and are specific within the meaning of 19 U.S.C. § 1677(5A)(D)(iii)(I).

Benefit: This VAT and tariff exemption confers a benefit equal to the amount of revenue foregone by the government under 19 CFR 351.510.

7. Corporate Income Tax Law Article 33: 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

Description: When calculating its taxable income, a company may take into account 90 percent of the revenue derived from the use of raw materials of the prescribed resources included in the

²⁰ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, 77 FR 63788 (October 17, 2012) (“Solar Cells”), and accompanying Issues and Decision Memorandum at Section VI.A.10.

Catalogue of Preferential Corporate Income Tax Treatments for Synergistic Utilization of Resources. The prescribed resources are associated minerals and by-products, waste water or liquid, waste gas, and waste residue, and recyclable resources. Petitioner maintains that the chemical industry falls under the second of these categories.

Financial contribution: This program provides a financial contribution in the form of government revenue foregone under section 771(5)(D)(ii) of the Act.

Specificity: The program is specific for purposes of section 771(5A)(D)(iii)(I) because the recipients of the subsidy are limited in number.

Benefit: The tax reduction confers a benefit equal to the amount of revenue foregone by the government under 19 CFR 351.510.

8. Policy Loans

Description: The GOC provides preferred loan terms and reduced interest rates to select enterprises and industries based on policy goals as opposed to market factors.

Financial contribution: Government loans provide a direct financial contribution by the GOC, pursuant to section 771(5)(D)(i) of the Act, and that state-owned commercial banks are considered government authorities. In the Chlor-Alkali Industry Second Five-Year Plan, the government encouraged the use of finance measures “to vigorously promote the chlor-alkali industry.” Additionally, Petitioner asserts that Chlor-Alkali Industry Second Five-Year Plan states that the Guiding Catalog of Industrial Structural Adjustment and other policy platforms should be the basis by which the GOC should give “financial, tax and other aspects of subsidies and incentives.”

Specificity: The PRC’s state-owned banks have generally directed policy loans to industries favored by the government, such as the chlor-alkali industry. As such, the GOC’s preferential loans and directed credit are granted on a specific basis, pursuant to section 771(5A)(D)(i) of the Act.

Benefit: Government policy lending provides benefits to recipients equal to the difference between what the recipients paid on loans from government-owned banks, and the amount they would have paid on comparable commercial loans, pursuant to 19 C.F.R. 351.505.

9. Shareholder Loans (Debt Forgiveness)

Description: Certain wholly state-owned non-bank financial institutions have provided loans to companies. The Department has previously found payments on these types of loans to be overdue and that certain portions of the loans were forgiven after the cut-off date either by explicit agreement or by default. Therefore the respondents in that case had failed to meet their obligations under contracts such that the loans provided a countervailable subsidy.

Financial contribution: The forgiven portion of the loan is treated as a grant bestowed at the point of the loan forgiveness, providing a financial contribution in the form of direct transfers of

funds under section 771(5)(D)(i) of the Act.

Specificity: The program is specific under section 771(5A)(D)(iii)(I) because it is limited to companies which have state-owned non-bank financial institutions as shareholders.

Benefit: The benefit is equal to the amount the government has assumed or forgiven under 19 CFR 351.508(a).

10. Discounted Loans for Export-Oriented Enterprises

Description: The PRC designates certain “honorable enterprises for collection of export receipts of foreign exchange” to encourage large-scale enterprises to export, if their annual export value reached \$200 million, their ratio of exports to foreign exchange is above 85 percent, and their ratio of surrendered verification forms of export receipts are above 80 percent. The lending rates of RMB loans extended by commercial banks to “honorable” companies can be lowered up to 10 percent on the basis of the lending rates fixed by the People’s Bank of China but can be raised up to 30 percent for high-risk enterprises. Although the PRC repealed this practice in 2007, preferential loans received in earlier years would be countervailable based on their repayment schedule.

Financial contribution: These loans constitute a direct financial contribution from the government in the form of a direct transfer of funds, pursuant to section 771(5)(D)(i) of the Act.

Specificity: This program are specific under section 771(5A)(A) of the Act because receipt of the financing is contingent upon exporting.

Benefit: The benefit of this program is the amount of interest paid against the loans compared to the amount of interest that would have been paid on a comparable commercial loan.

11. Preferential Lending for Industrial Readjustments

Description: In April of 2011, the NDRC released a new version of the Directory Catalogue on Readjustment of Industrial Structure. The projects listed in the “encouraged” category qualify for preferential treatment from the government, including receiving priority in the allocation of credit by state-owned banks. The 2011 catalogue lists “chemical products” under encouraged projects, and the chemical industry in the PRC receives preferential loans and financing from state-owned banks.

