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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review: Citric Acid and Certain Citrate Salts; 2012

SUMMARY

On June 25, 2014, the Department of Commerce (the Department) published the *Preliminary Results* for this administrative review of the countervailing duty order on citric acid and certain citrate salts from the People's Republic of China (PRC).[1] The period of review (POR) is January 1, 2012, through December 31, 2012. The respondent is RZBC Co., Ltd. (RZBC Co.) and its cross-owned affiliates RZBC Group Shareholding Co., Ltd. (RZBC Group), RZBC Juxian Co., Ltd. (RZBC Juxian), and RZBC Imp. & Exp. Co., Ltd. (RZBC IE) (collectively, the RZBC Companies).

BACKGROUND

Since the publication of the *Preliminary Results*, the Department released the Post-Preliminary Results on September 5, 2014.[2] The Department conducted verification of the questionnaire responses submitted by the Government of the PRC (GOC) and the RZBC Companies on September 11 through 19, 2014. On October 7, 2014, the Department extended the final results

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[1] *See Citric Acid and Certain Citrate Salts: Preliminary Results of Countervailing Duty Administrative Review; 2012*, 79 FR 36012 (June 25, 2014) (*Preliminary Results*).
[2] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Post-Preliminary Results Decision Memorandum for the Fourth Administrative Review of the Countervailing Duty Order: Citric Acid and Certain Citrate Salts from the People's Republic of China," (September 5, 2014) (Post-Preliminary Results).

of this administrative review until December 22, 2014.[3] The verification reports for the GOC and the RZBC Companies were released on October 8, 2014.[4] On October 20, 2014, interested parties submitted case briefs and filed rebuttal briefs on October 27, 2014.[5]

The "Subsidy Valuation Information" and "Analysis of Programs" sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for these final results. Additionally, we analyzed the comments submitted by interested parties in their case briefs and rebuttal briefs in the "Analysis of Comments" section below, which contains the Department's responses to the issues raised in the briefs. Based on the comments received, we made certain modifications to the *Preliminary Results* and Post-Preliminary Results for this final, which are discussed below under each program.

Below is a complete list of the issues in this administrative review for which we received comments from the parties.

<u>General Issues</u>

Comment 1: Whether to Reverse the Department's "Authorities" Determination
Comment 2: Whether to Find Certain Calcium Carbonate Producers are "Authorities"
Comment 3: Whether the Department Should Countervail Input Purchases Made Through Trading Companies and Produced by "Authorities"
Comment 4: Whether to Find Input for LTAR Programs Not Specific

<u>Program-Specific Issues</u>

Comment 5: Whether to Find the Provision of Caustic Soda for LTAR Countervailable

A. Specificity
B. "Authorities"
C. Market Distortion
D. Benchmark

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Citric Acid and Certain Citrate Salts from the People's Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review," (October 7, 2014).

[4] *See* Memorandum to Eric Greynolds, Acting Office Director for AD/CVD Duty Operations, Office III, "Administrative Review of Countervailing Duty Order on Citric and Certain Citrate Salts: Verification of the Questionnaire Responses Submitted by the RZBC Co. Ltd. and its cross-owned affiliates," (October 7, 2014) (RZBC Companies' Verification Report); *see also* Memorandum to Eric Greynolds, Acting Director, AD/CVD Duty Operations, Office III, "Administrative Review of Countervailing Duty Order on Citric and Certain Citrate Salts: Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China," (October 7, 2014) (GOC's Verification Report).

[5] *See* letter from the GOC, "GOC's POR 4 Administrative Case Brief in the Fourth Administrative Review of the Countervailing Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China," (October 20, 2014) (GOC's Case Brief); Letter from Petitioners, "Citric Acid and Certain Citrate Salts From The People's Republic Of China/ Petitioners' Case Brief," (October 20, 2014) (Petitioners' Case Brief); Letter from the RZBC Companies, "Citric Acid and Citrate Salts from the People's Republic of China: Case Brief," (October 20, 2014) (RZBC Companies' Case Brief); *see also* letter from the GOC, "GOC's Rebuttal Brief in the Fourth Administrative Review of the Countervailing Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China," (October 27, 2014) (GOC's Rebuttal Brief); Letter from Petitioners, "Citric Acid and Certain Citrate Salts From the People's Republic Of China / Petitioners' Rebuttal Brief," (October 27, 2014) (Petitioners' Rebuttal Brief); Letter from the RZBC Companies, "Citric Acid and Citrate Salts from the People's Republic of China: Rebuttal Case Brief," (October 27, 2014) (RZBC Companies' Rebuttal Brief).

Scope of Order

The scope of the order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of the order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of the order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of the order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

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

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 fails to cooperate by not acting to the best of its ability to comply with a request for information.

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 adverse facts available (AFA) rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[6] 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."[7]

GOC – Caustic Soda is Specific

The Department determines that the use of AFA is warranted in finding that the GOC's provision of caustic soda to citric acid producers is specific within the meaning of section 771(5A) of the Act. As discussed in detail below under Comment 5A, at the verification, the GOC failed to substantiate its claim that the consumption of caustic soda is not limited to citric acid producers. Pursuant to section 776(a)(2)(D) of the Act, when an interested party provides information that cannot be verified, the Department uses the facts otherwise available. Further, pursuant to section 776(b) of the Act, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for verifiable information. Accordingly, as an adverse inference is warranted, we find the provision of caustic soda to be specific.

GOC – Calcium Carbonate and Caustic Soda are Government "Authorities"

After the *Preliminary Results*, we gave the GOC the opportunity[8] to provide information, in order for the Department to determine whether a calcium carbonate producer (hereinafter referred to as Company E) and a caustic soda producer (hereinafter referred to as Company H) are "authorities" within the meaning of section 771(5)(B) of the Act.[9] Specifically, we requested the GOC to provide official documentation to support its claim that the producers did not have a

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[6] *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).
[7] *See SAA* accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 at 870 (1994).
[8] *See* the Department's sixth supplemental questionnaire (6SQ) to the GOC (June 30, 2014).
[9] *See* Final Results Calculation Memorandum at Attachment I for business proprietary names of Company E and Company H.

Chinese Communist Party (CCP) primary organization and that none of the owners, executive directors or managers of the companies were officials or representatives of any of the nine entities at any level. The GOC did not provide the requested documentation. The GOC responded that "{it} has repeatedly explained that there is no central repository" for entities such as the CCP.[10] However, the GOC's claims concerning its access to information concerning CCP officials conflict with its ability to provide verifiable CCP information with regard to individuals at two calcium carbonate producers, Companies B and C, which the GOC obtained on its own and not from the input producers themselves.[11] Thus, we find that the GOC failed to provide the requested information, even though the record demonstrates that it could obtain the requested information. By substantially failing to respond to the Department's questions, the GOC withheld information that was requested of it regarding the CCP's role in the ownership and management of Companies E and H.

As we explained in the *Preliminary Results* and our Additional Documents for Prelim Memorandum,[12] we understand the CCP to exert significant control over economic activities in the PRC. Thus, the Department finds, as it did in the *Preliminary Results*[13] and prior segments of this proceeding,[14] that the information requested regarding ultimate owners of Companies E and H and the role of CCP officials and CCP committees in the management and operations of those companies are necessary to our determination of whether a producer is an "authority" within the meaning of section 771(5)(B) of the Act.

Therefore, we find that the GOC withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in conducting our analysis of Companies E and H.[15] As a result of incomplete responses to the Department's initial and supplemental questionnaires, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. The GOC was afforded two

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[10] *See* GOC's sixth supplemental questionnaire response (6SQR) (July 21, 2014) at 2.
[11] *See* GOC's first supplemental questionnaire response (1SQR) (January 27, 2014) at 9, 20, and Exhibit I-6.
[12] *See Preliminary Results*, and Memorandum to the File from Patricia M. Tran, "Additional Documents for the Preliminary Results," dated June 18, 2014 (Additional Documents for Prelim Memorandum) at Attachment III (Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS379," dated May 18, 2012 (Public Body Memorandum); and its attachment, Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be 'public bodies' within the context of a countervailing duty investigation," dated May 18, 2012 (CCP Memorandum)).
[13] *See Preliminary Results* at "Use of Facts Otherwise Available and Adverse Inferences: GOC – Sulfuric Acid."
[14] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010*, 77 FR 72323 (December 5, 2012) (*Citric Acid Second Review*) and accompanying Issues and Decision Memorandum (IDM).
[15] *See* section 776(a)(2)(A) of the Act.

opportunities to provide supporting evidence.[16] Consequently, we determine that the GOC withheld information, and that an adverse inference is warranted in the application of facts available.[17] As AFA, we adversely infer that CCP officials are present in Company E and Company H as individual owners, managers and members of the board of directors. This gives the CCP, as the government, meaningful control over the companies and their resources. As explained in the Public Body Memorandum, an entity with significant CCP presence on its board or in management or in party committees is controlled such that it possesses, exercises or is vested with governmental authority.[18] Thus, we are finding that Company E and Company H are "authorities" within the meaning of section 771(5)(B) of the Act. *See* Comment 5B.

<u>GOC –Market Distorted by Government Presence</u>

The Department requested the GOC to provide information concerning the sulfuric acid, steam coal, calcium carbonate, and caustic soda industries in the PRC for the POR. Specifically, we requested the GOC provide the following information[19]:

a. The total number of producers.
b. The total volume and value of Chinese domestic consumption of {input} and the total volume and value of Chinese domestic production of {input}.
c. The percentage of domestic consumption accounted for by domestic production.
d. The total volume and value of imports of {input}.
e. The total volume and value of domestic production that is accounted for by companies in which the Government maintains an ownership or management interest either directly or through other Government entities.
f. A discussion of what laws, plans or policies address the pricing of {input}, the levels of production of {input}, the importation or exportation of {input}, or the development of {input} capacity. Please state which, if any, central and sub-central level industrial policies pertain to the {input} industry.

The Department requests such information to determine whether the GOC is the predominant provider of these inputs in the PRC and whether its significant presence in the market distorts all transaction prices. The GOC stated that it does not maintain records on the three industries at issue, rendering the identification of producers in which the GOC maintains an ownership or management interest either directly or through other government entities extremely difficult.[20] The GOC, with information from the relevant industry associations, provided the total volume and value of domestic consumption and production and total volume and value of imports of sulfuric acid and calcium carbonate.[21] The GOC provided estimates of the volume of domestic

[16] *See* the Department's 1SQ to the GOC (December 27, 2013) at referenced Input Producer Appendix, NSAQ (February 19, 2014) at referenced Input Producer Appendix and 6SQ (June 30, 2014) at 3.
[17] *See* section 776(b) of the Act.
[18] *See*, *e.g.*, Public Body Memorandum at 33-36, 38.
[19] *See* the Department's revised input for LTAR questionnaire and input producer appendix issued to the GOC on August 14, 2013 (Revised Input Questionnaire) and supplemental questionnaires issued on December 27, 2013 (1SQ), February 26, 2014 (2SQ), and May 5, 2014 (4SQ).
[20] *See* GOC's input supplier appendix response (input response) (October 21, 2013) at 7 and 17; 2nd supplemental questionnaire response (2SQR) (March 31, 2014) at 14.
[21] *See* GOC's input response at 6-7; 2SQR at 13-14.

consumption and the volume and value of imports of steam coal and caustic soda.[22] The Department issued a supplemental questionnaire requesting the GOC to provide the number of input producers in which the Government maintains an ownership or management interest.[23] The GOC, however, failed to provide the requested information for all four inputs.[24] In a previous investigation, the Department was able to confirm at verification that the GOC maintains two databases at the State Administration of Industry and Commerce (SAIC): one is the business registration database, showing the most up-to-date company information; while a second system, "ARCHIVE," houses electronic copies of documents such as business licenses, annual reports, capital verification reports, *etc*. We found that the GOC has an electronic system available to it to gather industry specific information the Department requested.[25]

Therefore, we determine that the GOC withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" in making our final determination.[26] Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available.[27] In drawing an adverse inference, we find that PRC prices from actual transactions involving Chinese buyers and sellers are significantly distorted by the involvement of the GOC.[28] Therefore we find that the use of an external benchmark is warranted for calculating the benefit for the provision of sulfuric acid, steam coal, calcium carbonate, and caustic soda for LTAR.

For details regarding the remaining elements of our analysis, *see* the "Provision of Sulfuric Acid, Steam Coal, Calcium Carbonate, and Caustic Soda for LTAR" section below.

<u>GOC – Other Subsidies</u>

The financial statements submitted by the RZBC Companies indicate that they received potentially countervailable subsidies in the form of grants. Consequently, we sought further information from the companies about these grants, and also asked the GOC to provide information about the programs under which the grants were provided.[29]

The Department normally relies on information from the government to assess program specificity; however, the GOC did not submit such information or provide an explanation why it was unable to obtain the information.[30] Where the RZBC Companies submitted information which showed the specificity of a program, we relied upon that information to make our

[22] *See* GOC's input response at 16; and GOC's new subsidy allegation questionnaire response (NSAQR) (March 19, 2014) at 5.
[23] *See* the Department's 2SQ to the GOC at 5 – 7, and 4th supplemental questionnaire response (4SQR) (May 20 and May 23, 2014) at 3-4.
[24] *See* the GOC's 2SQR and 4SQR (May 20, 2014) at 1 and 3.
[25] *See* Additional Documents for Prelim Memorandum at Attachment II.
[26] *See* section 776(a)(2)(A) of the Act.
[27] *See* section 776(b) of the Act.
[28] *See Preamble to Countervailing Duty Regulations*, 63 FR 65348, 65377 (November 25, 1998) (*Preamble*).
[29] *See* Department's supplemental questionnaires issued to the GOC on January 30 and April 23, 2013, and supplemental questionnaires issued to the RZBC Companies on January 22 and April 23, 2013.
[30] *See* GOC's initial questionnaire response (IQR) (October 21, 2013) at 10, 13, 19, 20, 22, and 30; and 2SQR at 5 - 6.

preliminary finding. Where neither the RZBC Companies nor the GOC provided information that would allow us to determine the specificity of a program, we relied upon AFA to make our preliminary finding. For those particular programs, we find that the GOC withheld necessary information that was requested of it and, thus, the Department had to rely on facts available for the *Final Results*.[31] Moreover, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available.[32]

Due to the GOC's failure to provide the requested information about the programs under which the RZBC Companies received grants, we applied an adverse inference that these grants are being provided to a specific enterprise or industry, or group of enterprises or industries.[33]

<u>GOC – Export-Import Bank of China: Export Buyer's Credits</u>

The Department determines that the use of AFA is warranted in determining the countervailability of the Export Buyer's Credits Program. As discussed in detail below under Comment 6, the GOC refused to allow the Department to examine records regarding the recipients of export buyer's credits and refused to allow the Department to examine or query electronic databases regarding such recipients. Pursuant to section 776(a)(2)(D) of the Act, when an interested party provides information that cannot be verified, the Department uses the facts otherwise available. Further, pursuant to section 776(b) of the Act, we find that the GOC failed to cooperate by not acting to the best of its ability, because it refused to allow the Department to pursue the most appropriate methods of verification of this program. Accordingly, an adverse inference is warranted. As AFA, we find, as discussed below under Comment 6, that the RZBC Companies benefitted from this program at the rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in a prior PRC proceeding.

<u>SUBSIDIES VALUATION INFORMATION</u>

<u>Allocation Period</u>

The average useful life (AUL) period in this proceeding, as described in 19 CFR 351.524(d)(2), is 9.5 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture the subject merchandise. Consistent with the Department's practice, we rounded the 9.5 years up to 10 years for purposes of setting the AUL.[34]

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[31] *See* section 776(a)(2)(A) of the Act.
[32] *See* section 776(b) of the Act.
[33] *See* section 771(5A) of the Act.
[34] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review*, 72 FR 43607, 43608 (August 6, 2007), unchanged in final, 73 FR 7708 (February 11, 2008).

Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that 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.

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 way it could use its own subsidy benefits.[35]

The RZBC Companies

The RZBC Companies consist of the RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE. All companies are domestically-owned PRC companies. RZBC Co., RZBC Juxian, and RZBC IE are wholly owned by RZBC Group and, hence, are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).[36] RZBC Co. and RZBC Juxian are producers of the subject merchandise; RZBC IE is the exporter of the subject merchandise; and RZBC Group is a headquarters company and does not produce any merchandise. Consequently, the subsidies received by these companies are being attributed according to the rules established in 19 CFR 351.525(b)(6)(ii), (c), and (b)(6)(iii), respectively.

In their initial questionnaire response, the RZBC Companies reported their ownership history and affiliations prior to the POR, but after December 11, 2001.[37] RZBC Co. reported that the company "Sisha" was a prior owner.[38] In the first administrative review of this order, the Department determined that Sisha Co., Ltd. (Sisha) was cross-owned with RZBC Co. and

[35] *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[36] *See* RZBC Companies' IQR (October 21, 2013) at "RZBC Group" page III - 4.
[37] The PRC ascended and became a member of the World Trade Organization on December 11, 2001.
[38] *See* RZBC Companies' IQR at "RZBC Co. Ltd." page III - 6.

instructed the RZBC Companies to file a response on behalf of Sisha.[39] The Department found that Sisha received a countervailable, allocable subsidy in 2003.[40]

Consistent with the *Citric Acid First Review*, we continue to find that Sisha was cross-owned with RZBC Co. (*see* 19 CFR 351.525(b)(6)(vi)) and attributed the allocable benefit for Sisha's grant to the RZBC Companies for the POR. For more information, *see* "Enterprise Development Fund from Zibo City Financial Bureau," below.

Also, RZBC IE reported that it exports subject merchandise produced by other, unaffiliated companies, but that this merchandise was not exported to the United States during the POR.[41] Although any subsidies to the unaffiliated producers would normally be cumulated with those of the trading company that sold their merchandise pursuant to 19 CFR 351.525(c), the Department, in some instances, limited the number of producers it examines where the merchandise was not exported to the United States during the POR or accounted for a very small share of respondent's exports to the United States.[42] In this review, we did not issue CVD questionnaires to the unaffiliated producers of citric acid whose merchandise was exported by RZBC IE because such merchandise was not exported to the United States during the POR. Also, we removed the sales of these products from RZBC IE's 2012 sales to derive the denominator for purposes of calculating countervailable subsidy rates for the RZBC Companies. This approach is consistent with the Department's treatment of RZBC IE's exports of subject merchandise produced by unaffiliated companies in *Citric Acid First Review*.[43]

<u>*Sales Denominators*</u>

We determine that multiple sales denominators are appropriate for use in the attribution of subsidies to the RZBC Companies. To attribute a subsidy received by RZBC Co., RZBC Juxian, or RZBC IE, we used as the denominator the total consolidated sales of all three companies, exclusive of sales among affiliated companies, for 2012. To attribute a subsidy received by RZBC Group, we used as the denominator the total consolidated sales of RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE, exclusive of sales among affiliated companies, for 2012. Lastly, to attribute an export subsidy received by a company, we used as the denominator the 2012 export sales of RBZC IE, exclusive of sales of merchandise produced by unaffiliated companies.

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[39] In the first administrative review, the Department also found that the company Shandong Province High-Tech Investment Co. Ltd. (HTI) was a prior owner of RZBC Co. and, thus, was cross-owned with the RZBC Companies. *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011) (*Citric Acid First Review*) and accompanying Issues and Decision Memorandum (IDM) at "Attribution of Subsidies - RZBC." All subsidies received by HTI that the Department found to be countervailable were expensed. *See Citric Acid First Review,* and accompanying IDM at "Shandong Province Financial Special Fund for Supporting High and New Technology Industry Development Project." *See Citric Acid First Review*, and accompanying IDM at "Attribution of Subsidies - RZBC."
[40] *See Citric Acid First Review,* and accompanying IDM at "Enterprise Development Fund from Zibo City Financial Bureau."
[41] *See* the RZBC Companies' IQR at "RZBC IE" page III - 7.
[42] *See, e.g.*, *Certain Pasta from Italy: Final Results of the Fourth Countervailing Duty Administrative Review*, 66 FR 64214 (December 12, 2001), and accompanying IDM at "Attribution."
[43] *See Citric Acid First Review,* and accompanying IDM at "Attribution of Subsidies - RZBC."

BENCHMARKS AND DISCOUNT RATES

The Department examined loans received by the RZBC Companies from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies (*see* 19 CFR 351.524(b)(1)). The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

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.[44] 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."[45] Section 771(5)(E)(ii) of the Act also indicates that the benchmark should be a market-based rate.

For the reasons first explained in *CFS from the PRC*,[46] loans provided by PRC banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a PRC benchmark for loans, the Department selected an external market-based benchmark interest rate.[47]

We first developed in *CFS from the PRC*[48] and more recently updated in *Thermal Paper from the PRC*,[49] the methodology used to calculate the external benchmark. Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from the PRC*, the pool of countries

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

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

[46] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying IDM at Comment 10; *see also* Memorandum to the File from Patricia Tran, International Trade Compliance Analyst, AD/CVD Operations, Office III, "Placement of Banking Memoranda on Record of the Instant Review" (June 18, 2014) (Banking Memoranda).

[47] The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. *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) (*Softwood Lumber from Canada*), and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

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

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

captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.[50] Beginning with 2010, however, the PRC is in the upper-middle income category.[51] Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2001 – 2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010 - 2012. As explained in *CFS from the PRC*, by pooling countries in this manner, we capture the broad inverse relationship between income and interest rates.

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

In each year from 2001-2009, and 2011-2012, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group.[52] This contrary result for a single year does not lead the Department to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009, and 2011-2012. 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 (IMF), 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. 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.[53] 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.[54]

[50] *See* Memorandum to the File from Patricia Tran, International Trade Compliance Analyst, AD/CVD Operations, Office III, "Interest Rate Benchmark Memorandum (2001 – 2012)" (June 18, 2014) (Interest Rate Benchmark Memorandum).
[51] *Id*.
[52] *See* Interest Rate Benchmark Memorandum.
[53] For example, in certain years Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L'Este reported dollar-denominated rates; therefore, such rates have been excluded.
[54] For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country's real interest rate was 34.95 percent and 37.25 percent, respectively. *See* Interest Rate Benchmark Memorandum.

The resulting inflation-adjusted benchmark lending rates are included in the RZBC Companies' preliminary calculations memoranda. Because these rates are net of inflation, we adjusted the benchmark to include an inflation component.

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.[55]

In *Citric Acid Investigation*, the Department revised this methodology 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.[56] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

Foreign Currency-Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is again following the methodology developed over a number of successive PRC investigations.[57] For U.S. dollar short-term loans, the Department used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Likewise, for any loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where "n" equals or approximates the number of years of the term of the loan in question.

[55] *See, e.g., Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008), and accompanying IDM, at 8.

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

[57] *See 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 I from the PRC*), and the accompanying IDM at "Loan Benchmarks and Discount Rates for Allocating Non-Recurring Subsidies," *and also Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012)(*Wind Towers from the PRC*), and accompanying IDM at "Benchmark and Discount Rates."

Discount Rate Benchmarks

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.

The resulting interest rate benchmarks that we used in the calculations are provided in the Interest Rate Benchmark Memorandum.

ANALYSIS OF PROGRAMS

I. Programs Determined To Be Countervailable

A. Shandong Province Policy Loans Program

In *Citric Acid Third Review*, the Department found that the *Shandong Province Development Plan of Chemical Industry during "Twelfth Five-Year Plan" Period* (*12th Five-Year Plan*) identifies objectives and goals, in conjunction with the Government of Shandong's past and present policies, for the development of the citric acid industry and calls for lending to support these objectives and goals.[58] Moreover, loan documents reviewed by the Department in the first administrative review stated that because the food-use citric acid industry "has characteristics of capital and technology concentration and belongs to high and new technology … the State always takes positive policy to encourage its development."[59] On the record of the instant review, the GOC reported that "while RZBC has reported receiving benefits under this program, the GOC submits that this program was terminated with the conclusion of the *Shandong Eleventh Five-Year Petro-Chemical Plan* on December 31, 2010. The current 12th five year plan, in effect during the POR, does not 'call for lending to support' the development of the citric acid industry."[60]

As the Department explained in Comment 7 of *Citric Acid Third Review*, the *12th Five-Year Plan* outlines provisions to transform and "upgrade traditional industries" and "accelerate the development of strategic emerging industries" by making "full use of the relevant policies introduced by the national {and} provincial {governments}."[61] Provincial policies directed to "accelerate" the development of strategic emerging industries are contained in the *Shandong Province Implementation Plan* and *State Council Decision on Strategic Emerging Industries*.[62]

[58] *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 Third Review*), and accompanying IDM at Comment 7.
[59] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 76 FR 33219, 33228 (June 8, 2011) (*Citric Acid First Review Prelim*), unchanged in the final results.
[60] *See* GOC's IQR at 2-5.
[61] *Id.* at Exhibit 1 and Additional Documents for Prelim Memorandum at Attachment I.
[62] *See* GOC's 2SQR at Exhibit 2 "*Decision of the State Council on Accelerating the Cultivation and Development of Strategic Emerging Industries* (Guo Fa (2010) No. 32) (*State Council Decision on Strategic Emerging Industries*);" and GOC's 4SQR (May 20, 2014), at Exhibit 4 "*Implementation Opinions of the People's Government of Shandong Province on Accelerating the Cultivation and Development of Strategic Emerging Industries* (Lu Zheng Fa (2011) No. 15), May 3, 2011 (*Shandong Province Implementation Plan*)."

The GOC provided the *Shandong Province Implementation Plan* which included a list of the "First Batch of Provincial-Level Strategic Emerging Industry Projects of Shandong Province" naming RZBC Group as part of a project of industrialization and application of citric acid biological conversion technology.[63] The *Shandong Province Implementation Plan* "guide{s} financial institutions to increase the credit support for strategic emerging industries. Guide{s} commercial banks to adjust and optimize the credit loan structure…Actively obtain{s} the support of policy banks, and encourage{s} policy credit loans to favor strateg{ic} emerging industries."[64] Similarly, the *State Council Decision on Strategic Emerging Industries* seeks "to speed up the cultivation and development of strategic emerging industries, . . .improve…{the} financial policy support system" by "encourage{ing} financial institutions to increase the credit loan support. Guid{ing} financial institutions to set up a credit loan management and loan evaluation system that fits the characteristics of strateg{ic} emerging industries. Actively promot{ing} the innovation of financial products."[65]

We find that the loans are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the objectives and goals of the *12th Five-Year Plan*, in conjunction with the Government of Shandong's past and present policies to develop the citric acid industry.

Further, consistent with the underlying investigation, *Citric Acid First Review*, *Citric Acid Second Review*, and *Citric Acid Third Review*, we find that Shandong Province policy loans from state-owned commercial banks constitute financial contributions from "authorities" within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act. Further, pursuant to section 771(5)(E)(ii) of the Act, such financing provides a benefit equal to the difference between what the recipients paid on the loans and the amount they would have paid on comparable commercial loans. RZBC Co., RZBC Juxian, and RZBC IE reported that they had loans outstanding during the POR, which were provided by state-owned commercial banks.[66]

To calculate the benefit under this program, we compared the amount of interest each company paid on their outstanding loans to the amount of interest they would have paid on comparable commercial loans.[67] In conducting this comparison, we used the interest rates described in the "Benchmarks and Discount Rates" section above. We attributed benefits under this program to the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (exclusive of inter-company sales), as discussed in the "Attribution of Subsidies" section above. On this basis, we find that the RZBC Companies received a countervailable subsidy of 0.25 percent *ad valorem*.

B. Export Seller's Credit for High- and New-Technology Products

RZBC IE reported having outstanding loans from the Export-Import Bank of China (EXIM) during the POR, which were provided under this program.[68] In the underlying investigation,

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[63] *See* GOC's 4SQR at Exhibit 4.
[64] *See* GOC's 2SQR at Exhibit 2.
[65] *Id*.
[66] *See* RZBC Companies' IQR at "RZBC Co." Exhibit 10, "RZBC Juxian" Exhibit 8, and "RZBC IE" Exhibit 7.
[67] *See* 19 CFR 351.505(a).
[68] *See* RZBC Companies' IQR at "RZBC IE" Exhibit 7.

Citric Acid First Review, *Citric Acid Second Review,* and *Citric Acid Third Review* the Department found that loans under this program conferred a countervailable subsidy.[69]

On the record of the instant review, the GOC reported that that there were no changes to the program during the POR.[70] Therefore, consistent with the *Citric Acid Investigation, Citric Acid First Review, Citric Acid Second Review,* and *Citric Acid Third Review*, we find that the loans provided by the GOC under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. The loans also provide a benefit under 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(A)-(B) of the Act.

To calculate the benefit under this program, we compared the amount of interest RZBC IE paid on the outstanding loans to the amount of interest the company would have paid on comparable commercial loans.[71] In conducting this comparison, we used the interest rates described in the "Benchmarks and Discount Rates" section above. We divided the total benefit amount by the RZBC Companies' export sales during the POR. On this basis, we find that the RZBC Companies received a countervailable subsidy of 0.64 percent *ad valorem*.

C. Export-Import Bank of China: Buyer's Credit

Through this program, the Export-Import Bank of China (EX-IM Bank) provides loans at preferential rates for the purchase of exported goods from the PRC. The Department found that this program was not used by the respondents in the *Preliminary Results*.[72] However, the Department was not able to verify the reported non-use of export buyer's credits during verification.[73] As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section, we determine, relying upon AFA, that export buyer's credits confer a countervailable subsidy to the RZBC Companies. Our determination regarding the countervailability of the program, our reliance on AFA and our selection of the appropriate rate to apply to this program are explained in further detail under Comments 6, below. On this basis, we determine a countervailable subsidy rate of 10.54 percent *ad valorem* for the RZBC Companies under this program.

D. Reduced Income Tax Rate for High or New Technology Enterprises

In the *Citric Acid First Review, Citric Acid Second Review*, and *Citric Acid Third Review* the Department found this program to be countervailable.[74] As discussed in the *Citric Acid First*

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[69] *See Citric Acid Investigation*, and accompanying IDM at "Policy Lending;" and *Citric Acid First Review, Citric Acid Second Review*, and *Citric Acid Third Review*, and accompanying IDMs at "Export Seller's Credit for High- and New-Technology Products."
[70] *See* GOC's IQR at 5.
[71] *See* 19 CFR 351.505(a).
[72] *See Preliminary Results* and accompanying Decision Memorandum at 27.
[73] *See* GOC's Verification Report at 2-3.
[74] *See Citric Acid First Review, Citric Acid Second Review,* and *Citric Acid Third Review,* and accompanying IDMs at "Reduced Income Tax Rate for High or New Technology Enterprises."

Review Prelim, Article 28.2 of the Enterprise Income Tax Law (EITL) authorizes a reduced income tax rate of 15 percent for high- and new-technology enterprises (HNTEs).[75] The criteria and procedures for identifying eligible HTNEs are provided in the *Measures on Recognition of High and New Technology Enterprises* (GUOKEFAHUO {2008} No. 172) (*Measures on Recognition of HNTEs*) and the *Guidance on Administration of Recognizing High and New Technology Enterprises* (GUOKEFA HUO {2008} No.362).[76] Article 8 of the *Measures on Recognition of HNTEs* provides that the science and technology administrative departments of each province, autonomous region, and municipality directly under the central government or cities under separate state planning shall collaborate with the finance and taxation departments at the same level to recognize HNTEs in their respective jurisdictions.[77]

The annex of the *Measures on Recognition of HNTEs* lists eight high- and new-technology areas selected for the State's "primary support": 1) Electronics and Information Technology; 2) Biology and New Medicine Technology; 3) Aerospace Industry; 4) New Materials Technology; 5) High-tech Service Industry; 6) New Energy and Energy-Saving Technology; 7) Resources and Environmental Technology; and 8) High-tech Transformation of Traditional Industries.[78]

On the record of the instant review, the GOC reported that there were no changes to this program during the POR.[79] RZBC Co. and RZBC Juxian reported that they received tax savings under this program on their 2011 income tax returns filed during the POR.[80]

Consistent with the *Citric Acid First Review, Citric Acid Second Review*, and *Citric Acid Third Review*, we find that the reduced income tax rate paid by RZBC Co. and RZBC Juxian is a financial contribution in the form of revenue foregone by the GOC, and provides a benefit to the recipient in the amount of the tax savings.[81] We also find, consistent with the *Citric Acid First Review, Citric Acid Second Review*, and *Citric Acid Third Review,* that the reduction afforded by this program is limited as a matter of law to certain new and high technology companies selected by the government pursuant to legal guidelines specified in *Measures on Recognition of HNTEs* and, hence, is specific under section 771(5A)(D)(i) of the Act. Both the number of targeted industries (eight) and the narrowness of the identified project areas under those industries support a finding that the legislation expressly limits access to the program to a specific group of enterprises or industries.

To calculate the benefit, we compared the income tax rate that RZBC Co. and RZBC Juxian would have paid in the absence of the program (25 percent) to the income tax rate that the companies actually paid.[82] We treated the income tax savings realized by RZBC Co. and RZBC Juxian as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POR by the consolidated sales (excluding inter-company sales)

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[75] *See Citric Acid First Review Prelim,* 76 FR at 33229-30.
[76] *Id*.
[77] *Id*.
[78] *Id*.
[79] *See* GOC's IQR at 7.
[80] *See* RZBC Companies' IQR at "RZBC Co." at pages III-16, III-40 through III-41 and Exhibit 5 and 24; and at "RZBC Juxian" at pages III-14, III-52 through III-53 and Exhibit 4.
[81] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[82] *See* RZBC Companies' IQR at "RZBC Co." at Exhibit 5 and at "RZBC Juxian" at Exhibit 4.

for RZBC Co., RZBC Juxian, and RZBC IE for the POR, pursuant to 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c). On this basis, we find that the RZBC Companies received a countervailable subsidy of 1.48 percent *ad valorem*.

E. Provision of Sulfuric Acid for LTAR

The Department examined the provision of sulfuric acid to the RZBC Companies. In the *Citric Acid First Review, Citric Acid Second Review,* and *Citric Acid Third Review* the Department found that this program provides countervailable subsidies.[83]

In its October 21, 2013, input response the GOC did not report any changes to the operation of the program during the POR and did not answer the questions in Standard Questions Appendix.[84] We find that the GOC's additional factual submission of April 14, 2014 does not compel us to revisit our findings. *See* Comment 4. As such, the Department continues to find that this program is specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Four producers provided sulfuric acid to the RZBC Companies during the POR. We determine that three producers are located in Korea and Japan, and therefore are not relevant to our analysis.[85] The GOC reported that the chairman of the board of the fourth producer (hereinafter referred to as Company A) is a member of the People's Congress of Shandong and a member of the People's Congress of Yantai City.[86] The GOC reported that Company A also has a CCP primary organization.[87] The Department requested the GOC to confirm the chairman's positions with official documentation. The GOC provided the representative lists of the People's Congress of Shandong Province and the People's Congress of Yantai City.[88]

We explained in the Public Bodies Memorandum and the CCP Memorandum that "available information and record evidence indicates that the CCP meets the definition of the term 'government' for the limited purpose of applying the U.S. CVD law to China."[89] Additionally, publicly available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in the company's affairs.[90] The GOC did not provide information that would alter our understanding of the CCP organizations nor has the GOC substantiated its claims, either in the laws that it provided or with expert, third-party sources, that CCP organizations and the businesses in which they operate are on "parallel" tracks that never affect each other.[91] Therefore, because Company A has a CCP primary organization,

[83] *See Citric Acid First Review*, *Citric Acid Second Review*, and *Citric Acid Third Review*, and accompanying IDMs at "Provision of Sulfuric Acid for LTAR."
[84] *See* GOC's input response at 5.
[85] *See* RZBC Companies' IQR at "RZBC Co." Exhibit 11 and "RZBC Juxian" Exhibit 12.
[86] *See* GOC's input response at 29.
[87] *Id.* at 25-26.
[88] *See* GOC's 5SQR (June 2, 2014) at 3 and Exhibit 3.
[89] *See* Additional Documents for Prelim Memorandum at Attachment III: Public Body Memorandum and CCP Memorandum at 33.
[90] *Id.*, at Public Body Memorandum at 35-36 and sources cited therein.
[91] *See* GOC's 4SQR at 3.

we determine that Company A is an "authority" within the meaning of section 771(5)(B) of the Act.[92]

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above we relied on AFA to determine that actual transaction prices for sulfuric acid in the PRC are significantly distorted by the government's involvement in the market. As such, we determine that domestic prices in the PRC cannot serve as viable, tier one benchmark prices. For the same reasons, we determined that import prices into the PRC cannot serve as a benchmark.[93] Accordingly, to determine whether the provision of sulfuric acid conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, consistent with the *Citric Acid First Review*, we applied a tier two benchmark, *i.e.*, world market prices available to purchasers in the PRC (*see* 19 CFR 351.511(a)(2)(ii)).

Petitioners placed on the record monthly world prices for sulfuric acid from Argentina, Azerbaijan, Belgium, Chile, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Denmark, Egypt, El Salvador, Estonia, Germany, Greece, Guatemala, Hong Kong, Hungary, Indonesia, Iran, Ireland, Kazakhstan, Kenya, Latvia, Lithuania, Luxembourg, Malaysia, Mauritius, Mexico, Morocco, Netherlands, Peru, Portugal, Russia, Senegal, Singapore, Slovakia, Slovenia, South Africa, Sri Lanka, Switzerland, Taiwan, Thailand, Turkey, Ukraine, United Kingdom, United States, and Uruguay for the year 2012, taken from trade statistics from Global Trade Atlas (GTA).[94] Petitioners also submitted monthly world prices for sulfuric acid from the United States and Europe for the year 2012, sourced from ICIS, a petrochemical trade publication.[95]

The RZBC Companies submitted prices for sulfuric acid from Brazil, Chile, Japan, Northwest Europe, South Korea, Turkey, Tunisia, and the U.S. Gulf region sourced from CRU Group for the year 2012.[96] We also used GTA export data that the RZBC Companies put on the record for sulfuric acid from Algeria, Argentina, Australia, Azerbaijan, Belarus, Belgium, Brazil, Bulgaria, Canada, Chile, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Czech Republic, Denmark, Egypt, El Salvadore, Estonia, France, Germany, Greece, Guatemala, Hong Kong, Hungary, India, Indonesia, Iran, Ireland, Italy, Japan, Kazakhstan, Kenya, Latvia, Lithuania, Luxembourg, Malaysia, Mauritius, Mexico, Morocco, Netherlands, New Zealand, Peru, Philippines, Poland, Portugal, Russia, Senegal, Serbia, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Thailand, Turkey, Ukraine, United Kingdom, United States, and Uruguay covering the POR.

The average of the export prices provided by parties represents an average of commercially available world market prices for sulfuric acid that would be available to purchasers in the PRC. *See* Comments 10, 13, 15, 16 and 17. Also, 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the

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[92] *See* section 771(5)(D)(iii) of the Act.
[93] *See Citric Acid First Review*, *Citric Acid Second Review*, and *Citric Acid Third Review*, and accompanying IDMs at "Provision of Sulfuric Acid for LTAR."
[94] *See* Petitioners' Submission of Factual Information (April 21, 2014) (Petitioners' Factual Information) at Exhibit 11.
[95] *Id.* at Exhibit 10.
[96] *See* the RZBC Companies' Submission of Factual Information (April 21, 2014) (RZBC Companies' Factual Information) at Exhibit 6.

prices to the extent practicable. Based on the facts of this case, we weight-averaged the prices to calculate a single benchmark by month. *See* Final Results Calculation Memorandum.[97]

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we averaged the international freight rates from Los Angeles, Vancouver, Rotterdam, New Delhi, and Buenos Aires to Shanghai, sourced from Maersk, originally submitted by Petitioners.[98] We also added inland freight from the port to the factory based on the RZBC Companies' sulfuric acid purchase information,[99] import duties as reported by the GOC, and the VAT applicable to imports of sulfuric acid into the PRC.[100] *See* Comment 12. Both RZBC Co. and RZBC Juxian reported the prices that they paid for sulfuric acid inclusive of inland freight and VAT.[101]

To derive the benchmark, we did not include marine insurance. In prior CVD investigations involving the PRC, the Department found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges.[102]

Comparing the adjusted benchmark prices to the prices paid by RZBC Juxian for sulfuric acid, we find that the GOC provided sulfuric acid for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark and what the respondents paid.[103] To calculate the benefit, we calculated the difference between the delivered world market price and the price that the companies paid for sulfuric acid, including delivery charges. Next, we divided the sum of the price differentials by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (exclusive of inter-company sales). On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.33 percent *ad valorem* during the POR.

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[97] *See* Department's memorandum, "Final Results of the Fourth Administrative Review of the Countervailing Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China ("PRC"): Calculation Memorandum for RZBC Co., Ltd. ("RZBC Co."); RZBC Import & Export Co., Ltd. ("RZBC IE"); RZBC (Juxian) Co., Ltd. ("RZBC Juxian"); and RZBC Group Co., Ltd. ("RZBC Group") (collectively, "RZBC Companies")" (December 22, 2014)(Final Results Calculation Memorandum) at Attachment II.
[98] *See* letter from King & Spalding to the Department regarding "Submission of Rebuttal Freight Rates" (May 1, 2014) at Exhibit 1.
[99] *See* the RZBC Companies' IQR at "RZBC Co." at Exhibit 12 and "RZBC Juxian" at Exhibit 10.
[100] For import duties and VAT, *see* GOC's input response at 8.
[101] *See* the RZBC Companies' IQR at "RZBC Co." at Exhibit 11 and at "RZBC Juxian" Exhibit 9.
[102] *See*, *e.g.*, *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 28557 (May 21, 2010) (*PC Strand from the PRC*), and accompanying IDM at Comment 13.
[103] *See* 19 CFR 351.511(a).

F. Provision of Steam Coal for LTAR

The Department examined whether the RZBC Companies purchase steam coal for LTAR during the POR. In the *Citric Acid Second Review* and *Citric Acid Third Review*, the Department found that this program provides countervailable subsidies.[104]

In its October 21, 2013, input response the GOC did not report any changes to the operation of the program during the POR and did not answer the questions in Standard Questions Appendix.[105] We find that the GOC's additional factual submission of April 14, 2014 does not compel us to revisit our findings. *See* Comment 4. As such, the Department continues to find that this program is specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act.

On the record of the instant review, the GOC reported that during the POR the RZBC Companies purchased steam coal from enterprises in which the government owned a majority stake.[106] As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.[107] The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we determine that these entities are "authorities" within the meaning of section 771(5)(B) of the Act and that the RZBC Companies received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above we relied on AFA to determine that actual transaction prices for steam coal in the PRC are significantly distorted by the government's involvement in the market. As such, we determine that domestic prices by coal producers based in the PRC and import prices into the PRC may not serve as viable, tier one benchmark prices.[108]

Accordingly, to determine whether the provision of steam coal conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, consistent with the *Citric Acid Second Review* and *Citric Acid Third Review*, we applied a tier two benchmark, *i.e.*, world market prices available to purchasers in the PRC (*see* 19 CFR 351.511(a)(2)(ii)).