Financial contribution: The loans provide a financial contribution in the form of the direct transfer of funds from government-owned banks under section 771(5)(D)(i) of the Act.

Specificity: The loans are specific because they are limited by law to a group of encouraged industries under section 771(5A)(D)(i) of the Act.

Benefit: Under section 771(5)(E)(ii) of the Act, the loans confer a benefit equal to the difference between the amount the recipient paid on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could obtain on the market.

12. Preferential Loans Provided by the Export-Import Bank “Going-Out” for Outbound Investment

Description: The GOC has promoted its “Going-out” strategy in the Tenth Five-Year Plan, 2001-2005 and Twelfth Five-Year Plan, 2011-2015. These loans and other means of preferential financial assistance provide calcium hypochlorite producers with the ability to establish subsidiaries or warehouses overseas, improving their distribution channels and granting them greater access to the export market, as well as provide producers with the ability to purchase inputs from overseas.

Financial contribution: These programs provide a financial contribution in the form of a direct transfer of funds by the GOC under section 771(5)(D)(i) of the Act.

Specificity: This program targets particular industries for international promotion, and is thus specific, pursuant to section 771(5A)(B) of the Act.

Benefit: Government policy lending provides benefits to the recipients equal to the difference between the amount paid on loans from government-owned banks and the amount that they would have paid on comparable commercial loans, pursuant to section 771(5)(E)(ii) of the Act.

13. Export Credits from China’s Export-Import Bank

Description: The China ExIm provides support to exporters through a variety of means, including the export seller’s credit and the export buyer’s credit. China ExIm explains that the purpose of its programs is to support the export of PRC products and improve their competitiveness in the international market, and it describes the export seller’s credit as a loan with a large amount, long maturity, and preferential interest rate.

Financial contribution: This program provides a financial contribution in the form of a direct transfer of funds from a government owned financial institution under section 771(5)(D)(i) of the Act.

Specificity: This program is specific within the meaning of section 771(5A)(B) of the Act because it is contingent upon export activity.

Benefit: Under section 771(5)(E)(ii) of the Act, export financing confers a benefit equal to the difference between the amount the recipient 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.

14. State Key Technology Renovation Project Fund

Description: The State Key Technology Renovation Project Fund (“Key Technology Program”) was created to promote technologies in targeted sectors, and operates under the regulatory guidelines provided in the circular. Under the Key Technology Program, companies can apply for funds to cover the cost of financing specific technological renovation projects. The funds cover two years of interest payments on loans to fund the project, or up to three years for enterprises located in the northeast, central, or western areas of the PRC.

Financial contribution: This program provides a financial contribution in the form of the direct transfer of funds by the GOC within the meaning of section 771(5)(D)(i) of the Act.

Specificity: This program is specific because it is limited to a group of enterprises under section 771(5A)(D)(i) of the Act, specifically, the group of enterprises that are financing specific renovation projects under this program.

Benefit: Key Technology Program grants are a direct transfer of funds, within the meaning of section 771(5)(D)(i) of the Act, and therefore, provide a benefit equal to the amount of the funds provided under 19 CFR 351.504.

15. Special Fund for Energy Saving Technology Reform

Description: The GOC grants monetary awards that support certain enterprises that undertake technological reform projects to save energy in accordance with the Measures on Administration of Energy Saving Technology Renovation Awards from Fiscal Funds, published by the Ministry of Finance and the NDRC.

Financial contribution: This government grant constitutes a financial contribution in the form of a direct transfer of funds under Section 771(5)(D)(i) of the Act.

Specificity: This program is specific because it is limited to a group of enterprises under section 771(5A)(D)(i) of the Act

Benefit: This grant program confers a benefit equal to the amount of the funds provided under 19 CFR 351.504.

16. Funds for Clean Production and Water Treatment

Description: Cash awards are provided to companies and individuals with "outstanding" achievements in clean production. The GOC also provides financial support for national clean production key technology renovation projects, voluntary resource saving arrangements, and pollution emission reduction projects. Under this law, the expenses incurred by an enterprise for undertaking the clean production examination and verification and related training fees are deductible expenses.

Financial Contribution: Grants provided to enterprises under these clean production and water treatment programs constitute a financial contribution in the form of a direct transfer of funds from the government within the meaning of section 771(5)(D)(i) of the Act.

Specificity: These programs are de facto specific under section 771(5A)(D)(iii)(I) of the Act, because the actual recipients of the grants are limited in number. The benefits provided under these programs are limited to enterprises in key industries and located in specific regions.

Benefit: The benefit provided by this program is equal to the amount of the grants awarded to the enterprise, according to 19 CFR 351.504(a).