Petitioners submitted monthly world prices for 2012 for various types of coal from Australia, Colombia, Japan, Korea, Poland, and Russia as reported in the Platts International Coal Report (Platts).[109] Petitioners further placed on the record steam coal (*i.e.*, "thermal coal") world price indices, as reported by the IMF, for Australia, from 2012.[110] Lastly, from GTA, Petitioners

[104] *See Citric Acid Second Review* and *Citric Acid Third Review*, accompanying IDMs at "Provision of Steam Coal for LTAR."
[105] *See* GOC's input response at 15.
[106] *Id*. at 37.
[107] *See* Additional Documents Prelim Memorandum at Attachment III: Public Body Memorandum at 35-36 and sources cited therein.
[108] *See Citric Acid Second Review* and *Citric Acid Third Review*, and accompanying IDMs at "Provision of Steam Coal for LTAR."
[109] *See* Petitioners' Factual Information at Exhibit 12.
[110] *Id.* at Exhibit 13.

submitted world market prices for anthracite coal[111], covering 2012, from Algeria, Argentina, Australia, Austria, Belarus, Belgium, Bulgaria, Canada, Chile, Colombia, Croatia, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Guatemala, Hungary, India, Italy, Latvia, Lithuania, Malaysia, Mexico, Netherlands, New Zealand, Peru, Poland, Portugal, Russia, Serbia, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Taiwan, Thailand, Turkey, United Kingdom, and the United States.[112] RZBC Companies submitted monthly export and import values for HTS 270.1.12 (covering steam coal) for 2010 through 2012 from Global Trade Atlas, covering numerous countries.[113] RZBC Companies also put on the record monthly Indonesia steam coal price indices for 2012, sourced from coalspot.com.[114] In their questionnaire response, the RZBC Companies indicated that it purchased bituminous coal for use in the production of citric acid[115]; therefore, we utilized coal prices representative of the steam coal (*i.e.*, thermal coal) purchased by RZBC Companies.[116] We used all steam coal data on the record except the Platts data submitted by Petitioners. *See* Comment 14.

The average of the export prices provided by parties represents an average of commercially available world market prices for steam coal that would be available to purchasers in the PRC. *See* Comments 10, 13, 15, 16 and 17. Also, 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Based on the facts in this case, the Department weight-averaged the prices to calculate a single benchmark by month. *See* Final Results Calculation Memorandum.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we included international freight and inland freight. The international ocean freight rates used are an average of the freight rates submitted on the record by Petitioners and RZBC Companies. Petitioners placed on the record ocean freight pricing data from Platts and Searates (for distance data), for the POR, pertaining to shipments of steam coal from various world ports (Australia (Newcastle and Gladstone), Colombia (Bolivar), Poland (Gdansk), and Russia (St. Petersburg)) to Qingdao, PRC.[117] The RZBC Companies placed on the record ocean freight pricing data from Platts and Searates, for the POR, pertaining to shipments of steam coal from Australia, Canada, Colombia, Iran, Indonesia, Malaysia, Mexico, Netherlands, Peru, Russia, South Africa, South Korea, Turkey, and the United States to Shanghai, PRC.[118] We averaged the international freight rates to derive the amount included in our benchmark.

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[111] Anthracite coal is listed as HTS 2701.11.
[112] *See* Petitioners' Factual Information at Exhibit 14.
[113] *See* RZBC Companies' Factual Information at Exhibits 3 and 4. Where we could, we extracted from the pricing data export prices to the PRC. If we could not extract export prices to the PRC, then we excluded the price from the average monthly benchmark price.
[114] *Id.* at Exhibit 2.
[115] *See* RZBC Companies' 2SQR at Exhibit 7.
[116] For further information, *see* Preliminary Results Calculation Memorandum.
[117] *See* Petitioner's Factual Information at Exhibits 17 and 18.
[118] *See* RZBC Companies' Factual Information at Exhibit 21.

The RZBC Companies purchased steam coal from domestic sources. Therefore, for inland freight we relied on the RZBC Companies' reported inland freight expense to transport citric acid from their plant to the port.[119] In doing so, we did not use the data Petitioners submitted for inland freight, which was sourced from Havers Analytics. *See* Comment 11. Additionally, to derive the benchmark, we included import duties and the VAT applicable to imports of steam coal into the PRC as reported by the GOC.[120] We did not include marine insurance. In prior CVD investigations involving the PRC, the Department found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges.[121]

Comparing the adjusted benchmark prices to the prices paid by RZBC Co. for steam coal during the POR, we find that the GOC provided steam coal for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark price and the price that the companies paid.[122] To calculate the benefit, we calculated the difference between the delivered world market price and the price that the companies paid for steam coal, including delivery charges. We next divided the sum of the price differentials by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales). On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.23 percent *ad valorem* during the POR.

G. Provision of Calcium Carbonate for LTAR

The Department examined whether the RZBC Companies purchased calcium carbonate for LTAR during the POR. In the *Citric Acid Third Review*, the Department found that this program provides countervailable subsidies.[123]

In its January 27, 2014, 1SQR the GOC did not report any changes to the operation of the program during the POR and did not answer the questions in Standard Questions Appendix.[124] We find that the GOC's additional factual submission of April 14, 2014 does not compel us to revisit our findings. *See* Comment 4. As such, the Department continues to find that this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Four domestic producers provide calcium carbonate to the RZBC Companies. The owner of two of the producers (hereinafter referred to as Companies B and C) was the Secretary of a CCP Committee of a village in the PRC. The GOC provided a certified letter from the CCP Committee of the village indicating that the owner of Companies B and C held the position of Secretary from June 2009 to December 2011, but claimed the role did not impact the management and operations of the two companies.[125] The third calcium carbonate producer

[119] *See* RZBC Companies' IQR at "RZBC Co." at page III-22.
[120] *See* GOC's input response at 18.
[121] *See, e.g., PC Strand from the PRC,* and accompanying IDM at Comment 13.
[122] *See* 19 CFR 351.511(a).
[123] *See Citric Acid Third Review*, and accompanying IDM at "Provision of Calcium Carbonate for LTAR."
[124] *See* GOC's 1SQR at 1.
[125] *Id.* at Exhibit I-6.

(hereinafter referred to as Company D) has a CCP primary organization.[126] The GOC claims that the fourth calcium carbonate producer (hereinafter referred to as Company E) does not have a CCP primary organization and that no officials of the Government or the CCP held positions or ownership stakes in the company.[127]

Regarding Companies B and C, we determine that the two input producers are not "authorities" within the meaning of section 771(5)(B) of the Act. While the owner of these two enterprises was reported to be the Secretary for the Party Committee of a village in the PRC, the GOC provided a certified letter from the Party Committee stating the individual's dates of service in this role.[128] Because the dates of service ended prior to the POR and the village does not geographically overlap with the locations of the producers' operations, we determine that the GOC did not exercise meaningful control over these input producers through this individual during the POR. Concerning Company D, as noted above, we determine that the presence of a CCP primary organization at a company constitutes evidence that the producer is an "authority."[129] As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine that Company E is an "authority" within the meaning of section 771(5)(B) of the Act.

As discussed under "Use of Facts Otherwise Available and Adverse Inferences" above, we relied on AFA to determine that actual transaction prices for calcium carbonate in the PRC are significantly distorted by the government's involvement in the market. As such, we determine that domestic prices in the PRC cannot serve as viable, tier one benchmark prices. For the same reasons, we determined that import prices into the PRC cannot serve as a benchmark.[130] No new evidence has been presented in this review that would call into question that finding. Accordingly, to determine whether the provision of calcium carbonate conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, consistent with the *Citric Acid Third Review*, we applied a tier two benchmark, *i.e.*, world market prices available to purchasers in the PRC (*see* 19 CFR 351.511(a)(2)(ii)).

We received calcium carbonate and limestone flux[131] benchmark pricing data from Petitioners and the RZBC Companies.[132] In their questionnaire response, the RZBC Companies indicated that they purchased limestone flux in the production of citric acid;[133] therefore, we utilized the limestone flux and ground calcium carbonate benchmark pricing data to apply a more accurate

[126] *Id*. at 28.
[127] *Id*. at 37 and 39.
[128] *Id*. at Exhibit I-6.
[129] *See* Additional Documents for Prelim Memorandum at Attachment III: Public Body Memorandum at 35-36 and sources cited therein.
[130] *See Citric Acid Third Review*, and accompanying IDM at "Provision of Calcium Carbonate for LTAR."
[131] *Id*., and accompanying IDM at Comment 11 and 12. We found that precipitated calcium carbonate (PCC) and ground calcium carbonate (GCC), *i.e.*, limestone flux, are different grades of the same input, calcium carbonate.
[132] *See* RZBC Companies' Factual Information at Exhibit 10 – 12 and 23; *see also* Petitioners' Factual Information at Exhibit 1 - 4.
[133] *See* RZBC Companies' 1SQR at 1 and Exhibit 1- 2.

benchmark price corresponding to the company's domestic purchases.[134] Petitioners and the RZBC Companies submitted monthly limestone flux prices for the POR, reported by GTA for numerous countries.[135] In addition, Petitioners submitted monthly ground calcium carbonate prices for the POR, from Metal Bulletin for the United States and the United Kingdom.[136] The regulation at 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. *See* Comments 10, 13, 15, 16, and 17. Based on the facts in this, case the Department weight-averaged the prices to calculate a single benchmark by month. *See* Final Results Calculation Memorandum.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we included international freight and inland freight. The international ocean freight rates used are an average of the freight rates submitted on the record by Petitioners and the RZBC Companies. Petitioners and the RZBC Companies placed on the record ocean freight pricing data from Maersk and Searates, for the POR, pertaining to shipments of calcium carbonate from various world ports to Shanghai, PRC.[137] We averaged the international freight rates to derive the amount included in our benchmark. *See* Comment 8.

The RZBC Companies purchased calcium carbonate from domestic sources; therefore, for RZBC Co.'s inland freight, we relied on the RZBC Companies' reported inland freight expense to transport citric acid from their plant to the port.[138] We also added inland freight in the PRC based on RZBC Juxian's calcium carbonate purchase information.[139]

Additionally, to derive the benchmark, we included import duties and the VAT applicable to imports of calcium carbonate into the PRC as reported by the GOC.[140] We did not include marine insurance. In prior CVD investigations involving the PRC, the Department found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of

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[134] *See Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) (*Steel Wheels from the PRC*), and accompanying IDM at Comment 15; *see also Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009), and accompanying IDM at "Provision of SSC for LTAR" (where the Department compared prices by steel grade); *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008), and accompanying IDM at "Sale of High-Grade Iron Ore for LTAR" (where the Department conducted the benefit analysis on a lump-to-lump and fine-to-fine basis); and *Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73448 (December 12, 2005), and accompanying IDM at "Calculation of Provincial Benefit" and "Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the GOBC" (where the Department computed species-specific benefits).
[135] For more information on this topic, *see* Final Calculation Memorandum.
[136] *See* Petitioners' Factual Information at Exhibits 1 – 2; and RZBC Companies' Factual Information at Exhibit 10.
[137] *See* Petitioners' Factual Information at Exhibit 3 – 4; and RZBC Companies' Factual Information at Exhibit 23.
[138] *See* RZBC Companies' 1SQR at 3-4.
[139] *Id*. at Exhibit 3.
[140] *See* GOC's 2SQR at 16.

levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges.[141]

Comparing the adjusted benchmark prices to the prices paid by RZBC Co. and RZBC Juxian for calcium carbonate during the POR, we find that the GOC provided calcium carbonate for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark price and the price that the companies paid. To calculate the benefit, we calculated the difference between the delivered world market price and the price that the companies paid for calcium carbonate, including delivery charges. We next divided the sum of the price differentials by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales). On this basis, we determine that the RZBC Companies received a countervailable subsidy of 1.72 percent *ad valorem* during the POR.

H. Provision of Caustic Soda for LTAR

We initiated and are investigating whether the GOC provides caustic soda, *i.e.*, sodium hydroxide, for less than adequate remuneration. In the Post-Preliminary Results, the Department found the program not specific. However, the GOC failed to substantiate its specificity information at verification.[142] As explained above in “Use of Facts Otherwise Available and Adverse Inferences,” we determine that the GOC has failed to act to the best of its ability in terms of providing the Department with the information it requested concerning consumption of caustic soda by industry. Thus, pursuant to section 771(5A)(D)(iii) of the Act, the provision of caustic soda to citric acid producers is specific.

The GOC reported in its NSAQR that RZBC Companies purchased caustic soda from three producers, of which one (hereinafter referred to Company F) is majority-owned by the GOC during the POR. As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.[143] 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. As discussed above in “Use of Facts Otherwise Available and Adverse Inferences,” we are relying on AFA to determine that Company H is an “authority” within the meaning of section 771(5)(B) of the Act. Therefore, for Company F and Company H, we find that the RZBC Companies received a financial contribution in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

With regards to the RZBC Companies’ purchases from their third caustic soda producer (hereinafter referred to as Company G), there is insufficient information on the record to determine that it is an “authority,” and therefore we did not conduct a subsidy analysis for RZBC Companies’ purchases from Company G. For a detailed discussion, *see* Comment 5B.

To determine whether the government’s provision of caustic soda conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, we relied on 19 CFR 351.511(a)(2) to identify an

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[141] *See*, *e.g.*, *PC Strand from the PRC*, and accompanying IDM at Comment 13.
[142] *See* GOC’s Verification Report at 2-3.
[143] *See* Public Body Memorandum at 35-36 and sources cited therein.

appropriate, market-determined benchmark for measuring the adequacy of remuneration. 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 we explained in *Softwood Lumber from Canada*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions in the industry under investigation.[144]

Beginning with tier one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *Preamble*: "Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative tier two in the hierarchy."[145] The *Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.[146]

In the instant review, we are relying on AFA regarding the caustic soda industry to determine whether the PRC market is distorted by the involvement of the GOC. As discussed in the "Use of Facts Otherwise Available and Adverse Inferences," section above, the GOC failed to provide the number of calcium carbonate producers in the PRC and the number of those producers that are owned by the Chinese government. Because the GOC failed to provide the requested information, the Department concludes as AFA that Chinese state-owned enterprises are responsible for a dominant percentage of domestic production volume and that actual transaction prices are significantly distorted as a result of the government's involvement in the market. For this reason, we determine that domestic prices charged by privately-owned calcium carbonate producers based in the PRC and import prices into the PRC may not serve as viable, tier one benchmark prices.

We received caustic soda, *i.e.*, sodium hydroxide or lye,[147] benchmark pricing data from Petitioners and the RZBC Companies.[148] Petitioners and the RZBC Companies submitted monthly caustic soda prices for the POR, reported by GTA for numerous countries.[149] In addition, Petitioners submitted monthly caustic soda prices for the POR, from Metal Bulletin for the United Kingdom, from ICIS for the United States and Africa.[150] The regulation at 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. *See* Comments 10, 13,

[144] *See Softwood Lumber from Canada*, and accompanying Softwood Lumber IDM at "Market-Based Benchmark" section.
[145] *See Preamble*, 63 FR at 65377.
[146] *Id.*
[147] *See* Petitioners' new subsidy allegation (NSA) (November 12, 2014) at 20.
[148] *See* RZBC Companies' Factual Information at Exhibit 15 and 24 and 23; *see also* Petitioners' Factual Information at Exhibit 5-8.
[149] For more information on this topic, *see* Final Calculation Memorandum.
[150] *See* Petitioners' Factual Information at Exhibits 5 and 7.

and 17. Based on the facts in this, case the Department weight-averaged the prices to calculate a single benchmark by month. *See* Final Results Calculation Memorandum.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we included international freight and inland freight. The international ocean freight rates used are an average of the freight rates submitted on the record by Petitioners and the RZBC Companies. Petitioners and the RZBC Companies placed on the record ocean freight pricing data from Maersk and Searates, for the POR, pertaining to shipments of caustic soda from various world ports to Shanghai, PRC.[151] We averaged the international freight rates to derive the amount included in our benchmark. *See* Comment 12 and Final Results Calculation Memorandum.

The RZBC Companies purchased caustic soda from domestic sources; therefore, for RZBC Co.'s inland freight, we relied on the RZBC Companies' reported inland freight expense to transport citric acid from their plant to the port.[152] We also added inland freight in the PRC based on RZBC Juxian's caustic soda purchase information.[153]

Additionally, to derive the benchmark, we included import duties and the VAT applicable to imports of caustic soda into the PRC as reported by the GOC.[154] We did not include marine insurance. In prior CVD investigations involving the PRC, the Department found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges.[155]

Comparing the adjusted benchmark prices to the prices paid by RZBC Co. and RZBC Juxian for caustic soda during the POR, we find that the GOC provided caustic soda for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark price and the price that the companies paid. To calculate the benefit, we calculated the difference between the delivered world market price and the price that the companies paid for caustic soda, including delivery charges. We next divided the sum of the price differentials by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales). On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.96 percent *ad valorem* during the POR.

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[151] *See* Petitioners' Factual Information at Exhibit 8; and RZBC Companies' Factual Information at Exhibit 24.
[152] *See* RZBC Companies' NSAQR at 6-7.
[153] *Id*.
[154] *See* GOC's NSAQR at 8.
[155] *See, e.g.*, *PC Strand from the PRC*, and accompanying IDM at Comment 13.

I. Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Shandong Province

In *Citric Acid Third Review*, the Department found that the RZBC Companies received a countervailable subsidy under this program in 2010 and 2011.[156]

In *Citric Acid Third Review*, we found that the subsidies provided under this program are limited to strategic emerging industries, and thus, are *de jure* specific under section 771(5A)(D)(i) of the Act. Also, we found that the provisions of land for LTAR constitute financial contributions in the form of provision of a good within the meaning of section 771(5)(D)(iii) of the Act. The provision of land constitutes a benefit to the extent the local land authority provides the land for LTAR.[157] On the record of the instant review, the GOC reported that there were no changes to this program during the POR.[158]

To calculate the benefit, we calculated the difference between the price RZBC Co. and RZBC Juxian paid for their land-use rights and a Thai land benchmark. For purchased land, we next conducted the "0.5 percent test" of 19 CFR 351.524(b)(2) for the year of the relevant land-use agreement by dividing the total benefit for each tract by the appropriate sales denominator. If more than one tract was provided in a single year, we combined the total benefits from the tracts before conducting the "0.5 percent test."

Our analysis in *Citric Acid Third Review* indicated that the benefit subsidy amount under this program exceeded the 0.5 percent threshold. Therefore, in the instant review we used the discount rate described under the "Benchmarks and Discount Rates" section above to allocate the benefit over the life of the land-use rights contract, which is 50 years.[159]

To calculate the net subsidy rate, we divided the benefit by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the POR. On this basis, we calculated a net subsidy rate of 1.32 percent *ad valorem* for the RZBC Companies. *See* Comment 18.

J. Enterprise Development Supporting Fund from Zibo City Financial Bureau

In *Citric Acid First Review* and *Citric Acid Second Review*, the Department found that Sisha, RZBC Co.'s prior cross-owned parent company, received a countervailable subsidy under this program in 2003.[160]

We found that the grants are direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act and that they provide a benefit in the amount of the grant.[161] The RZBC Companies' statement regarding the eligibility criteria for this program indicates that enterprises that receive

[156] *See Citric Acid Third Review* and accompanying IDM at "Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Shandong Province."
[157] *Id.*
[158] *See* GOC's IQR at 25.
[159] *See Citric Acid Third Review*, and accompanying IDM at "Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Shandong Province.".

these grants are, as a matter of fact, limited in number. Accordingly, we determined that the program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.[162] On the record of the instant review, the GOC reported that there were no changes to this program during the POR.[163]

The Department determined to use Sisha's consolidated sales as reported by Sisha as the denominator for the 2003 allocation test pursuant to 19 CFR 351.524(b)(2).[164] We found that the 2003 grant was greater than 0.5 percent of the reported consolidated sales for 2003.[165] Thus, because the 2003 grant was a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii), we allocated the benefit over the 10-year AUL.

Because RZBC Co. and Sisha ceased to be cross-owned after March 2008, we applied a Sisha/RZBC Co. sales ratio to compute the benefit attributable to the RZBC Companies during the POR; this approach is consistent with the Department's decision in *Citric Acid First Review*.[166] We then divided that benefit amount by RZBC Co.'s, RZBC IE's, and RZBC Juxian's total combined sales (excluding inter-company sales) for 2012 to obtain the *ad valorem* subsidy rate. On this basis, we preliminary found that the RZBC Companies received a countervailable subsidy of 0.05 percent *ad valorem*.

K. Application Technology Research and Development Fund

RZBC Co. reported that it received grants from Rizhao City during the POR because it engaged in research and development projects related to applied technology.[167] The company had to apply for the fund.[168]

We determine that the grant received by RZBC Co. constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grant is limited to enterprises with applied technology projects, we determined that the grant is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit in the instant review, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we expensed the total amount of

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160 *See Citric Acid First Review*, *Citric Acid Second Review*, and *Citric Acid Third Review*, and accompanying IDMs at "Enterprise Development Fund from Zibo City Financial Bureau."
161 *See* 19 CFR 351.504(a).
162 *See Citric Acid First Review*, *Citric Acid Second Review*, and *Citric Acid Third Review* and accompanying IDM at "Enterprise Development Fund from Zibo City Financial Bureau."
163 *See* GOC's IQR at 16.
164 *See Citric Acid First Review*, *Citric Acid Second Review*, and *Citric Acid Third Review*, and accompanying IDMs at "Enterprise Development Fund from Zibo City Financial Bureau."
165 *Id*.
166 *Id*.
167 *See* RZBC Companies' IQR at "RZBC Co." page III-17, III-37 through III-39, and Exhibits 21, 22, and 23.
168 *Id.* at page III-37.

the grant to the year of receipt, which is the POR. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.01 percent *ad valorem*.

L. Economic Task Special Contribution Award

RZBC Juxian reported that it received a grant from the township government during the POR because the company made an economic contribution in the form of tax payments.[169] The company did not have to apply for the grant.[170]

We determined that the grant received by RZBC Juxian constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, the Department is relying on AFA to determine that the grant program is specific under section 771(5A) of the Act because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.[171]

To calculate the benefit, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we expensed the grant to the POR, the year of receipt. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.01 percent *ad valorem*.

M. Rizhao City: Special Fund for Enterprise Development

RZBC Juxian reported that it received a grant from Rizhao City during the POR because it qualified based on its status as a technologically innovative and strategic emerging industry.[172] The company had to apply for this grant.[173]

We determine that the grant received by RZBC Juxian constitutes a financial contribution and benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, the Department is relying on AFA to determine that the grant program is specific under section 771(5A) of the Act because the GOC failed to provide information that was requested of it on two occasions regarding the details of the government assistance.[174]

The grant that RZBC Juxian received during the POR was less than 0.5 percent of the total consolidated sales of RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for 2011. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant

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[169] *Id*. at "RZBC Juxian" page III-16, III-49 through III-51, and Exhibits 27 and 28.
[170] *Id.* at page III-49.
[171] *See* GOC's IQR at 21-22; and 2SQR at 5.
[172] *Id.* at "RZBC Juxian" page III-46 through III-48, and Exhibits 24, 25, and 26.
[173] *Id.* at page III-46.
[174] *See* GOC's IQR at 9 -11; and 2SQR at 5.

amount to the POR. On this basis, we determine that the RZBC Companies received a countervailable subsidy of 0.01 percent *ad valorem*.

II. Programs Determined Not To Provide Measurable Benefits During the POR

After the Department inquired about several items in each company's financial statement, the RZBC Companies reported that it received a total of 14 grants from various governmental entities. The RZBC Companies reported that RZBC Group received three grants in 2011 and 2012; RZBC Co. received three grants in 2011 and 2012; and RZBC Juxian received eight grants in 2011 and 2012. Those grants for which we find a countervailable benefit are described above. We determine that the benefit from the programs listed below each result in a net subsidy rate that is less than 0.005 percent *ad valorem*. Consistent with our past practice, we did not include these programs in our net countervailing duty rate calculations.[175]

A. Rizhao City: Patent Development Special Fund
B. Shandong Province: Patent Development Special Fund
C. Subsidy for Providing Employment Internship Base
D. Subsidy for Shandong Province Science and Technology Award
E. Cleaning Production Inspection Expense Reimbursement
F. Award for Work Safety Demonstrative Enterprises of Juxian County
G. Enterprise Technology Improvement Award

III. Programs Determined Not to be Used[176]

We find that the RZBC Companies did not use the following programs during the POR:

1. Reduced Income Tax Rates to Foreign Invested Enterprises (FIEs) Based on Location
2. Reduced Income Tax Rate for Tech or Knowledge Intensive FIEs
3. Two Free, Three Half Tax Program for FIEs
4. Local Income Tax Exemption & Reduction Program for Productive FIEs
5. VAT Rebate on Purchases by FIEs of Domestically Produced Equipment
6. Famous Brands - Yixing City
7. Anqui City Energy & Water Savings Grant
8. Land for LTAR in Anqui Economic Development Zone
9. Land-Use Rights Extension in Yixing City
10. National Government Policy Lending
11. Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products
12. International Market Development Fund Grants for Small and Medium Enterprises
13. Jiangsu Province Energy Conservation and Emissions Reduction Program

[175] *See*, *e.g.*, *CFS from the PRC*, and accompanying IDM at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE;" *see also Steel Wheels from the PRC*, and accompanying IDM at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District."
[176] In this section, we refer to programs found to be not used by the RZBC Companies.

14. Rizhao City: Subsidies to Encourage Enterprise Expansion
15. Rizhao City: Subsidy for Antidumping Investigations
16. Rizhao City: Technological Innovation Grants
17. Rizhao City: Technology Research and Development Fund
18. Shandong Province: Special Fund for the Establishment of Key Enterprise Technology Centers
19. Shandong Province: Subsidy for Antidumping Investigations
20. Shandong Province: Award Fund for Industrialization of Key Energy-saving Technology
21. Shandong Province: Environmental Protection Industry R&D Funds
22. Shandong Province: Waste Water Treatment Subsidies
23. Yixing City: Leading Enterprise Program
24. Yixing City: Tai Lake Water Improvement Program
25. Loans Provided to the Northeast Revitalization Program
26. State Key Technology Renovation Project Fund
27. National Level Grants to Loss-making State-Owned Enterprises (SOEs)
28. Income Tax Exemption Program for Export-Oriented FIEs
29. Tax Benefits to FIEs for Certain Reinvestment of Profits
30. Preferential Income Tax Rate for Research and Development for FIEs
31. Preferential Tax Programs for Encouraged Industries
32. Preferential Tax Policies for Township Enterprises
33. Provincial Level Grants to Loss-making SOEs
34. Reduced Income Tax Rates for Encouraged Industries in Anhui Province
35. Provision of Land for Less Than Adequate Remuneration in Anhui Province
36. Funds for Outward Expansion of Industries in Guangdong Province
37. Income Tax Exemption for FIEs Located in Jiangsu Province
38. Administration Fee Exemption in the Yixing Economic Development Zone (YEDZ)
39. Tax Grants, Rebates, and Credits in the YEDZ
40. Provision of Construction Services in the YEDZ for LTAR
41. Grants to FIEs for Projects in the YEDZ
42. Provision of Electricity in the YEDZ for LTAR
43. Provision of Water in the YEDZ for LTAR
44. Provision of Land in the YEDZ for LTAR
45. Provision of Land to SOEs for LTAR
46. Torch Program – Grant
47. Discounted Loans for Export-Oriented Industries
48. Provision of Land in the Zhuqiao Key Open Park for LTAR
49. Special Funds for Energy Saving and Recycling Program
50. Water Resource Reimbursement Program
51. Shandong Province: Energy Saving Award
52. VAT and Import Duty Exemptions on Imported Equipment
53. Ecology Compensation Subsidy Funds
54. Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Rizhao City

55. Provision of Land for LTAR to Enterprises Located in Development Parks/Zones in the Donggang District
56. Provision of Plants for LTAR to Enterprises in the Science and Technology Incubator of Rizhao High-Tech Industrial Development Zone
57. Fund for Large Technology-Intensive Projects in the Donggang District
58. Strategic Emerging Industries Fund of Shandong Province
59. Tax Refunds for Export-Oriented Trading Companies in the Donggang District
60. Tax Refunds to Large-Scale Trading Companies in the Donggang District
61. Provision of Electricity for LTAR
62. Provision of Natural Gas for LTAR
63. Provision of Water for LTAR
64. Income Tax Credits on Purchases of Domestically Produced Equipment
65. Grant to State Key New Products
66. Subsidies to Shandong Provinces Enterprise Key Technology Renovation Projects
67. Shandong Province Brand Development Fund
68. Donggang District Awards for Famous Brands
69. Donggang District Awards for New Products and Technology Centers
70. Donggang District Interest Rate Subsidy to Technology Renovation Projects
71. Return of Land Use Right Deed Tax
72. Award for Contribution to City and People
73. Enterprise Technology Research and Development Subsidy
74. Financial Resource Construction Award
75. Technology Innovation Advanced Unit Award
76. Special Fund for Foreign Trade Public Service Platform
77. Shandong Province Science and Technology Development Fund
78. Self-Innovation Special Fund
79. Self-Innovation Achievement Convert into Major Industry Structure Optimization Upgrade Project
80. Shandong Self-Innovation Subsidy
81. Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River
82. Fund for Energy-saving Technological Innovation

Analysis of Comments

Comment 1: Whether to Reverse the Department's "Authorities" Determination

GOC's Arguments:

- The Department concluded in the *Preliminary Results* that Company A and Company D were government authorities solely due to the presence of a CCP primary organization within the companies citing pages 35-36 of its Public Body Memorandum.[177] The Public Body Memorandum, however, provides insufficient evidentiary basis to conclude that the presence of a CCP primary organization within a privately-owned company is sufficient, standing alone, to transform the company into a government authority. The Public Body Memorandum does not state that the CCP exerts control over private companies through CCP primary organizations. At most, the Public Body Memorandum expresses uncertainty over the role of CCP primary organizations in private companies. With regard to private companies, the Public Body Memorandum plainly states that "the role of this Party presence {in private companies} is unclear; it may exert varying degrees of control in different circumstances."[178] The only other conclusion the Public Body Memorandum makes is that the CCP primary organization is "more than just monitoring" but that the reason for its presence in companies is not understood.[179]
- In addition, while the *Economist* article quoted in the Public Body Memorandum mentions CCP primary organizations in private companies and in SOEs, it is unlikely that the statements made in the article were intended to apply equally to primary party organization in both types of entities.[180] The vast majority of this article is focused on the presence of CCP primary organization in SOEs and their effect on SOEs, not private companies. Thus, there is no support for the conclusion from the statements in the *Economist* that CCP primary organization in private companies "hold meetings that shadow formal board meetings and often trump their decisions."[181] No other facts on the record support such a statement. Nor are there any other statements within pages 35-36 of the Public Body Memorandum that state that CCP primary organizations exert control over private businesses or would otherwise support the leap the Department makes here that the presence of CCP primary organizations alone is sufficient to vest a company with government authority. Indeed, the GOC has provided information that directly refutes this claim.
- The GOC has provided a wealth of information in this review to support the position that CCP primary organizations in private companies do not exert control over a company sufficient to vest the company with government authority. First, in its questionnaire response the GOC very clearly explained that CCP primary organizations in private companies are focused solely on party affairs: the relationship between the CCP primary organizations in question and their higher party organizations is clearly stipulated in

[177] *See* Public Body Memorandum; *see also* Memorandum to the File, "Final Results Calculation Memorandum RZBC Co., Ltd. ("RZBC Co."); RZBC Import & Export Co., Ltd. ("RZBC IE"); RZBC (Juxian) Co., Ltd. ("RZBC Juxian"); and RZBC Group Co., Ltd. ("RZBC Group") (collectively, "RZBC Companies")," (December 22, 2014) (Final Results Calculation Memorandum) at Attachment I for business proprietary names of Company A and D.
[178] *See* Public Body Memorandum at 36.
[179] *Id*.
[180] *Id*. at Attachment III at Document 73.
[181] *Id*.

Article 10(4) of the CCP Constitution. The type of "work" that is required to be reported to higher Party organizations is "Party affairs". More specifically, a CCP primary organization's "work," including that of the two in question, is to elect a party secretary, recruit new party members and organize "seminars" where party members study important Party reports and policies."[182] "The company's business decisions are made by the board of directors and/or management, not the CCP primary organizations. As noted above, the primary party organization's work, as well as its reporting responsibility to its higher Party organization, is limited to "Party affairs." As noted above, the business operations of a company are entirely independent of the functions and responsibilities of the CCP primary organizations."[183]

- These statements echo the delineation espoused in the CCP constitution between the work of CCP primary organizations in SOEs and non-SOEs: in a non-public economic institution, *e.g.*, a private company, the primary Party organization carries out the Party's principles and policies, provides guidance to and oversees the enterprise in observing the laws and regulations of the state, exercises leadership over the trade union, the Communist Youth League organization and other mass organizations, rallies the workers and office staff around it, safeguards the legitimate rights and interests of all quarters and stimulates the healthy development of the enterprise.[184] The CCP Constitution plainly states that CCP primary organizations "exercise oversight overall {*sic*} Party members, including the chief administrators who are Party members, but do not direct the work of their units."[185]
- The GOC provided the *Opinions Regarding Strengthening & Improvement of Party Construction in Non-State Enterprises (Interim)*.[186] This document explains the different functions of CCP primary organization in state-owned enterprises (SOEs) and non-SOEs. For example, the document states that in SOEs, "{t}he {CCP} primary organization guarantees and oversees the implementation of the principles and policies of the Party and the state in its own enterprise and backs the meetings of the shareholders, board of directors, board of supervisors and manager (factory director) in the exercise of their functions and powers according to law."[187] The function of a CCP primary organization in non-SOEs, however, is significantly different.[188] Noticeably absent from this list of functions is any directive, implicit or otherwise, for the CCP primary organization to have involvement in the company's day to day operations or to implement government policies, or otherwise exert control over the company in any way. Rather, the emphasis is on the education and welfare of the workers who are employed in the companies.
- The GOC has submitted documents from official sources directly explaining the nature and functions of CCP primary organization in private companies. The Department, in contrast, based its determination in the *Preliminary Results* on information from secondary sources that specifically conclude that the "role of this party presence is

[182] *See* GOC's 3SQR at 2.
[183] *Id*. at 4.
[184] *See* GOC's Rebuttal Factual Information (July 2, 2014) at Exhibit 1 - CCP Constitution at Article 32.
[185] *Id*.
[186] *See* GOC's Rebuttal Factual Information at Exhibit 2.
[187] *Id*.
[188] *Id*.

unclear." Absent any direct evidence that CCP primary organizations in private companies exercise significant control over the company, the Department should reverse its finding in the *Preliminary Results* and find Companies A and D not to be government authorities.

Petitioners' Rebuttal Arguments:

- The GOC argues that CCP primary organizations in non-SOEs are not involved "in the company's day-to-day operations or to implement government policies, or otherwise exert control over the company in any way." Contrary to the GOC's assertion, the document that the GOC provided is entitled *Major Functions a/Chinese Communist Party (CCP) Organization in Enterprises {sic}*, and only refers generally to the *Opinions Regarding Strengthening & Improvement of Party Construction in Non-State Enterprises (Interim).*[189] That document only contained an "excerpt" of the *Opinions regarding Strengthening & Improvement of Party Construction in Non-State Enterprises (Interim)*, and the GOC failed to place a complete translation on the record.
- The excerpt does not support the GOC's argument because it confirms the pivotal role played by CCP primary organizations in PRC entities with private ownership. CCP primary organizations are described as "the fighting fortress in Non-SOEs" and "the political center for workers and employees" which "exercise{} political leadership over enterprise development."[190] This contradicts the GOC's assertion that the record contains no evidence that CCP primary organizations in private companies exercise significant control over the company. Thus, record evidence supports the Department's preliminary finding that because Company A and Company D have CCP primary organizations, these input suppliers are authorities capable of providing a financial contribution.
- The GOC also argues that the CCP Constitution creates delineation…between the work of CCP primary organizations in SOEs and non-SOEs. The actual language of the CCP Constitution, however, contradicts the GOC's legal argument. For example, Article 32 of the CCP Constitution explicitly addresses situations where the company's "administrative leaders assume full responsibility under the leadership of the Party committee," in which "the primary Party organization discusses and decides on major issues and at the same time ensures that the administrative leaders are able to fully exercise their functions and powers."[191] This record evidence cannot be reconciled with the GOC's assertion in its case brief that {CCP} primary organizations in private companies are focused solely on Party affairs, and that CCP primary organizations in private companies do not exert control over a company sufficient to vest the company with government authority. As a result, the Department should give no weight to the GOC's legal arguments in the final results.
- The GOC attempts to create uncertainty where there is none by suggesting that the Department's Public Body Memorandum at most…expresses uncertainty over the role of CCP primary organizations in private companies. This is incorrect. The Department's Public Body Memorandum reasonably concluded that the determination is made on a case-by-case basis because certain enterprises that have little or no formal government

[189] *Id.*
[190] *Id.*
[191] *Id*. at Exhibit 1 at Article 32.

ownership are public bodies if the Department determines that the government exercises meaningful control over such enterprises.[192] This approach is not an expression of uncertainty over whether CCP primary organizations "may wield a controlling influence in the company's affairs."[193] It is a reasonable expression of a methodology that will be guided by the record of each proceeding and in light of the general framework set forth in the Public Body Memorandum.

- In this case, the record does not support the GOC's argument. Record evidence including the CCP Constitution itself confirms that the Department reasonably found that "{t}he GOC has not provided information that would alter our understanding of the CCP organizations nor has the GOC substantiated its claims" that CCP primary party organizations "and the businesses in which they operate are on 'parallel' tracks that never affect each other."[194] To the contrary, primary party organizations in ostensibly private input suppliers such as Companies A and D are expressly capable of exerting control over a company sufficient to vest the company with government authority. In sum, the Department should reject the GOC's arguments and continue to find that Companies A and D are authorities capable of providing a financial contribution under the Sulfuric Acid and Calcium Carbonate Programs, respectively.

Department's Position: The Public Body Memorandum notes that according to the Xinhua News Agency, there were a total of "178,000 party organs in private firms in 2006, a rise of 79.8 percent over 2002."[195] The GOC fails to acknowledge or address that CCP primary organizations are present in private enterprises in growing numbers and that expert, third-party sources have indicated that these organizations may be imbued with significant power such that they are properly considered to be "authorities" for the purpose of U.S. CVD law.[196] Included in the Public Body Memorandum and CCP Memorandum, for example, is a report that notes:

> The party has cells in most big companies – in the private as well as the state-owned sector – complete with their own offices and files on employees. It controls the appointment of captains of industry and, in the SOEs, even corporate bodies. It holds meetings that shadow formal board meetings and often trump their decisions, particularly on staff appointments. It often gets involved in business planning and works with management to control pay.[197]

The information provided by the GOC in this administrative review does not change this information and instead further supports the information in the Department's Public Body Memorandum because it demonstrates that the CCP's focus in establishing a CCP primary organization within private enterprises goes beyond the mere "education" of members in Party affairs. Rather, the information on the record and provided by the GOC instead

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[192] *See* Public Body Memorandum at Attachment III at 38.
[193] *See Preliminary Results* and accompanying Decision Memorandum at 16.
[194] *Id*.
[195] *See* Public Body Memorandum at 36, citing to "Brief Introduction of the Communist Party of China," ChinaToday.com, current as of April 2012 at http://www.chinatoday.com/org/cpc/.
[196] *Id*., at 35-36, citing to "A Choice of Models," *The Economist* (January 2012).
[197] *Id*.

indicates that the primary focus of the CCP organizations and its members in private companies is the implementation of the Party's line, principles, policies and resolutions.[198]

Indeed, record information provided by the GOC explicitly indicates that these CCP primary organizations are the "fighting fortress in {n}on-SOEs; {they} play{ } as the political center for workers and employees; and {they} exercise{ } political leadership over enterprise development…"[199] Listed as a major function of the CCP primary organization in non-SOEs is to "strengthen {the} Party's internal construction and self-discipline. To improve Party organization's institutionalization system by fully appreciating and supporting the works of party discipline agency within the party organ."[200] According to the *Guiding Opinions of the State*, private enterprises are "one of the Party's important working focuses. The primary party organization in non-collectively owned {private} enterprises is responsible to carry out the Party's lines and policies, to guide and monitor the enterprise to comply with the nation's laws and regulations, to unify the workers and employees, to protect all parties' legitimate interests, and to promote healthy development of the enterprise."[201] The CCP primary organizations are also tasked with "focus{ing} on promoting the construction of the Party organizations in individual industrial and commercial business, small enterprises and professional markets, thus to make sure the numbers (*sic*) of Party organizations grow steadily and the coverage of Party organizations further expand."[202] These guidelines for CCP primary organizations in non-SOEs indicate that the CCP primary organizations are not mere observers within these enterprises but active participants in the development of strategic and operational objectives of the enterprises with the intent on expanding the CCP's presence within the enterprise.

We, therefore, find that the information placed on the record by the GOC does not refute the conclusions in the Public Body Memorandum and CCP Memorandum but, instead, confirms the Department's understanding of the CCP and demonstrates that the CCP meets the definition of the term "government" for the limited purpose of applying the U.S. CVD law to the PRC.[203] The GOC has tried to draw a distinction between CCP primary organizations in SOEs and non-SOEs. However, as discussed above, the *Guiding Opinions of the State* explicitly states that CCP primary organizations in non-SOEs are to carry out the Party's line and policies and guide and monitor the enterprise to comply with the nation's laws and regulations.[204] The GOC argues that CCP primary organizations are not involved in the business operations or day-to-day operations of non-SOEs, but that is not the relevant question. The relevant question is whether an entity possesses, exercises or is vested with government authority. The GOC's own information demonstrates that CCP primary organizations are placed in non-SOEs to ensure those entities "carry out social

[198] *See* GOC's Rebuttal Factual Information (July 7, 2014) at Exhibit 3 - *Guiding Opinions of the State Administration for Industry and Commerce regarding Promoting the Party Organizations and Party Members in the Non-collectively owned enterprises to Implement the Mass-route Educational Practice and Activities* (*Guiding Opinions of the State*).
[199] *Id.* at Exhibit 2.
[200] *Id*.
[201] *Id*. at Exhibit 3.
[202] *Id*.
[203] *See* CCP Memorandum at 33.
[204] *See* GOC's Rebuttal Factual Information at Exhibit 3.

responsibilities," maintain and implement the Party's (*i.e.*, the government's) line and principles, "uphold the legitimate rights of individual citizens," and ensure social development, among other things.[205] In other words, the CCP primary organizations ensure that non-SOEs possess and/or exercise government functions and government authority.

In short, the GOC did not provide information that would alter or counter record information describing the function of the CCP organizations within firms nor has the GOC substantiated its claims, either in the laws that it provided or with third-party sources that CCP organizations and the businesses in which they operate are on "parallel" tracks that never affect each other.[206] Therefore, we continue to find Companies A and D are "authorities" within the meaning of section 771(5)(B) of the Act and are capable of providing a financial contribution.