17. Export Credit Insurance from China Export and Credit Insurance Corporation

Description: The PRC provides generous export credit insurance through the China Export and Credit Insurance Corporation (“Sinasure”), a state-owned financial institution. Due to the inadequate premiums charged by Sinasure, the company is unable to cover its costs and losses.

Financial contribution: Export insurance provides a financial contribution in the form of the potential direct transfer of funds from a government-owned financial institution under section 771(5)(D)(i) of the Act.

Specificity: This program is specific because it is contingent on export performance under section 771(5A)(B) of the Act.

Benefit: This program confers a benefit on the recipient pursuant to 19 CFR 351.520, equal to the difference between what the recipient paid for insurance premiums and the amount received by the firm under the insurance program.

18. Foreign Trade Development Fund

Description: This national grant program provides firms, with an annual export value of USD \$1,000,000 to \$5,000,000, grants from the Ministry of Foreign Trade and Economic Cooperation.

Financial contribution: These government programs constitute financial contributions in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act.

Specificity: This program is specific within the meaning of section 771(5A)(B) of the Act because it is contingent upon export activity.

Benefit: These programs confer a benefit equal to the amount of the funds provided under 19 CFR 351.504.

19. “Famous Brands” Program

Description: This program provides grants to an exporting company that wins the “Famous Brand” or “Top Brand” award from a local or provincial government for meeting high international standards. The PRC’s “Famous Brands” program is administered at the national,

provincial, and local government levels. Enterprises must provide information concerning their export ratio as well as the extent to which their product quality meets international standards.

Financial contribution: This government grant constitutes a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act.

Specificity: This program is specific under section 771(5A)(B) of the Act because it is contingent upon export activity.

Benefit: The benefit is an amount equal to the amount of funds provided under 19 CFR 351.504.

20. Loans to State-Owned Enterprises

Description: State-owned enterprises have access to more preferential borrowing rates than non-state-owned enterprises. The preferential measures in providing loans to SOEs by banks include preferential interest rates and unsecured loans, etc.

Financial Contribution: These programs provide a direct financial contribution by the GOC under section 771(5)(D)(i) of the Act.

Specificity: This loan program is specific because it is limited to a group of enterprises, i.e., state-owned enterprises, under section 771(5A)(D)(i) of the Act.

Benefit: Government lending provides benefits to recipients equal to the difference between what the recipients paid on loans from government-owned banks, and the amount they would have paid on comparable commercial loans, pursuant to section 771(5)(E)(ii) of the Act.

21. Provision of Land Use and Land Rents to SOEs

Description: The GOC has provided numerous benefits to the Sinopec Group, one of the PRC's largest SOEs, relating to land use. Specifically, land is allocated to SOEs for free, it is assigned by agreement, and through bid tendering and auction.

a. Free Allocation of Land

Description: As a state-owned industrial enterprise, Sinopec, JSCC's parent, is allocated additional land each year for free.

Financial Contribution: The provision of land for less than adequate remuneration is a financial contribution under 19 U.S.C. § 1677(5)(D)(iii).

Specificity: The allocation of free land is limited to SOEs and is specific within the meaning of 19 U.S.C. § 1677(5A)(D)(iii)(I).

Benefit: This program confers a benefit to recipients because land is being provided for less than adequate remuneration ("LTAR"), pursuant to section 771(5)(E)(iv) the Act.

b. Land Acquisition Through Agreement

Description: SOEs acquire land for commercial and service purposes through agreements with the GOC, bids, and auctions.

Financial Contribution: The provision of land for less than adequate remuneration is a financial contribution under 19 U.S.C. § 1677(5)(D)(iii).

Specificity: The allocation of land is limited to SOEs and is specific within the meaning of 19 U.S.C. § 1677(5A)(D)(iii)(I).

Benefit: This program confers a benefit to recipients because land is being provided for less than adequate remuneration (“LTAR”), pursuant to section 771(5)(E)(iv) the Act.

c. Retention of Land Rents

Description: According to the Notice of the State Administration of Business Tax Issues Concerning Land Rent Received by China Petrochemical Corporation, in exchange for the operation and management of the land, Sinopec was to collect the land rents and pay a business tax to the competent taxation authorities for the rents it received. In other words, Sinopec obtained the land from the state rent-free and is able to retain the majority of the income earned from rent for the land leased to others.

Financial Contribution: Sinopec’s ability to retain the rent and only pay the GOC business taxes on the rental income is a financial contribution in the form of revenue foregone under 19 U.S.C. § 1677(5)(D)(ii).

Specificity: The land rent collection is limited to Sinopec and is specific within the meaning of 19 U.S.C. § 1677(5A)(D)(iii)(I).

Benefit: With respect to Sinopec’s retention of the collected rent, the benefit is the difference between the rent that would normally be paid to the GOC and the income the GOC receives from Sinopec in the form of business taxes on the rental income.