Comment 2: Whether to Find Certain Calcium Carbonate Producers are "Authorities"

Petitioners' Arguments:

- In the *Preliminary Results*, the Department determined that two suppliers of calcium carbonate, Company B and C,[207] were not "authorities" within the meaning of section 771(5)(B) of the Act. Petitioners contend that based on information on the record of this review, the Department should reverse its decision in the final results and find that the two companies were "authorities" and that the provision of calcium carbonate from these companies provides a countervailable benefit. In its questionnaire response, the GOC states that one of the owners of both Company B and C was the secretary of the CCP committee of Liujiadu Village during the POR, *i.e.*, calendar year 2012.[208] As part of its questionnaire response, however, the GOC provides a certificate from the CCP Committee of Liujiadu Village that states that the person's tenure did not overlap with the POR. It was on the basis of this certificate indicating that the Department preliminarily concluded that the two companies were not "authorities" within the meaning of section 771(5)(B) of the Act.
- The Department made it clear in its verification outline that it wanted to meet with representatives of the CCP Committee of Liujiadu Village at the Ministry of Commerce (MOFCOM) in Beijing.[209] Petitioners contend at verification the GOC refused to make representatives of the CCP Committee of Liujiadu Village available to the Department's verifiers. Instead, MOFCOM officials asserted that the CCP Village Committee was "not a sector of the government" and "due to budgetary constraints," officials of the CCP Committee of Liujiadu Village were unable to attend.[210] The MOFCOM officials provided what they said were "election notifications" showing the election in June 2009 and the election in December 2011.
- The information that the GOC provided at verification -- instead of making the requested Party officials available as requested in the verification outline -- conflicts with other

[205] *See id.* at Exhibit 2.
[206] *See* GOC's input response and 3SQR (April 17, 2014).
[207] *See* Final Results Calculation Memorandum at Attachment I for business proprietary names.
[208] *See* GOC's 1SQR at 9, 19 and 20. *See also*, GOC's 5SQR at 4 - 5.
[209] *See* the Department's Verification Outline to the GOC (September 3, 2014) at 5.
[210] *See* GOC's Verification Report at 2.

record evidence. The information raises questions about the government affiliations of Companies B and C.[211] The GOC never rebutted, clarified, or corrected the information Petitioners placed on the record with regards to Companies B and C.

- Taken collectively, this information demonstrates that Companies B and C are authorities within the meaning of section 771(5)(B) of the Act. Thus, the Department should include inputs purchased by the RZBC Companies from Companies B and C in calculating the Calcium Carbonate Program benefit for the final results in this review.

GOC's Rebuttal Arguments:

- It is wrong to argue that the GOC failed to provide sufficient information to verify that the owner of Company B and C was not CCP secretary of Liujiadu Village during the POR. The GOC placed documents on the record demonstrating that the owner of Company B and C was not the secretary of the CCP committee of the village during the POR.[212] While the GOC misspoke in the narrative of its response regarding the duration of this individual's term, the documentation provided in the response and the documentation obtained at verification, plainly demonstrate that the owner was not secretary of the CCP committee of the village during the POR.[213]
- The information placed on the record by Petitioners does not rebut this fact. The only information placed on the record with regard to this issue is an article (not fully translated) from 2008.[214] The GOC made no statements, one way or the other, whether the owner was secretary of the CCP committee of the village prior to 2009. This information is not relevant to whether the owner was part of the village CCP committee during the POR.
- The evidence reviewed at verification demonstrates that the owner of Companies B and C was not a secretary of the village CCP committee during the POR and therefore these two suppliers are not vested with government authority.

Department's Position: As noted above in the "Provision of Calcium Carbonate for LTAR" section, we continue to find that Companies B and C are not "authorities" within the meaning of section 771(5)(B) of the Act. Despite the GOC's narrative questionnaire response that the owner of Companies B and C served as Secretary for the Party Committee during the POR,[215] the GOC provided a certified letter from the CCP Committee of the village indicating that the owner of Companies B and C held the position of Secretary from June 2009 to December 2011.[216] The Department established at verification through official government documentation provided by the GOC and the CCP (*e.g.*, stamped originals of election notification from the CCP Committee of Lijiaxiang Town), that the owner of Companies B and C did not serve as Secretary for the Party Committee of Liujiadu Village in the PRC during the POR and that the village does not geographically overlap with the locations of the producers' operations.[217] The Department was also able to establish at verification that another person was elected to the position of Secretary

[211] *See* Petitioners' Case Brief at pages 26 - 27 for business proprietary information.
[212] *See* GOC's 1SQR at Exhibit I-6.
[213] *See* GOC's Verification Exhibit 1.
[214] *See* Petitioners' Rebuttal Factual Information (February 6, 2014) at Exhibit 1.
[215] *See* GOC's 1SQR at 9 and 20.
[216] *Id*. at Exhibit I-6.
[217] *See* GOC's Verification Report at 2.

for the Party Committee of Liujiadu Village on December 28, 2011, ending the owner of Companies B and C's tenure as Secretary before the POR. In addition, the December 28, 2011 election notification announced the approval of another person for Secretary of the Party Committee for the village in which Companies B and C are located.[218] The fact that officials from the actual village in question were not present to personally submit these original documents does not diminish the reliability of the information. Further, we find the information placed on the record by Petitioners is not compelling evidence to discredit the official government documentation collected at verification. Therefore the Department continues to find Companies B and C are not "authorities" and will continue to exclude these producers from the net subsidy calculation.

Comment 3: Whether the Department Should Countervail Input Purchases Made Through Trading Companies and Produced by "Authorities"

GOC's Arguments:

- In this review, the RZBC Companies made input purchases through private trading companies.[219] In the *Preliminary Results*, the Department countervailed these purchases because they were sourced from producers determined to be government authorities. The Department failed to make the requisite showing that the benefit to the RZBC Companies was a result of the financial contribution made from the government authority to the private trading company. Absent a causal connection between these requisite elements of the subsidy analysis, the Department's subsidy finding is unsupported by substantial evidence and contrary to law.
- In response to this argument in the past, the Department has maintained that the statute contemplates countervailing indirect subsidies and that it does not require the financial contribution and benefit to go to the same person.[220] The GOC agrees that the statute permits indirect subsidies; however, the statue does not permit a financial contribution to one party and a benefit to another to constitute a countervailable subsidy absent a showing of the connection between the contribution and the benefit. In the context of a simple input for LTAR program in particular, the presence of a third-party independent, private actor in the transaction requires a more definitive causal connection between the government action and the benefit bestowed.[221] This causation element is required because the private trading company can raise or lower prices of the input independent of its receipt of a government's financial contribution. Thus, without establishing the benefit to the trading company, the Department cannot establish that the benefit calculated from the RZBC Companies' transaction was actually a result of the financial contribution to the trading company. In other words, it cannot be established that the benefit was the result of the subsidy program alleged: the government provision of inputs for LTAR. Under these circumstances, the plain language of the statute and the Department's previous interpretation of LTAR programs requires a showing either that

[218] *Id.*
[219] *See* the RZBC Companies' IQR at "RZBC Co." Exhibit 15 and "RZBC Juxian" Exhibit 9.
[220] *See High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*Cylinders from the PRC*), and accompanying Issues and Decision Memorandum at Comment 7.
[221] *See AK Steel Corp. v. United States*, 192 F.3d 1367, 1372 (Fed. Cir. 1999) (*AK Steel*) ("in the case of an indirect subsidy, evidence of a causal nexus between the program and the benefit is also required").

the first transaction between the government authority and private trading company results in a benefit for that financial contribution to indirectly benefit RZBC or that the private trading company was entrusted or directed to provide a financial contribution and benefit to RZBC.

- In the *Preliminary Results* the Department merely presumed that since a benefit was calculated based upon the RZBC Companies' purchases from the trading company, that this benefit must have been a result of the financial contribution to the trading company. This tautological conclusion is a non sequitur that cannot be supported by the language of the statute or the facts of this case. A countervailable subsidy is defined, in relevant part, as a transaction "in which an authority . . . provides a financial contribution . . . or entrusts or directs a private entity to make a financial contribution . . . and a benefit is thereby conferred." By including the word "thereby" in this phrase, Congress has clarified that the "benefit" being conferred must be a consequence of the financial contribution made by the government authority.[222] Thus, regardless of whether 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.
- The GOC asserts in this case, and within the limited context of an input for LTAR program, the Department has failed to make that essential link. The Department has found a financial contribution by a government authority (*i.e.*, the sale of steam coal from a government owned steam coal producer to a trading company), and purports to find a "benefit" conferred on the RZBC Companies' purchases of inputs from the trading companies at LTAR. However, the Department has failed to establish any link or causal nexus between the benefit and the financial contribution by the government authority because the record does not show that the trading company received the inputs from the government authority at LTAR prices.
- The record shows only that RZBC purchased these inputs from the trading company at LTAR prices. It is certainly plausible that the trading company purchased the inputs from the government authority at higher prices and subsequently resold them to RZBC at lower prices due to differences in prevailing market conditions at the different times the sales transactions took place or for some other reason. Each of these inputs are commodity products subject to price fluctuations. The Department cannot simply presume that a trading company received the inputs at LTAR prices if it is a statutory requirement for establishing a countervailable subsidy.[223] Moreover, the inclusion of a third-party private actor in these transactions is precisely why in the *Preamble* the Department indicated that inputs for LTAR would only be countervailed as indirect subsidies when the private actor was entrusted or directed by the government to provide the financial contribution.

[222] *See The Compact Edition of the Oxford English Dictionary*, p. 284 (1987) (defining "thereby" as "1: By that, by means of, or because of that: through that"); see also *Webster's Third New International Dictionary of the English Language Unabridged*, p. 2372 (1993) (defining "thereby" as "1: by that: by that means: in consequence of that"). This interpretation is consistent with the court's interpretation of indirect subsidies in *Hynix Semiconductor, Inc. v. United States*, 29 CIT 995, 1008 (2005) (citing the "causal nexus" requirement discussed in *AK Steel*, 192 F.3d at 1376)).

[223] *See Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1327 (Fed. Cir. 2009) ("It is well established that speculation does not constitute 'substantial evidence.'"); *Mid Continent Nail Corp. v. United States*, 2013 CIT LEXIS 146 (CIT 2013) ("Speculation and surmise are no substitute for affirmative evidence").

- Regarding the issue of whether indirect subsidies can arise through the provision of goods or services, the GOC believes this is clearly answered by the Act. Section 771(5)(D)(iii) states that financial contributions include the provision of goods or services. The GOC contends if a private entity is entrusted or directed to provide a good or service to producers of the merchandise under investigation, a financial contribution exists.[224]
- The GOC submits that the entrustment or direction provision is the proper method to address these transactions. If the Department was correct that an indirect subsidy could be established by merely demonstrating a financial contribution to one private party and then a benefit to another private party there would be no need for the entrustment or direction discussion in the *Preamble* or for the provision at all.
- The GOC asserts the Department has followed very clear statutory guidelines for dealing with this issue: if a private party acts as the middle-man in the transaction, use the entrustment or direction provision. Despite this guideline, the Department adopted a new methodology for Chinese cases, ignoring completely the actions and presence of private trading companies in the transaction and rendering the entrustment and direction provision in the law entirely superfluous. The Department's treatment of input purchases through private trading companies is therefore unsupported by substantial evidence and contrary to law and should be changed in the final results.

Petitioners' Rebuttal Arguments:

- The Department should reject the GOC's comment because there is a causal connection. As explained by the U.S. Court of International Trade in *Guangdong Wireking*, "The GOC provided a financial contribution to private trading companies . . . A benefit was conferred upon {respondent} through the provision of wire rod from said trading companies." [225]
- The Department has already considered and rejected the GOC's argument in prior segments of this proceeding. In the first review, the Department determined that the RZBC Companies obtained some of its Sulfuric Acid Program inputs from trading companies.[226] The Department explained that "the GOC's financial contribution (provision of a good) is made to the trading company suppliers that purchase sulfuric acid," and "all or some portion of the benefit is conferred on the respondent citric acid producers through their purchases of the sulfuric acid from the trading company suppliers."[227] The Department has reached identical results in multiple proceedings, and should continue to do so in the final results of this review.[228] In the *Citric Acid Third*

[224] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65357 (November 25, 2008) (*Final Rule*); see also, *id*. at 65362 ("When we examine indirect subsidies, we are inquiring into whether a government is entrusting or directing a private entity to provide a reduced-cost input or enhanced revenue to a firm that produces subject merchandise").

[225] *See Guangdong Wireking Housewares & Hardware Co. v. United States*, 900 F. Supp. 2d 1362, 1380 (CIT 2013) (*Guangdong Wireking*)

[226] *See Citric Acid First Review* and accompanying IDM at Comment 3. The Department explained that "a subsidy is deemed to exist" under section 771(5)(B) of the Act "when there is a financial contribution 'to a person' and a 'benefit is thereby conferred.'"

[227] *Id*.

[228] *See*, *e.g.*, *Cylinders from the PRC* and accompanying IDM at Comment 7- Countervailability of Inputs Purchased from Domestic Trading Companies; *Galvanized Steel Wire From The People's Republic Of China*, 77 FR17418 (March 26, 2012), and accompanying IDM at Comment 5; *Certain Steel Wheels From The People's Republic Of*

Review, the Department found "that the GOC has provided a direct financial contribution (provision of a good) to the trading companies" and that "the existence of the financial contribution is not in doubt."[229] The Department explained that "the issue of whether the trading companies' sales of the inputs at issue constitute a countervailable subsidy hinges on whether the prices they charged conferred a benefit upon RZBC."[230] The Department appropriately compared "the prices RZBC paid to the trading companies for the inputs at issue" and found they were less "than the benchmark prices and" the Department therefore "determined that the transactions conferred a benefit in the form of a provision of a good for LTAR."[231]

- The GOC's reliance on the word "thereby" in isolation is contradicted by the plain language of the statute. Section 771(5)(E)(iv) of the Act states that "{a} benefit shall normally be treated as conferred where there is a benefit to the recipient, including ... in the case where goods or services are provided, if such goods or services are provided for less than adequate remuneration." The record demonstrates that RZBC Companies benefitted by obtaining inputs made by "authorities" from trading companies at LTAR prices.
- The Department should reject the GOC's argument and continue to countervail purchases of inputs made by "authorities" that were sold by trading companies. Seeking to confuse what is otherwise a straightforward inquiry, the GOC "submits that the entrustment or direction provision" of section 771(5)(B)(iii) of the Act is the proper method to address these transactions. The statute, however, contemplates myriad subsidy types, and LTAR subsidy programs are not cognizable only under section 771(5)(B)(iii) of the Act. In this case, the Department found the presence of a countervailable subsidy under section 771(5)(B)(i) of the Act. Thus, the GOC's argument regarding an alternative prong of the statute is irrelevant.

Department's Position: We disagree with the GOC, and continue to find that the RZBC Companies' purchases of inputs for LTAR through trading companies are countervailable. In *Citric Acid Third Review* and other CVD proceedings, the Department 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.[232] The Department's practice in this regarded has been affirmed by

China, 77 FR 17017 (March 23, 2012), and accompanying IDM at Comment 9; *First Citric Acid* and accompanying IDM at Comment 3; *Kitchen Shelving And Racks From The People's Republic Of China*, 74 FR 37012 (July 27, 2009), and accompanying IDM at Comment 6; *Circular Welded Carbon Quality Steel Pipe From The People's Republic Of China*, 73 FR 31966 (June 5, 2008), and accompanying IDM at Comment 7; *Light-Walled Rectangular Pipe from The People's Republic Of China*, 73 FR 35642 (June 24, 2008), and accompanying IDM at Section I.A; and *Certain New Pneumatic Off-the-Road Tires From The People's Republic Of China*, 73 FR 40480 (July 15, 2008), and accompanying IDM at Comment D.4.

[229] *See Citric Acid Third Review* and accompanying IDM at Comment 5.

[230] *Id.*

[231] *Id.*

[232] *See Citric Acid Third Review at Comment 5; 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) (*Circular Welded Pipe from the PRC*), and accompanying IDM 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)

the Court.[233] In such instances, when the price paid by the producer of subject merchandise is less than the benchmark price, the producer receives a benefit when it purchases these government-provided goods and, accordingly, receives these inputs for LTAR. Accordingly, we adopted this same approach in the instant review with respect to inputs produced by "authorities" that the RZBC Companies acquired through trading companies.

We disagree with the GOC that a causal nexus, as referenced in *AK Steel*, is required in order for the Department to determine that inputs produced by 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.[234] 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.[235] The situation is different in the instant proceeding.

As noted above, we find that the certain "authorities" have provided a financial contribution (provision of a good) to the trading companies and, therefore, the existence of a financial contribution is not in doubt. Thus, the issue of whether the trading companies' sales of the inputs at issue constitute a countervailable subsidy hinges on whether the prices they charged conferred a benefit upon the RZBC Companies. As noted in the "Analysis of Programs" section of this decision memorandum, we determined that the prices the RZBC Companies paid to the trading companies for the inputs at issue are less than the benchmark prices and, thus, we determined that the transactions conferred a benefit in the form of a provision of a good for LTAR. Finally, we disagree with the GOC that our finding here means there was no need for the entrustment or direction provision of the Act. Entrustment or direction involves an authority entrusting or directing a private entity to provide a financial contribution; it does not involve an authority providing a financial contribution to a private entity, which is the situation here.

Comment 4: Whether to Find Input for LTAR Programs Not Specific

GOC's Argument:

- For a domestic subsidy program such as inputs for LTAR to be countervailable, the Department must first find that the alleged "program" is specific "in law or in fact, to an enterprise or industry within the jurisdiction of the authority providing the subsidy."[236] As the Department explained in the *Preamble* to the final CVD regulations, "the purpose of the specificity test is simply to ensure that subsidies that are distributed very widely throughout an economy are not countervailed."[237] Typically, as in the *Preliminary Results*, the Department has found inputs for LTAR "programs" in China to be *de facto*

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and accompanying IDM at Comment 47.

[233] *See Guangdong Wireking*.

[234] *See AK Steel*, 192 F. 3d at 1370-1373.

[235] *Id*. at 1377-1378.

[236] *See* section 771(5A)(D) of the Act.

[237] *See Final Rule*.

specific because the "actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number."[238] In determining whether a particular industry fits within the statutory term "limited," the *Preamble* explains that this analysis is not necessarily dependent on the number of enterprises involved but instead is "focused on the makeup of the users."[239] Thus, "if numerous enterprises that received benefits had comprised a limited number of industries, then {a} program would {be} specific."[240] In contrast, if the "users represented numerous and diverse industries" the program is not specific.[241]

- Despite these clear guidelines, the manner in which the Department applies this standard in CVD cases involving China represents a dramatic departure from its previous, pre-China CVD practice. In previous non-China cases where the Department has addressed LTAR programs, its specificity findings have related to inputs that were truly limited to a handful of industries. For example, in *Coated Paper from Indonesia,* the input at issue was "stumpage," or timber, for LTAR. In finding the program "limited" and, thus, specific, the Department relied on two facts: first, that only "five of these industries out of a total of 23 industries at the same level of industrial classification (large and medium manufacturing activities), were 'making use of timber' during the POI;" and second, that harvesting timber required a license.[242] Similarly, in *Softwood Lumber Products from Canada,* the Department again found a program on stumpage for LTAR to be limited and specific because it was "used by a single group of industries, comprised of pulp and paper mills, and the saw mills and remanufacturers that produce the subject merchandise."[243] In each of these cases where the Department has addressed the term "limited," the term was only satisfied where a handful of industries were involved. But that clearly is not the case here. Indeed, even unlike other Chinese CVD cases involving inputs for LTAR such as hot-rolled steel or wire rod, the use of which is arguably limited to the steel industry and its downstream users, *e.g.*, steel grating, sulfuric acid, steam coal and calcium carbonate are widely sold throughout the Chinese economy to a broad and diverse spectrum of industries for a wide variety of uses.
- For the LTAR programs on sulfuric acid, steam coal and calcium carbonate, the Department continued to find these programs to be specific in the *Preliminary Results* because "the GOC did not report any changes to the operation of the program during the POR and did not answer the questions in Standard Questions Appendix."[244] This statement is misleading and inaccurate. The GOC provided specificity information for these programs in a factual information filing made on April 21, 2014.
- When the Department issued the new subsidy allegation questionnaire to the GOC that contained a new allegation on caustic soda for LTAR, the Department did not request that the GOC respond to the Standard Questions Appendix.[245] This is consistent with the

[238] *See* section 771(5A)(D)(iii)(I) of the Act.
[239] *See Final Rule*, 63 FR at 65357.
[240] *Id.*
[241] *Id*.
[242] *See Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination,* 72 FR 60642 (October 25, 2007) (*Coated Paper from Indonesia*) and accompanying IDM at Comment 10.
[243] *See Notice of Preliminary Results and Extension of Final Result of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 71 FR 33932 (June 26, 2006).
[244] *See Preliminary Results* and accompanying Decision Memorandum at 15, 18, 20.
[245] *See* the Department's NSAQ to the GOC (February 19, 2014) at 5 – 8.

Department's practice in previous segments of this proceeding and in other cases. As a result, when determining the specificity of input for LTAR programs, the Department does not rely on information developed in responses to the Standard Questions Appendix; the GOC could not find a single case where the Department found specificity for an LTAR program based upon responses to a Standard Questions Appendix.

- The Department does not require responses to this generic appendix because the information required for analyzing LTAR programs is distinct from other programs and, for purposes of analyzing specificity, the generic appendix does not request the necessary information on the industries that use the particular inputs or volume and value information on purchases. For the specificity analysis in particular, the Department requests that the GOC provide a list of industries that use the input in question and the volume and value of that consumption. Then, when the Department analyzes specificity of these programs, it looks solely at the GOC's response to this question.[246]
- In this review, the Department failed to request this industry usage information with respect to any of the inputs involved: steam coal, sulfuric acid, and calcium carbonate.
- Even if the GOC had provided responses to the Standard Questions Appendix for sulfuric acid, steam coal and/or calcium carbonate, the information provided in the GOC's April 21, 2014, factual filing would not have been responsive to, and so would not have been included in, such a response. As noted above, the Standard Questions Appendix does not request a list of industries that purchase the particular input; nor does it request volume and value consumption data. As the Department demonstrated clearly in *ISOS from the PRC*, and in the Post-Preliminary Determination in this case, the only information needed for an input for LTAR specificity analysis is a list of industry users and their relative consumption. Thus, the fact that the GOC did not provide responses to the Standard Questions Appendix is irrelevant and an insufficient basis to decline to analyze specificity for these three input for LTAR programs.
- The GOC's specificity data was properly filed as a factual filing. Here, one month after the issuance of the initial questionnaire, the Department issued industry specific questions to the GOC for each of these inputs.[247] These questions sought industry specific information regarding each input and the reported suppliers. Conspicuously absent from these questions was a request of the GOC to provide a list of industries that consume each input and to provide their relative consumption. Typically, this question is included within such a list of industry specific questions. As a result of this absence and because the Standard Questions Appendix does not seek information on the industries that use the particular inputs and at what percentage, the GOC provided this information on a timely basis in a factual filing submitted on April 21, 2014, pursuant to 19 CFR 351.301(c)(5).

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[246] *See Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*ISOS from the PRC*) and accompanying IDM at Comment 4 (finding urea for LTAR not to be specific due to the list of industries provided by the GOC and the consumption of urea by each industry); *see also* Post-Preliminary Results at 5 (finding caustic soda for LTAR not to be specific); *see also, e.g., Citric Acid Second Review* and accompanying IDM at 10 (applying AFA regarding specificity to the GOC for not identifying "PRC industries that use steam coal and the volume of steam coal used/consumed by each of those industries").

[247] *See* Department's letter to GOC, "Appendix of Initial Questionnaire to the Government of the PRC (GOC)," (August 14, 2013).

- In this review, the GOC demonstrates that 64 percent of the sulfuric acid sold in China during the POI was used by the fertilizer industry.[248] The fertilizer industry is, therefore, the predominant user of this alleged program, not the chemical or the citric acid industries.[249] With regard to steam coal, the GOC has provided information that demonstrates that steam coal is used by a large number and wide variety of industries in China including the (a) electricity industry, (b) construction industry, (c) chemical industry, (d) metallurgy industry and others.[250] The information further demonstrates that of these industries, electricity consumes the vast majority (62.23 percent), while the chemical industry at large consumes a mere 3.72 percent. Under these facts, the use of steam coal in China is neither limited to nor predominant in the chemical or citric acid industries. With regards to calcium carbonate, the GOC has provided information that demonstrates that calcium carbonate production exceeded 20 million tons in 2012 and its use was spread among a number of industries including: (a) machine-made paper and paper plate industry, 36 percent; (b) plastic products industry, 31 percent; (c) coating, 14 percent; (d) rubber, 5 percent; and (e) 14 percent in other unspecified industries.[251] Under these circumstances, these programs are not *de jure* or *de facto* specific under the statute.

Petitioners' Rebuttal Arguments:

- In the Department's initial and first supplemental questionnaire, with regards to the sulfuric acid, steam coal and calcium carbonate programs, the program-specific questions stated that the Department "found this program to be countervailable in prior segments of the proceeding and that "{w}e do not intend to reevaluate the countervailability of this program."[252] Accordingly, the Department said "if there were any changes to the operation of the program during the POR, please explain the changes and answer all relevant questions in the Standard Questions Appendix."[253] On August 14, 2013, the Department issued a revised Input Producer Appendix to the GOC for the steam coal and sulfuric acid programs, and instructed the GOC to answer the attached questions instead.[254] In that revised portion of the initial questionnaire, the Department informed the GOC yet again of its previous countervailability determinations regarding the steam coal and sulfuric acid programs, and instructed the GOC to explain any changes to the operation of the program during the POR "and answer all relevant questions in the Standard Questions Appendix."[255]
- In the *Preliminary Results*, the Department explained that "the GOC did not report any changes to the operation of" the calcium carbonate, steam coal, and sulfuric acid

[248] *See* GOC's Factual Information at Attachment 1.
[249] *See ISOS from the PRC* and accompanying IDM at Comment 4 ("a common-sense reading of section 771(5)(A)(D)(iii)(II) of the Act supports an interpretation limiting a finding of countervailability to that enterprise or industry making predominant use of the subsidy.").
[250] *See* GOC's Factual Information at Attachment 2.
[251] *See* GOC's Factual Information at Attachment 3.
[252] *See* the Department's IQ to the GOC (July 15, 2013) at page 5 and 6 of Section II; and the Department's 1SQR to the GOC at 3.
[253] *Id*.
[254] *See* Department's letter to GOC, "Appendix of Initial Questionnaire to the Government of the PRC (GOC)," (August 14, 2013).
[255] *Id*.

programs “during the POR,” and failed to answer the Standard Questions Appendix.[256] In its case brief, the GOC characterizes the Department’s findings as misleading and inaccurate. To the contrary, the Department clearly explained the GOC’s failure to report any changes to the operation of the calcium carbonate, steam coal, and sulfuric acid programs in its initial questionnaire responses and that the GOC failed to answer the Standard Questions Appendix. Thus, the GOC’s argument is both inaccurate and lacks merit.

- The GOC attempts to justify its failure to respond by telling the Department that the Department does not utilize the Standard Questions Appendix when investigating input subsidy programs for the first time, such as was the case for the Department’s new subsidy allegations questionnaire for the caustic soda program in this review. The GOC’s argument ignores the record of this review. As stated above, the Department already made affirmative countervailability determinations regarding the calcium carbonate, steam coal, and sulfuric acid programs in prior segments of the proceeding. Thus, the types of questions that the Department uses when initially investigating input subsidies are inapposite.
- The GOC claims that the Standard Questions Appendix is not a useful tool for potential reexamination of a previously-countervailed input subsidy program because the generic appendix does not request the necessary information on the industries that use the particular inputs or volume and value information on purchases in any event. To the contrary, the Standard Questions Appendix does address program usage. For example, question D.2.d. requests “the total amount of assistance approved for the industry in which the respondent companies operate,” and “the totals for every other industry in which companies were approved for assistance under this program.[257] The question continues with an instruction for a government to identify industries through “use {of} whatever resource or classification scheme . . . normally relie{d} upon to define industries and to classify companies within an industry,” and to “provide the relevant classification guidelines,” and “ensure the list provided reflects consistent levels of industrial classification.”[258] The question also instructs the government to “clearly identify the industry in which the companies under examination are classified.”[259] This language is virtually identical to the input subsidy program usage questions that the GOC claims is the only way to obtain such information.[260]
- The GOC’s argument is also contradicted by the Department’s long-standing practice (including in prior segments of this proceeding) that “a previous countervailability determination creates a situation in which the burden is on the challenging party to present new evidence that would cause the Department to revisit its prior finding.”[261] Should the GOC prevail with its tactics, responding governments would be incentivized to ignore the Department’s questionnaires and push for reversal of previous countervailability determinations on the basis of insufficient record evidence.

[256] *See Preliminary Results* and accompanying Decision Memorandum at 15 – 22.
[257] *See* the Department’s IQ to the GOC at Standard Questions Appendix question D.2.d.
[258] *Id*.
[259] *Id*.
[260] *See* GOC’s 4SQR (May 5, 2014) at 3.
[261] *See Citric Acid Second Review* and accompanying IDM at Comment 3 - Countervailability of Shandong Province Policy Loans.

- As stated above, the GOC's argument ignores the distinction between cases where the Department investigates an input subsidy for the first time and later segments where the Department will not revisit prior countervailability determinations absent compelling information placed on the record in questionnaire responses that warrants such reexamination. The GOC's argument would short-circuit the Department's reasonable approach and should be rejected.
- The specificity information submitted by the GOC is untimely and the Department should reject it. In this case, "the appropriate stage of the proceeding" for the GOC to present a challenge to prior affirmative specificity determinations regarding the steam coal and sulfuric acid programs was in its initial questionnaire response, while for the calcium carbonate program, it was in response to the first supplemental questionnaire. Accordingly, the GOC's Factual Information is untimely and should be rejected by the Department pursuant to 19 CFR 351.301(c)(5)(i).
- Even if it were appropriate, the untimely information submitted by the GOC provides no basis for the Department to reexamine its prior affirmative specificity determinations regarding the calcium carbonate, steam coal, and sulfuric acid programs. First, the GOC's Factual Information, consists of only printouts from the internet of "public sources…not information compiled by the GOC in the regular course of business."[262] This admission confirms that the GOC's information cannot meet the evidentiary requirements in order for the Department to reexamine the countervailability of these programs.
- In addition, the limited information presented by the GOC fails to present the information in a way that is useful to determine the specificity of the calcium carbonate, steam coal, and sulfuric acid programs. For example, the information does not clearly identify or provide data for the industry in which the respondent companies operate, and the totals for every other industry in which companies were approved for assistance under this program.[263] Nor does the GOC's information comply with the Department's instruction to identify industries through "use {of} whatever resource or classification scheme your government normally relies upon to define industries and to classify companies within an industry, and to provide the relevant classification guidelines, and ensure the list provided reflects consistent levels of industrial classification.[264] In sum, even if the Department were to consider the GOC's untimely information, that information would not warrant the reexamination of the countervailability of these programs, much less a reversal of any prior determination.
- The GOC's challenge is legally flawed, and finds no support on this record. The record demonstrates that the GOC reported no changes to the calcium carbonate, steam coal, and sulfuric acid programs in its initial questionnaire responses, nor did it respond to the Standard Questions Appendix, as required for the Department to consider revisiting countervailability determinations from earlier segments of the proceeding. Thus, on both the law and the facts, the GOC's arguments are meritless and the Department should reject them in the final results.

Department's Position: The Department found the provision of sulfuric acid, steam coal, and

[262] *See* GOC's Factual Information at 1 – 2.
[263] *See* the Department's IQ to the GOC at Standard Questions Appendix at D.2.d.
[264] *Id*.

calcium carbonate to be countervailable in the *Citric Acid Third Review* and prior segments,[265] and the GOC provided no information in this review to demonstrate that there has been any change in the programs. In the initial and supplemental questionnaires, we notified the GOC that:

> The Department found this program to be countervailable in the {prior reviews}. We do not intend to reevaluate the countervailability of this program. However, if there were any changes to this program during the POR, or if the GOC replaced it with a successor program, please answer all questions in the ***Standard Questions Appendix***. If there were no changes to this program during the POR, please so state; you do not need to provide a response to this appendix if there were no changes.[266]

In response, the GOC did not indicate any changes by providing a response to the Standard Questions appendix.[267] A previous countervailability determination creates a situation in which the burden is on the challenging party to present new evidence sufficient for the Department to revisit its prior finding.[268] The GOC argues that the Standard Questionnaire Appendix is not relevant in the Department's analysis for specificity. The Department disagrees. By stating that the requested information is not relevant, the GOC has placed itself in the position of the Department, and only the Department can determine what is relevant to this administrative review.[269] Contrary to the GOC's assertions and objections to our questions, it is the prerogative of the Department, not the GOC, to determine what information is relevant to our analysis.[270] As noted by Petitioners, the Standard Questions Appendix contains program eligibility, specificity,

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[265] *See Citric Acid Third Review* and accompanying IDM at "Provision of Sulfuric Acid for LTAR," "Provision of Steam Coal for LTAR," "Provision of Calcium Carbonate."
[266] *See* the Department's IQ to the GOC at Section II page 5-6; and the Department's 1SQ to the GOC at 3.
[267] *See* GOC's input response at Attachment 1 and GOC's 1SQR.
[268] *See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 7395 (February 17, 2009), and accompanying IDM at "Programs Previously Determined to Confer Subsidies." *See also Magnola Metallurgy, Inc. v. United States*, 508 F.3d 1349 (Fed. Cir. 2007).
[269] *See Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (*Ansaldo*) (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided"). The Court in *Ansaldo* criticized the respondent for refusing to submit information which the respondent alone had determined was not needed, for failing to submit data which the respondent decided could not be a basis for the Department's decision, and for claiming that submitting such information would be "an unreasonable and unnecessary burden on the company." *See also Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010) (*Essar Steel*) (stating that "{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion" and that "Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin"); *NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) (*NSK, Ltd.*) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); *Nachi-Fujikoshi Corp. v. United States*, 890 F. Supp. 1106, 1111 (CIT 1995) (*Nachi-Fujikoshi Corp.*) ("Respondents have the burden of creating an adequate record to assist Commerce's determinations.").
[270] *See NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); *see, e.g., Ansaldo*, 628 F. Supp. at 205 (CIT 1986).

and program change questions[271] that the Department considers essential in its analysis of whether there is sufficient evidence to reevaluate a previously countervailed program.

With regards to the GOC's April 21, 2014 submission, the information does not provide sufficient evidence to warrant a reexamination of the provision of sulfuric acid, steam coal, and calcium carbonate for LTAR programs. Section 771(5A)(D)(iii) of the Act provides:

> (iii) Where there are reasons to believe that a subsidy may be specific as a matter of fact, the subsidy is specific if one or more of the following factors exist:
>
> (I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.
>
> (II) An enterprise or industry is a predominant user of the subsidy.
>
> (III) An enterprise or industry receives a disproportionately large amount of the subsidy.
>
> (IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

For sulfuric acid, the news article contends that 37.1 percent of sulfuric acid is consumed by "industrial uses," 51.8 percent by high concentration phosphate fertilizer, 6.3 percent by low-concentration phosphate fertilizer, and 6.3 percent by other fertilizer production.[272] Because the article does not clearly identify or define the various sub-categories of "industrial uses," the information is incomplete. For calcium carbonate, the news article identifies four industries as consumers of calcium carbonate but does not account for the remaining the 14 percent of domestic consumption for calcium carbonate, and therefore this information also is incomplete.[273] Notwithstanding the incompleteness of the information, the consumption information placed on the record does not undermine the Department's findings that these inputs are used by a limited number of enterprises or industries.

The GOC presented information that the fertilizer industry is the predominant consumer of sulfuric acid;[274] however the Department must also analyze whether consumption is limited in number to certain enterprises or industries.[275] As stated in *Citric Acid Second Review*, the Department, in determining whether a particular industry or enterprise fits within the term "limited," does not necessarily limit its consideration to the number of enterprises, but must also be focused on the make-up of the users.[276] The make-up of the users and the number of industries or enterprises they represent are both factors in the Department's analysis of whether the users of sulfuric acid are limited in number. The record, in the instant review, indicates that sulfuric acid consumption is limited to two main "categories," fertilizer and "industrial uses."

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[271] *See* the Department IQ to the GOC at Standard Questions Appendix questions A through E.
[272] *See* GOC's Factual Information at Attachment 1.
[273] *Id*. at Attachment 3.
[274] The various subcategories of the fertilizer industry consume approximately 64.4 percent of sulfuric acid. *See* GOC's Factual Information at Attachment 1.
[275] *See* section 771(5A)(D)(iii) of the Act.
[276] *See Citric Acid Second Review* and accompanying IDM at Comment 4.

The information on the record does not allow the Department to analyze the subcategories of "industrial uses" and whether they are diverse sectors. However, the Department's experience with regards to sulfuric acid in the first administrative review defines "industrial uses" to include citric acid production and the related chemical industry. In the first administrative review, based on information reported by the GOC, the Department considered users in three major industrial categories reported by the GOC: Mining; Manufacturing; and Electric Power, Gas and Water Production and Supply, for the specificity analysis of sulfuric acid.[277] Within these three major categories, were 44 subcategories, 37 of which fell under Manufacturing.[278] We concluded that those facts denoted a concentration of users in the major industrial area that clearly includes citric acid production.[279] Further, the finding that the citric acid industry is part of a limited group of users was reinforced by the fact that a number of the 37 subcategories identified in the Manufacturing major industrial category appeared to be closely related to the citric acid industry in terms of processes and outputs.[280] Those subcategories include the manufacturing of raw chemicals, chemical products, household chemical products, food and beverages.[281] In short, the GOC's new information demonstrates that the industries consuming sulfuric acid remain limited (*i.e.*, fertilizer production and "industrial uses"), and our prior decisions reveal that the chemical industry, which citric acid is part of, accounts for a notable concentration of "industrial uses." Therefore, we find that the information confirms our original determination that the program is specific because the industries receiving the subsidy are limited in number.

Similarly, the citric acid or chemical industry may not be the predominant consumer of calcium carbonate but consumption is still limited to five industries, four of which are presented in the GOC's submission.[282] The chemical industry is not a predominant consumer of steam coal, but it is one of only five industries that consume steam coal, which constitute a limited in number of users.[283] We note that the Department may find specificity on the basis of any of the factors enumerated by the Act; thus, even if the record does not support a finding under one factor, the Department may find specificity under another.[284]

Further, the GOC provided news articles, not documentation from government sources, *i.e.*, the National Bureau of Statistics of China or industry associations. For verification purposes, the Department must be able to test books and records in order to assess whether the questionnaire responses are complete and accurate, which means that we need to tie information to internal documentation, surveys, phone records, or databases. The Department must verify questionnaire responses and tie them to supporting government or industry association documents to determine whether a program is specific or not. We are not able to do so with the type of information that the GOC submitted. Therefore, we find the information on the record is not reliable, and does not undermine the evidence supporting our determination.

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[277] *See Citric Acid First Review* and accompanying IDM at "Provision of Sulfuric Acid for LTAR" and Comment 7.
[278] *Id*.
[279] *Id*.
[280] *Id*.
[281] *Id*.
[282] *See* GOC's Factual Information at Attachment 3.
[283] *See* GOC's Factual Information at Attachment 2.
[284] *See* section 771(5A)(D)(iii) of the Act, which states that "the subsidy is specific if one or more of the following factors exist" (emphasis added).

As indicated above, no new evidence was presented in this review that would cause us to reverse the Department's findings in the prior administrative reviews.[285] Therefore, consistent with *Citric Acid Third Review*, we continue to find that the industries consuming sulfuric acid, steam coal, and calcium carbonate in the PRC, are limited in number and, hence, the subsidies are specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Comment 5: Whether to Find the Provision of Caustic Soda for LTAR Countervailable

A. <u>Specificity</u>

Petitioners' Arguments:

- At verification, the GOC failed to provide supporting documentation to substantiate the industry consumption data provided in its questionnaire responses.[286]
- The GOC withheld information necessary to the Department's analysis and failed to cooperate by not acting to the best of its ability to comply with the Department's requests. The Department was unable to verify any of the information that had been submitted by the GOC relating to specificity, and the Department should apply AFA and find that the provision of inputs under the caustic soda program to citric acid producers is specific within the meaning of section 771(5A) of the Act, and that the program provides a countervailable subsidy.

GOC's Rebuttal Arguments:

- The Court has made clear that before applying AFA, "{the Department} must examine a respondent's actions and assess the extent of respondent's abilities, efforts, and cooperation in responding to {the Department's} requests for information."[287] An adverse inference is not to be "drawn merely from a failure to respond;" it must arise "only under circumstances in which it is reasonable for {the Department} to expect that more forthcoming responses should have been made, *i.e.*, under circumstances in which it is reasonable to conclude that less than full cooperation has been shown."[288]
- The GOC has never been able to provide industry usage information from a government source because no government agency collects this information.[289] In the absence of official statistics on the industries that use and consume caustic soda, the GOC reasonably turned to experts in the field, the China Chlor-Alkali Industry Association (CCAIA), which provided consumption information.[290] This analysis contained statistics on the consumption of caustic soda by industry and showed that in 2012, caustic soda was used by a large variety of industries including: alumina, chemicals, paper-making, printing and dyeing, light industry, medical, water treatment, metallurgy and others. Petitioners have not provided any evidence to contradict this industry breakdown. In fact, the evidence Petitioners provided to "rebut" the GOC's NSA Response containing

[285] *See Magnola*, 508 F.3d at 1355.
[286] *See* GOC's Verification Report at 5.
[287] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).
[288] *Id*.
[289] *See Citric Acid Second Review* and accompanying IDM at Comment 4 (noting that "{o}nly the GOC has knowledge of how its agencies and organizations compile and maintain data").
[290] *See* GOC's NSAQR at Exhibit B-1-A; *see also*, GOC 4SQR at Exhibit 1.

this industry analysis supports the consumption breakdown the GOC placed on the record.

- At verification, the GOC provided the source of the consumption figures, *i.e.*, CCAIA official, Mr. Xingyu Zhu.[291] Mr. Xingyu Zhu explained, at length, how he derived the figures contained in his analysis, indicating that the consumption percentages were based upon phone surveys of the industry. The results of the surveys were then used by Mr. Xingyu Zhu to estimate the consumption of caustic soda by each industry. Mr. Xingyu Zhu walked through the calculations during verification and provided the consumption ratio used to determine the consumption figures.[292] These calculations were consistent with the analysis submitted.
- The failure to provide documents or notes from the initial phone survey does not support a finding that the GOC did not cooperate with the proceeding or that these consumption figures are somehow not useable.[293] The GOC cannot be considered uncooperative for not providing information that does not exist. Because the data did not exist, the GOC provided the next best thing: estimated consumption figures compiled by experts in the field, based on actual communications with purchasers that was not developed for this investigation. While the GOC could not provide the raw notes underlying the phone surveys, this is not unreasonable.
- These data were not prepared for purposes of this investigation, and there is no requirement that underlying notes be kept once a studied analysis is complete. In addition, there is no evidence or suggestion on the record that these consumption figures were somehow manipulated or that they are inaccurate so as to preclude their use in the Department's specificity analysis. To the contrary, the consumption figures are generally supported by information Petitioners themselves placed on the record. Thus, this information is the best available information on the record upon which the Department could determine specificity in this case and there is no reason that estimated figures cannot be used for this purpose.

Department's Position: The Department agrees with Petitioners that the use of AFA is warranted in determining that the number of industries that consume caustic soda is limited and therefore specific pursuant to section 771(5A)(D)(iii)(I) of the Act. In the NSAQ,[294] the Department requested the GOC to provide information on the caustic soda industry, including the total number of producers, total volume and value of Chinese domestic consumption of caustic soda and total volume and value of Chinese domestic production of caustic soda, etc. In 4SQ, the Department requested the total volume and value of consumption by industry.[295] The GOC indicated that it did not maintain statistics on the consumption, but in conjunction with the CCAIA provided industry consumption information which provided the basis for the Department to determine in the Post-Preliminary Results that the provision of caustic soda for LTAR was not specific.[296] The Department conducted its verification after the release of the Post-Preliminary Results and issued its verification outline to the GOC. The Department specifically requested in

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[291] *See* GOC's Verification Report at 4.
[292] *Id*.
[293] *See* Petitioners' Case Brief at 6.
[294] *See* the Department's NSAQ to the GOC (February 19, 2014) at 6.
[295] *See* the Department's 4SQ to the GOC (May 5, 2014) at 3.
[296] *See* Post-Preliminary Results at "Provision of Caustic Soda for LTAR."

its verification outline for the supporting documentation for the consumption information submitted on the record.[297]

The GOC did not indicate prior to or at the outset of verification that it had any concerns with the clear requests in the verification outline. It did not express any objection to these requests, nor did it indicate that there would be difficulty obtaining supporting documentation of the industry consumption data until the moment the Department sat down with the GOC and CCAIA officials to begin this portion of the verification agenda.

For verification purposes, the Department must be able to test books and records in order to assess whether the questionnaire responses are complete and accurate, which means that we need to tie information to internal documentation, surveys, phone records, or databases. The GOC and CCAIA did not provide any documentation at verification to support their claim that the industries listed in the CCAIA's presentation actually consumed caustic soda, nor did they support the consumption percentages represented in the CCAIA's presentation. In their explanation on how they derived the percentage of consumption of caustic soda by the alumina industry, the GOC and CCAIA presented the "national production of alumina, as reported by the NBSC…and applying a theoretical consumption ratio . . . CCAIA officials did not provide for our examination supporting documentation for the theoretical consumption ratio used to calculate the alumina industry's consumption of caustic soda."[298] CCAIA officials repeatedly stated that they conducted phone surveys of manufacturers, end-users, and academics but did not retain records of those surveys. The officials did not present any "journal of the {a}ssociation, books and reference materials," published and issued by CCAIA as described in Chapter II - Scope of Business, Article 6 (viii)(XI) of the CCAIA's Charter of Association. Thus, we find that even though the GOC's assertions are internally consistent, all of those assertions are based on data that was not documented and is therefore unverifiable.

We disagree with the GOC's argument that rebuttal information Petitioners placed on the record supports the GOC's industry consumption data.[299] The list of industries that consume caustic soda presented in Petitioners' submission replicate six of the nine industries the GOC argues consume caustic soda.[300] In fact, the consumption information submitted by Petitioners does not replicate the GOC's consumption data, but rather supports a finding that the chemical industry, of which citric acid producers are a part, is the largest consumer of caustic soda.[301] Petitioners' article states that in 2011, "{c}hemicals are still the largest caustic soda downstream industry in China, accounting for more than 25% of total demand."[302] It further reports that, "{i}n the past few years, alumina oxide has emerged as a developing downstream industry…about 14% of total consumption…With the development of the widely-used Bayer process, alumina oxide demand for caustic soda will continue to grow."[303] The article indicates that the chemical industry is the largest consumer and alumina oxide is a growing consumer of

[297] *See* the Department's verification outline to the GOC (August 28, 2014) at 6.
[298] *See* GOC's Verification Report at 4.
[299] *See* GOC's Rebuttal Brief at 5 and 6.
[300] *See* Petitioners' Rebuttal Information to GOC's NSAQR (April 1, 2014) at Exhibit 12, and the GOC's 4SQR (May 20, 2014) at Exhibit 3.
[301] *See* Petitioners' Rebuttal Information to GOC's NSAQR (April 1, 2014) at Exhibit 12.
[302] *Id.*
[303] *Id.*

caustic soda. The article is not explicit and, contrary to the GOC's assertion, does not predict that the alumina oxide industry would surpass the chemical industry in its consumption of caustic soda during 2012, the POR.

We do not agree with the GOC that AFA is not appropriate here. The GOC provided information that we could not verify, within the meaning of section 776(a)(2)(D) of the Act. Moreover, it failed to cooperate by not acting to the best of its ability, because it provided unverifiable information. The Department cannot make its determination on this issue based on mere verbal assurances by industry association officials. Therefore, as stated above in the section "Application of Facts Available and Adverse Inferences," the Department determines that AFA is warranted in determining the provision of caustic soda for LTAR is specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

B. <u>Financial Contribution</u>

Petitioners' Arguments:

- The GOC's failure in multiple instances to provide requested information that is relevant to the assessment of this subsidy program impeded the Department's ability to fulfill its statutory mandate. The RZBC Companies identified three producers from which it purchased caustic soda during the POR. Petitioners argue that the Department should find that Company F is an "authority" within the meaning of section 771(5)(B) of the Act, because the company was majority-owned by the government during the POR.[304]
- The Department should also find that the other two suppliers of caustic soda, Company G and H, are "authorities" within the meaning of section 771(5)(B) of the Act.[305] The GOC failed to supply key documents requested by the Department for Company G and H, including articles of incorporation, company by-laws, and annual reports. Moreover, the GOC failed to provide capital verification reports, articles of association, share transfer agreements, or financial statements for Company G's first-level owner. The GOC also failed to provide documentation from the State-owned Assets Supervision and Administration Commission (SASAC), the relevant Ministry of Commerce (MOFCOM) divisions, and the China Securities Regulatory Commission demonstrating whether the GOC was involved in the restructuring approval process when Company G acquired another company in 2011.
- The GOC also failed to clarify discrepancies in its ownership information with respect to Company H. The GOC submitted Company H was owned by four individuals, however, Petitioners obtained and placed on the record contradictory information.[306]
- The GOC failed to identify government or CCP affiliations of the owners, senior managers, and members of the board of directors of the caustic soda producers, Company G and Company H. The GOC failed to explain why the requested information is unavailable to it. The GOC only states that "{e}xcept for entities of the national and provincial levels, the GOC has been unable to obtain full lists of members or representatives of the various entities at issue" and "{i}n the absence of a full list of members or representatives of the various entities of all levels, the GOC sought the

[304] *See* Final Results Calculation Memorandum at Attachment I for business proprietary name of Company F.
[305] *Id*. for business proprietary name of Company G and H.
[306] *See* GOC's NSAQR at Exhibit B-8.

relevant information directly from the Company."[307] This statement, however, fails to address why, at a minimum, the GOC did not consult the lists for entities at the national or provincial levels, which the GOC's response indicates were available.

- Moreover, the GOC does not explain why member lists for the nine CCP entities at issue in the Department's questions are not available at the sub-provincial level, or what efforts the GOC undertook to access such lists. The information requested by the Department regarding the role of CCP officials and CCP committees in the management and operations of the input producers, and in the management and operations of the producers' owners, is necessary to assess whether the producers are authorities within the meaning of section 771(5)(B) of the Act. By failing to supply the CCP affiliation information requested by the Department, the GOC fails to cooperate by not acting to the best of its ability to comply with the Department's requests. The Department should apply an adverse inference in the application of facts available consistent with section 776(b) of the Act. Petitioners argue it submitted information on the record that contradict the GOC's assertions that officials from Company G and H lack party affiliation.[308]

GOC's Rebuttal Arguments:

- There is no factual or legal support for Petitioners to make their assertion that Company G is controlled by "authorities." Petitioners quote language in Company G's articles of association but the statement does not suggest government control of the company, and all other evidence submitted demonstrates that Company G is 100 percent owned by a non-Chinese company with no ties to the Chinese government or any of the nine entities.[309] Without any additional or follow-up information over the language's precise meaning, the language in isolation is simply insufficient to establish a presumption of government control.[310]
- The GOC has clearly and reasonably explained in its questionnaire responses that it could not obtain the records of Company G's parent company for very specific reasons.[311]
- The Department did not and could not inform the GOC that this response was deficient, which would have been required in order for the Department to apply AFA in this instance. There can be no expectation that the GOC submit records of foreign companies from foreign governments. The foreign government is not a party to this proceeding and is in sole control over the corporate records of entities registered within that country. Rather than notify the GOC of any deficiency, the Department simply issued another questionnaire after receiving the GOC's first response and asked the GOC to confirm and cross-reference the ownership information submitted, which it did.[312]
- Petitioners' assertion that AFA is warranted because the GOC failed to provide Company G's nine entity affiliations is not accurate. The GOC argues that it stated that none of Company G's owners, senior management or board of directors was part of the nine

[307] *Id*.
[308] *See* Petitioners' Factual Information at 3 and Exhibits 1 and 2.
[309] *See* GOC's NSAQR at Exhibit B-7 to B-7-6.
[310] *See Mid Continent Nail Corp. v. United States*, 949 F. Supp. 2d 1247, 1281 (CIT 2013) (concluding bluntly that "{s}peculation and surmise are no substitute for affirmative evidence").
[311] *See* GOC's 4SQR at 2.
[312] See GOC's 5SQR at 1.

entities.[313] The GOC further stated that this company did not have a CCP primary organization. The Department did not find this information deficient, nor did it request that the GOC provide additional information.

- The information placed on the record by Petitioners with regards to a board of director member of Company G[314] does not show that the individual mentioned in the article and the board of director member is one in the same. As the GOC noted in response to a similar charge by Petitioners regarding another individual in another supplier, many individuals in China have the same name.[315] Thus, without a link between this name and the company, Petitioners' information is insufficient to rebut the GOC's statements. Ultimately, the GOC demonstrated that this producer is 100 percent foreign-owned by a publically traded company. This evidence is sufficient in and of itself to demonstrate that the company is not a Chinese government authority.
- The information Petitioners submitted with regards to Company H indeed states that it may be a subsidiary of another company; however, the official documentation provided to the Department plainly states that this is not the case. In addition to the documents submitted in the GOC's NSA Response at Exhibit B-8-1 to B-8-4, the GOC provided an official certification from the Administration of Industry and Commerce of Shouguang City confirming the ownership of Company H.[316]
- Petitioners' assertion that an AFA finding is warranted because the GOC failed to provide Company H's nine entity affiliations is not accurate. The GOC clearly stated that none of Company H's owners, senior management or board of directors was part of the nine entities.[317] The GOC further stated that Company H did not have a CCP primary organization. The Department did not find this information deficient, nor did it request that the GOC provide additional information. Again, if the Department were going to apply AFA to the GOC, the Department was required to notify the GOC of any deficiency in its response.
- Information placed on the record by Petitioners with regards to a board of director member of Company H does not show that the individual mentioned in the article and the board of director member is one in the same.[318] There is no reference to a company on this document; a necessary fact, given how common it is for individuals to have similar names in China. In addition, this information is from 2010 and not from the POR and therefore does not demonstrate that the GOC's statements were inaccurate even if true. The GOC contends that it demonstrated that Company H is individually owned and was not otherwise vested with government authority in any way.

Department's Position: With regard to Company F, on the record of the instant review, the GOC reported that during the POR the RZBC Companies purchased caustic soda from an

[313] *See* GOC's NSAQR at Exhibit B-7. As previously explained, the Department understands that for each level of government, there are nine CCP entities. *See* "GOC – Calcium Carbonate and Caustic Soda are Government 'Authorities'" section above.
[314] *See* Petitioners' Case Brief at 13.
[315] *See* GOC's 5SQR at 31 and Exhibit III-7.
[316] *See* GOC's 5SQR at Exhibit 2. *See* Petitioners' Brief at 10 for business proprietary information.
[317] *See* GOC's NSAQR at Exhibit B-8.
[318] *See* Petitioners' Case Brief at 13 for business proprietary information. We note that the issue is moot because the GOC did not provide verifiable information, therefore we must rely on AFA to determine whether Company H is an "authority."

enterprise in which the government owned a majority stake.[319] As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.[320] The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we determine that Company F is an "authority" within the meaning of section 771(5)(B) of the Act and that the RZBC Companies received a financial contribution from it in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

We disagree with Petitioners that the GOC refused to supply information we requested regarding Company G. The GOC provided the capital verification reports, articles of association, and business license of Company G in its NSAQR.[321] Each document confirmed Company G's parent company and was cross-referenced with the GOC's State Administration of Industry and Commerce (SAIC) database.[322] The GOC demonstrated that Company G's parent company is registered in Hong Kong, which in turn is wholly-owned by a company registered in the Cayman Islands and publically traded on the Hong Kong stock exchange.[323] The GOC provided additional information listing shareholders of Company G's ultimate parent company.[324] Based on record evidence, we find that Company G is not an "authority" within the meaning of section 771(5)(B) of the Act.

As discussed above in "Use of Fact Otherwise Available and Adverse Inferences" section, in order to do a complete analysis of whether Company H is an "authority" within the meaning of section 771(5)(B) of the Act, we sought information related to whether senior company officials were government or CCP officials and to the role of any CCP committee within the companies.[325] Specifically, to the extent that the senior company officials 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.[326] We explained to the GOC our understanding of the CCP's involvement in the PRC's economic and political structure in the current as well as other PRC CVD proceedings,[327] and explained why we consider the information regarding the CCP's involvement in the PRC's economic and political structure to be relevant.[328] We disagree with the GOC's characterization that the Department did not find its questionnaire responses deficient. We requested the GOC to respond to the Input Producer Appendix because it is the party to the investigation which has in its possession verifiable information on the CCP's structure and functions that are relevant to the Department's determination of whether the producers of inputs are "authorities" within the

[319] *See* GOC's NSAQR at 14.
[320] *See* Additional Documents Prelim Memorandum at Attachment III: Public Body Memorandum at 35-36 and sources cited therein.
[321] *See* GOC's NSAQR at Exhibits B-7, B-7-1, B-7-2, and B-7-3.
[322] *See* GOC's 5SQR (June 2, 2014) at Exhibit 1.
[323] *See* GOC's NSAQR at Exhibit B-7-5.
[324] *Id*. at Exhibit B-7-6.
[325] *See* Department's NSAQ to GOC (February 19, 2014) at "Provision of Caustic Soda for LTAR" and referenced "Input Producer Appendix," and 6SQ to the GOC (June 30, 2014) at 3.
[326] *Id.*
[327] *See Citric Acid Third Review*, and accompanying IDM at Comment 6; *and Solar Cells from the PRC*, and accompanying IDM at Comment 6.
[328] *Id. See also* Public Bodies Memorandum and its attachment the CCP Memorandum.

meaning of section 771(5)(B) of the Act.[329] The GOC did not provide the requested documentation. The GOC responded that "{it} has repeatedly explained that there is no central repository" for entities such as the CCP so it contacted the company directly.[330] We provided the GOC a second opportunity to provide verifiable information,[331] however the GOC did not do so.[332]

Therefore, we find that the GOC withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in conducting our analysis of Company H.[333] As discussed above, we also find that an adverse inference is appropriate, because the GOC failed to cooperate to the best of its ability when it did not provide us with information within its control. Thus, we are finding that Company H is an "authority" within the meaning of section 771(5)(B) of the Act.

C. **Market Distortion**

Petitioners' Arguments:

- The GOC failed to provide information that would permit the Department to assess market distortion and determine whether the RZBC Companies' input purchases should be compared to potential benchmarks based on either (1) market prices from actual transactions within the country under investigation for the government-provided good, *e.g.*, actual sales, actual imports, or competitively run government auctions (tier-one benchmarks); (2) world market prices that would be available to purchasers in the country under investigation (tier-two benchmarks); or (3) prices consistent with market principles based on an assessment by the Department of the government-set price (tier-three benchmarks).
- The GOC reported that "there is no government entity in China that maintains statistics of this nature for the caustic soda industry." The GOC provided information on the number of producers, consumption, and production of caustic soda that it said was developed by the CCAIA, but the GOC provided no documentation from the CCAIA to support the data provided. The GOC also failed to provide information on the total volume and value of domestic production that are accounted for by companies in which the GOC maintains an ownership or management interest. Instead of providing these data, the GOC simply asserts that "CCAIA believes that at least half of the 20 largest producers are state-owned."[334]
- In previous segments of this proceeding, the Department found that where the GOC withheld information necessary to the Department's assessment of government predominance and market distortion, the Department must rely on facts available. In the

[329] *See, e.g., Pre-Stressed Concrete Steel Wire Strand From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum at Comment 8, where it is discussed the that Department requested and obtained from the GOC information, which was verified with the GOC, on the ownership of an input producer and the involvement of a shareholder in the CCP.
[330] *See* GOC's 6SQR (July 21, 2014) at 2.
[331] *See* Department's 6SQ to the GOC at 3.
[332] *See* GOC's 6SQR at 2.
[333] *See* section 776(a)(2)(A) of the Act.
[334] *Id*. at 4.

previous administrative review, the GOC failed to cooperate by not acting to the best of its ability to comply with the Department's request for information about the calcium carbonate industry in China. The Department found that an adverse inverse was warranted in the application of facts available. In drawing an adverse inference, the Department found that Chinese prices from actual transactions involving Chinese buyers and sellers were significantly distorted by the involvement of the GOC, and the Department used an external benchmark, as described in 19 CFR 351.511(a)(2)(ii).

- Absent an AFA finding that prices within China are distorted, the record in this review supports a finding that significant government ownership in the caustic soda market distorts individual transaction prices. First, the number of producers of caustic soda in which the GOC has an ownership or management interest is significant according to the CCAIA – "at least half of the 20 largest producers are state-owned."[335]
- Second, the CCAIA's Charter of Association indicates that it operates both as a clearing house and as an instrument of government policy with respect to the caustic soda industry. As noted in the Charter at Article 3, "{t}he Association is the bridge and bond between the members . . . The aim is to unite and educate the whole members to comply with the Constitution, laws, regulations, national policies, and social moral standards, to carry out the policies for developing the chlor-alkali industries . . . ." Article 4 of the Charter states that "{t}he Association shall accept the business guidance and the supervision of the Ministry of Civil Affairs of the People's Republic of China and institutions in charge of State-owned Assets Supervision and Administration Commission of the State Council."
- Third, imports account for an insignificant share of caustic soda consumption in China. The GOC reports that imports of caustic soda in 2012 totaled 11,492 tons (10,807 tons of solid caustic soda and 685 tons of liquid caustic soda). The GOC also reports (via the CCAIA) that domestic consumption in 2012 was 24,919,000 tons. Consequently, imports accounted for a negligible share (0.05 percent) of Chinese consumption of caustic soda during the POR. Given the very small share of consumption accounted for by imports, import prices would not have had any influence on overall caustic soda prices in China. As a result of the GOC's predominant position in the caustic soda industry and the lack of any significant influence on pricing by imports, the Department should determine that it is unable to rely on Chinese prices and must instead use external prices to measure the benefit from caustic soda.

Rebuttal Arguments:

The GOC and the RZBC Companies did not submit rebuttal arguments with regard to market distortion of the caustic soda industry.

Department's Position: As described above in the "Use of Fact Otherwise Available and Adverse Inferences" section, the Department twice requested information from the GOC to determine whether the GOC is the predominant provider of caustic soda in the PRC and whether its significant presence in the market distorts all transaction prices.[336] The GOC indicated that it did not maintain records on the caustic soda industry that allowed the identification of producers

[335] *Id*.
[336] *See* the Department's NSAQ to the GOC (February 19, 2014) at 6; see also, 4SQ at 3.

in which the GOC maintains an ownership or management interest either directly or through other government entities.[337] In a previous investigation, the Department was able to confirm at verification that the GOC maintains two databases at the SAIC: one is the business registration database, showing the most up-to-date company information; while a second system, "ARCHIVE," houses electronic copies of documents such as business licenses, annual reports, capital verification reports, *etc*. Thus, we find that the GOC has an electronic system available to it to gather industry-specific information the Department requested.[338]

We determine that the GOC withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" in making our final determination.[339] Further, we find that the GOC failed to cooperate to the best of its ability, and therefore an adverse inference is warranted. Therefore we find that the use of an external benchmark is warranted for calculating the benefit for the provision of caustic soda for LTAR.

D. <u>Benchmark Prices</u>

Petitioners' Arguments:

- The Department should calculate a benchmark based on world export prices submitted by Petitioners, specifically using prices sourced from GTIS, ICIS, and *Metal Bulletin*.[340] The RZBC Companies "excluded all sales" under a certain volume in order to be "consistent with the RZBC {Companies'} conditions of purchase."[341] Thus, by definition, the RZBC Companies' data are incomplete. Because Petitioners' information includes all sales and is thus complete, it should be used in the final results.
- The Department has a long-standing practice to use all available benchmarking data regardless of whether the data reflect bulk, large volume sales, including in prior segments of this proceeding. In rejecting the RZBC Companies volume-based arguments in the final results of the third administrative review, the Department stated that "{w}e disagree with the RZBC Companies that the Department must eliminate small quantity export prices because the supplier would not be able to meet their purchase requirements." The Department explained that 19 CFR 351.511(a)(2)(ii) "does not require us to determine whether a country will meet respondent's production needs, but whether the export price is reasonably available." There is no basis for the Department to abandon that methodology in this review.
- The RZBC Companies stated that Petitioners' suggested benchmarks should be revised to account for the concentration of sodium hydroxide in aqueous solution. Without any support, the RZBC Companies claimed that there "is no way to know whether the concentration level of the {suggested benchmark} is similar to RZBC {Companies}."[342] For the final results, the Department should not take this argument into account in calculating the benchmark. Petitioners supplied GTIS benchmarking data for the exact

[337] *See* GOC's NSAQR at 4, and GOC 4SQR (May 20, 2014) at 1.
[338] *See* Additional Documents for Prelim Memorandum at Attachment II.
[339] *See* section 776(a)(2)(A) of the Act.
[340] *See* Petitioners' Factual Information at Exhibits 5 – 7.
[341] *See* the RZBC Companies' Pre-Preliminary Determination Comments (May 22, 2014) (Pre-Prelim Comments) at 10.
[342] *Id*.

Harmonized Tariff Schedule (HTS) number the RZBC Companies claim matches their own purchases, *i.e.*, 281512. The relevant HTS chapter heading is entitled "Sodium hydroxide (Caustic soda)...In aqueous solution (Soda lye or liquid soda)."[343] The Department has utilized this same six-digit HTS number in multiple antidumping administrative reviews of citric acid. In fact, RZBC itself supplied data for this HTS number in the antidumping reviews. The Department should reject the RZBC Companies' arguments to revise Petitioners' suggested benchmarks.

The RZBC Companies' Rebuttal Arguments:

- 19 CFR 351.511(a)(2)(i) defines the factors affecting comparability by stating "the Secretary will consider product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability." Global Trade Information Services (GTIS or GTA) data is the only usable data on which to calculate any potential benefit for caustic soda. The Department has determined that the GTIS data is weightable, and it should calculate a single weighted average benchmark using the GTIS data while making due allowance for factors affecting comparability.[344]
- Petitioners' claim that the RZBC Companies' GTIS data are incomplete is factually wrong. The RZBC Companies submitted the entire world data for 2012 exports and imports for harmonized tariff schedule (HS) 281512, *i.e.*, caustic soda, aka sodium hydroxide, in aqueous solution (NAOHAS), obtainable from GTIS.
- 19 CFR 351.51l(a)(2)(i)-(ii) requires that the Department make due allowance for factors of comparability, *e.g.*, product similarity and quantities sold, and determine a world market price where it is reasonable to conclude that such prices would be available to purchasers in the country in question. The RZBC Companies provided benchmarks that adjusted the data to ensure that the Department use the most accurate benchmark that matches the Department's obligations pursuant to 19 CFR 351.511(a)(2)(i)-(ii).[345]
- Petitioners' submitted GTIS data fails to include both unit quantities reported by GTIS. This is important because Petitioners' wrongly assume that kilograms (KG) and kilograms of caustic soda (KSH) represent the same weight measurement and advocate averaging these values together.[346] Petitioners are incorrect to assume that KG and KSH are the same units of measure. In this case, the RZBC Companies provided evidence that KSH is defined as kilograms of caustic soda, which RZBC Companies argue is also solid caustic soda.[347] Petitioners' GTIS data only reported the 1st unit of measurement or quantity reported by GTIS. However, the GTIS data also allows parties to download a

[343] The Harmonized Tariff Schedule of the United States (2012).
[344] *See* S*teel Concrete Reinforcing Bar From the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014) (*Turkey Rebar*) and the accompanying IDM at 12 and Comment 1 (stating "{b}ased on our examination of the GTIS data, we find that a simple averaging of prices by country, per month, as argued by Petitioner, creates skewed results in which minor gas supplier countries such as the Spain, Serbia, and Italy, have the same weight as Norway and Russia, Europe's dominant natural gas suppliers").
[345] *See* the RZBC Companies' Pre-Prelim Comments at Attachment 4.
[346] *See* Petitioners' Factual Information at Exhibit 6.
[347] *See* the RZBC Companies' Factual Information at Exhibit 20 (http://apps.cybersource.com/library/documentation/dev_guides/Level23_SO_API/html/wwhe1p/wwhimpl/common/html/wwhelp.htmllhreapp unitcodes.html&single=true).

2nd reported unit of measurement quantity.[348] In this case, every country that reported KSH as the 1st quantity measurement reported either KG or metric ton (MT) as the 2nd quantity measurement. A comparison of these two unit quantity values shows that KSH and KG are not the same unit measurements as Petitioners assumed.[349] Petitioners provide no explanation for these clear differences between the KSH and the KG total quantities reported for the same export and import in the GTIS data supplied by RZBC Companies.

- Similar to the GTIS data, Petitioners provide no explanation or evidence on how the ICIS or the Metal Bulletin calculates or obtains the reported prices or unit measures. The record shows that NAOHAS can be reported in KG, MT, liters and KSH. Petitioners failed to provide complete information or evidence concerning the collection or concentration level of the ICIS and Metal Bulletin information. It is therefore impossible to determine whether these prices are specific to RZBC Companies' input. The GTIS data, submitted by Petitioners, which are reported in kilograms from Canada, Hong Kong, India, Mauritius, Singapore, South Africa, Malaysia, Costa Rica, and Mexico have the same problem as the ICIS and Metal Bulletin values. The concentration levels of the merchandise are not similar to the inputs purchased by the RZBC Companies. The ICIS and Metal Bulletin data are also incomplete given that Petitioners have failed to provide any supporting documentation from these services.
- Petitioners did not provide an explanation of how the ICIS data were converted from DMT, *i.e.*, a dry metric ton basis to a metric ton basis.[350] The concentration levels of NAOHAS are highly relevant given that record evidence submitted by RZBC shows that concentration levels significantly affect the weight of NAOHAS.[351] Thus, in order to obtain a KG value from the reported KSH unit of measurement or KG unit of measurement, the KSH or KG quantity value must be divided by the concentration level of the NAOHAS.[352]
- If the Department determines that NAOHAS is countervailable, then the Department must use RZBC Companies submitted complete GTIS data of reportable exports for NAOHAS on which to derive a "world" benchmark price.[353] RZBC Companies' benchmark information allows the Department to calculate an accurate benchmark by dividing the export quantity values that were reported on a KSH basis by RZBC Companies' reported maximum concentration level of 33 percent.[354] A benchmark that is based on RZBC Companies' concentration level represents the best available information and represents the most accurate information on the record specific to RZBC's input in accordance with 19 CFR 351.511(a)(2)(i)-(ii).
- Additionally, RZBC purchases the NAOHAS in bulk tank quantities similar to sulfuric acid and, therefore, RZBC has provided a benchmark example that excludes sales under

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[348] *See* the RZBC Companies' Factual Information at Exhibits 15 and 16.
[349] *Id*.
[350] *See* Petitioners' Factual Information at Exhibit 5.
[351] *See* the RZBC Companies Factual Information at Exhibit 20 (showing the specific gravity, *i.e.*, weight, significantly varies based on the concentration levels).
[352] *Id*. (http://thesmarttime.comitesting/strength-of-caustic-soda.html showing the calculation to convert caustic soda to NAOHAS).
[353] *See* the RZBC Companies' Factual Information at 15.
[354] *See, e.g.*, the RZBC Companies' Rebuttal Factual Information (May 1, 2014) at Exhibit 5 (reporting the maximum concentration level of caustic soda in its NAOHAS).

28.8 metric tons, which is consistent with RZBC's conditions of purchase.[355] Finally, the GTIS data used by RZBC is inclusive of Petitioners' information. Therefore, the inclusion of Petitioners' benchmark data in the LTAR calculation would be distortive or result in double counting for those countries.
- If the Department determines it should use the reported values from ICIS or Metal Bulletin, then the Department must adjust these values to match RZBC's concentration level by multiplying the values by 33 percent, or dividing the unit quantity by 33 percent.

Department's Position: We disagree with both Petitioners and the RZBC Companies. First, Petitioners are incorrect in their assertion that the RZBC Companies' GTIS data is incomplete and only included information that met their purchasing conditions. In its Pre-Preliminary Results comments, the RZBC Companies calculated various benchmarks and suggested the Department use GTIS world market prices adjusted for their purchasing conditions.[356] However, in their actual factual information submission the RZBC Companies reported a complete GTIS dataset which includes lower volume transactions.[357]

The RZBC Companies submitted GTIS data for caustic soda, *i.e.*, sodium hydroxide in aqueous solution, for 58 countries and Petitioners submitted GTIS data for caustic soda for 23 countries.[358] We note that all the countries Petitioners reported in its GTIS submission are duplicated in the RZBC Companies' GTIS data. Further, of the 23 duplicate countries contained in Petitioners' GTIS dataset, 14 countries are reported in the unit of measure, KSH.[359] Based on the information contained in the GTIS datasets submitted by Petitioners and the RZBC Companies, we find that KSH is a different unit of measure than KG, because for individual transactions where KSH and KG are reported, the quantities are different.[360] If KSH and KG were the same unit of measure, then the quantities would be the same. Additionally, we find that we lack sufficient information to convert KSH into KG or metric tons because we do not have a conversion table. Therefore, because the Petitioners' GTIS dataset reflects countries already present in the dataset submitted by the RZBC Companies and because we lack sufficient information to convert portions of Petitioners' data into a common unit of measurement, we relied exclusively on the GTIS data submitted by the RZBC Companies.[361]

We disagree with the RZBC Companies that an adjustment of 33 percent should be applied to all GTIS prices in order to match the concentration levels of caustic soda which the RZBC Companies purchased. HTS 2815.12.00 is sodium hydroxide in aqueous solution (soda lye or liquid soda) and is not subdivided into various concentrations of sodium hydroxide but contains a basket of high and low concentrations of sodium hydroxide.[362] Thus, we find that the RZBC Companies have not provided sufficient evidence to warrant an adjustment. Further, as discussed in detail at Comment 15, in this review, the Department is relying on a tier-two benchmark. The Department has previously stated that it will endeavor to apply a more accurate

[355] *See* the RZBC Companies' Pre-Prelim Comments at Attachment 4.
[356] *Id.*
[357] See the RZBC Companies' Factual Information at Exhibit 15.
[358] *Id.*, and Petitioners' Factual Information at Exhibit 6.
[359] *Id.*
[360] *Id.*
[361] *See* the RZBC Companies' NSAQR at Exhibit 1.
[362] *See* Petitioners' new subsidy allegation (NSA) (November 12, 2013) at Exhibit 23.

benchmark price to correspond to the company's domestic purchases; however, because the Department must rely on a tier-two benchmark, an exact match cannot be achieved in all instances.[363] There is no requirement that the Department calculate world market prices solely reflective of a respondent's particularities, such as the size of its input purchases; to the contrary, doing so would detract from calculating a truly world market price.[364]

Based on the facts contained in this record of the instant review, we calculated a world market price by weight-averaging benchmark prices submitted from all sources, *i.e.*, GTIS, ICIS, and Metal Bulletin. For a detailed discussion, *see* the Final Results Calculation Memorandum. However, in using the GTIS data submitted by the RZBC Companies, we excluded pricing data expressed in liters (L) because there is insufficient information on the record to accurately convert from L to MT.[365]

See also Comment 16 for a detailed discussion on quantities sold for caustic soda.

Comment 6: Export-Import Bank of China Buyer's Credit

Petitioners' Arguments:

- The Department should find that the EXIM Bank's Buyer's Credit program provides a countervailable benefit to the RZBC Companies. The GOC refused to provide information in response to the Department's requests regarding the operation of this program. The GOC also refused to provide documentation at verification to demonstrate that the RZBC Companies' customers did not use the program. The GOC similarly failed to provide information and to permit verification in other China CVD proceedings that covered this program. In those proceedings the Department found the program to be countervailable on the basis of AFA. The Department should make the same finding with respect to this program in this review.
- Regarding the question of whether the RZBC Companies' customers used this program, the GOC states that "{t}o the best of the GOC's knowledge, none of the respondent's U.S. customers applied for, used, or benefited from the alleged program during the POR."[366] The GOC provided no documentation to support this assertion. It stated that the database is not maintained in a way that is searchable by the seller's name."[367] The GOC also noted that, according to the *Administrative Measures* associated with this program, sales contract values must exceed $2 million in order to qualify for this program.[368]
- The RZBC Companies did not provide information to support either the assertion that their customers did not use the Buyer's Credit program or that it did not sign a single sales contract exceeding $2 million. The record evidence that exists on this issue also

[363] *See Citric Acid Third Review* and accompanying IDM at "Provision of Calcium Carbonate for LTAR."
[364] *See also*, *Archer Daniels Midland Co. v. United States*, 968 F. Supp. 2d 1269, 1279 (CIT 2014) (rejecting RZBC's attempts to force Commerce to use "benchmark prices that are nearly identical to reported purchases" because the regulation "does not manifest such a stringent standard.").
[365] Metric ton is the unit of measure in which the RZBC Companies reported their purchases of caustic soda.
[366] *See* GOC's NSAQR at 16.
[367] *Id*. at 16-17.
[368] *Id*. at 17.

does not support the RZBC Companies' claims.[369] The Department previously investigated the Buyer's Credit program in *Solar Cells I from the PRC*, *Wind Towers from the PRC*, and *Shrimp from the PRC*.[370] In these investigations the Department attempted to verify the accuracy of claims of non-use, but the GOC refused to permit the Department to do so. This is precisely what happened at verification in this review. In *Solar Cells I from the PRC*, *Wind Towers from the PRC*, and *Shrimp from the PRC*, the Department based its determinations on AFA and found that respondents received a benefit from the Buyer's Credit program. The Department should again find that the GOC failed to act to the best of its ability in this review and on the basis of AFA find that the Buyer's Credit program provides a countervailable subsidy to the RZBC Companies and that the RZBC Companies benefitted to the fullest extent possible under the program. As AFA, the Department should utilize the 10.54 percent rate calculated for preferential policy lending in the *Coated Paper from the PRC* investigation[371], and used as an AFA rate in *Solar Cells I from the PRC*, *Wind Towers from the PRC*, and *Shrimp from the PRC*.

GOC's Rebuttal Arguments:

- Through prior investigations, the Department is aware that even if the Buyer's Credit was obtained in transactions involving the respondent's goods, the lending information would relate to the purchasers, not the respondents. Thus, neither the respondents nor the GOC could waive the interests of these non-party companies in keeping such information confidential. Based upon these limitations, the GOC provided the Department with sufficient information to determine the utilization of this program while still protecting the interests of the customers that were not party to this review.
- The Department has before it the regulations issued by EXIM Bank.[372] In *Solar Cells I from the PRC*, the Department stated that it was under the impression that this program was solely "an interaction between the {EXIM Bank} and the borrowers only, with no involvement of third parties such as exporters."[373] As a result, the Department believed it could only establish non-use at the government authority level.[374] The EXIM Bank regulations, however, were not on the record of *Solar Cells I from the PRC*. These regulations clarify that the Department's initial perception of this program was and is inaccurate. The Department's sole reason for focusing on the GOC's reporting of non-

[369] *See* Petitioners' Case Brief at 22 for BPI information.
[370] *See Solar Cells I from the PRC* and accompanying IDM at Comment 18 and 19; see also *Wind Towers from the PRC* and accompanying IDM at Comment 7 - Application Of Adverse Facts Available To The Export Buyers' Credit Program; and *Certain Frozen Warmwater Shrimp From The People's Republic Of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from the PRC*), and accompanying IDM (August 12, 2013) at Comment 16 - Whether To Apply AFA With Regard To The Export Buyers' Credits From The China Export-Import Bank Program.
[371] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from the PRC*), and *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010); *see also Solar Cells I from the PRC* and accompanying IDM at Comment 19.
[372] *See* GOC's NSAQR at Exhibit C-1.
[373] *See Solar Cells I from the PRC* and accompanying IDM at Comment 18.
[374] *Id*.

use in *Solar Cells I from the PRC* and *Wind Towers from the PRC* rather than the respondents' is not valid. The regulations make clear that the Chinese exporter not only would know if its U.S. customer applied for and used this program, but also would affirmatively be required to submit certain information to the EXIM Bank in order for its customer to qualify for and receive the EXIM Bank credit in the first place.[375] The *Administrative Measures* of Buyer's Credit of EXIM Bank state that: the borrower must apply for an export buyer's credit by written application and provide {the} following materials; commercial contract draft or letter of intent, binding document, project feasibility analysis report and related approval documents; and the credit materials and related supporting documents of the borrower, guarantor, importer, exporter, and financial statement of the borrower and guarantor…[376]

- The GOC confirmed the $2 million contract threshold at verification: "one of the conditions prior to and during the POR was that sales contracts have to be a minimum of US$2 million."[377] The criteria for receiving these loans were missing from the records of both the *Solar Cells I from the PRC* and the *Wind Towers from the PRC* proceedings. In addition, in this review, the bank also confirmed a critical involvement of the exporter: "The foreign importer" (*e.g.*, the foreign buyer) "will then instruct EXIM {B}ank to pay the Chinese exporter" (*e.g.*, the Chinese producer) "by assigning payment to the Chinese exporter's bank account."[378] This information, characterized at verification as a "condition precedent," conclusively establishes both that the exporter would be aware of its customer's use of this program and that the program could be verified by the exporter by demonstrating that it had not received payments from the EXIM Bank.
- The EXIM Bank offered to provide to the Department verifiers screenshots of its database searches. The Department, however, declined to accept for the record or to even review screen-shots of the searches identifying whether any of the RZBC Companies' customer's names appeared in the bank's database. The information was not "new" information and was not information that was asked for in a questionnaire but not provided in questionnaire responses. The refusal to accept this information was an abuse of the Department's discretion and has prevented a fair review of the facts surrounding this program. There were clear avenues to verify the usage of this program at the company level, the Department refused to do so.
- By declining to perform any verification at the company respondents, the Department effectively engineered a limited verification record knowing that the EXIM Bank was unable to comply with the Department's specific verification requests. The Department's actions also ignored the clear statements of fact made by the RZBC Companies in their questionnaire responses that the program was not used. The purpose of verification is to confirm the accuracy of these facts as asserted by the respondents. The Department chose not to do so in favor of what it knew would be a limited verification of the GOC. But if the Department chooses not to verify information provided by a respondent, it must presume that information is accurate. "A deliberate refusal to subject certain factual information to a verification procedure is not the equivalent of a valid finding that, for purposes of section 776(2)(D) of the Act, such information 'cannot be verified,'" and a

[375] *See* GOC's NSAQR at 16.
[376] *Id*. at Exhibit C-1.
[377] *See* GOC's Verification Report at 2.
[378] *Id*.

failure to verify cannot serve as the basis for finding that the information purposefully not subjected to verification was not relevant or could not serve to confirm non-use.[379]

- The Department should not use as AFA in this case, the AFA rate of 10.54 percent applied to this program in *Solar Cells I from the PRC*. This is an unduly punitive rate that is based on outdated information. There are no facts on the record to corroborate this old rate with the current proceeding and no facts showing that this rate has probative value to the RZBC Companies presumed use of this program. This rate therefore cannot be used as the AFA rate in this case. Instead, the Department should use the RZBC Companies' rate for their usage of the Export Seller's Credit from this review as the AFA rate for the Export Buyer's Credit program.
- The statute permits the Department to rely upon "secondary information" when making an adverse inference, but it also contains an express requirement that {the Department} shall, to the extent practicable, "corroborate that information from independent sources."[380] While the statute does not provide a definition of "secondary information," the SAA notes that secondary information is information "derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[381] The Department's regulations and SAA define "corroboration" as an examination of whether "the secondary information to be used has probative value."[382] This corroboration requirement is necessary as "secondary information may not be entirely reliable because, for example, as in the case of the petition, it is based on unverified allegations, or as in the case of information from prior section 751(a) reviews, it concerns a different time frame than the one issued."[383] Ultimately, in corroborating an AFA rate, the Department must select a rate by balancing the statutory objectives of finding an accurate dumping margin and inducing compliance, rather than creating an overly punitive result.[384]
- The record evidence demonstrates that the policy lending rate selected from *Coated Paper from the PRC* cannot be corroborated to the commercial reality of the RZBC Companies. First, as noted above, the SAA warns against the use of secondary information that is outdated. The use of information that is too outdated can result in an overly punitive AFA rate.[385] The rate taken from *Coated Paper from the PRC* was calculated using information from 2008, a full four years prior to the POR in this case.[386] The year in which a loan was received is critical to the benefit analysis of that loan as the year is determinative of what benchmark interest rate applies. Since the rate was taken

[379] *See China Kingdom Import & Export Co. v. United States*, 31 CIT 1329, 1340 n.7 (2007).
[380] *See* section 776(c) of the Act.
[381] *See SAA* at 870.
[382] *See* 19 CFR 351.308(c)(1) and *SAA* at 870.
[383] *Id.*; *see also Foshan Shunde Yongjian Housewares & Hardware Co. v. United States,* 991 F. Supp. 2d 1322, 1328 (CIT 2014) ("In creating this {corroboration} requirement, Congress expressly intended to check the Department's ability to select potentially suspect secondary information when drawing adverse inferences").
[384] *See Timken Co. v. United States*, 354 F.3d 1334, 1345 (Fed. Cir. 2004).
[385] *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (stating that an adverse rate may be considered "punitive" if Commerce "had to reject low margin information in favor of high margin information that was demonstrably less probative of current conditions").
[386] *See Coated Paper from the PRC* at 59212 (noting that the POI was from January 1, 2008, through December 31, 2008).

from previous years, the benchmark interest rate would not be the same as the benchmark interest rate applied to loans received by the RZBC Companies that were outstanding in 2012.[387] Thus, the use of an older rate inflates the benefit that would have applied to the RZBC Companies had it benefited from this loan in 2012.

- Second, the rate selected from *Coated Paper from the PRC* was an uncreditworthy rate. The RZBC Companies have not been found to be uncreditworthy. As the Department is well aware, the benefit calculation for loans to uncreditworthy companies is significantly different from the typical loan calculation, and always results in a much higher *ad valorem* rate as compared to a creditworthy loan calculation.[388] Applying this uncreditworthy rate to a creditworthy company cannot be corroborated or justified.
- Third, the loans from *Coated Paper from the PRC* were not provided to the respondents in that case by the EXIM Bank. The EXIM Bank is a completely distinct bank separate from other state-owned commercial banks in China, and has never been involved in a typical policy loan program like the one countervailed in *Coated Paper from the PRC*.
- Finally, the rate from *Coated Paper from the PRC* was calculated for an entirely different respondent involved in a completely different CVD proceeding. Unlike in an investigation, in this case there have been three completed prior reviews in addition to the original investigation. The history of rates applied to the RZBC Companies over the life of this order is therefore very relevant to whether this AFA rate reflects the company's commercial reality.[389]
- A review of those rates demonstrates that the RZBC Companies has never received a rate this high for a subsidy program, particularly one related to financing from a state-owned bank. Instead of selecting an outdated rate based on loans from four years prior to the POR, issued by banks that were not the EXIM Bank, to a respondent that was deemed uncreditworthy; the Department should select an AFA rate from a virtually identical program in this proceeding. Unlike previous cases, this review also involved the companion program to the Export Buyer's Credit program: the Export Seller's Credit program.[390] A rate was not calculated for this program in the other cases in which the Export Buyer's Credit program was present. This program is nearly the same as the Export Buyer's Credit program. It is operated by the EXIM Bank and EXIM Bank issued loans to the RZBC Companies under this program that were outstanding during the POR. The program operates to assist companies in exporting their products, just like the Export Buyer's Program.
- The GOC recognizes that the Department has developed a practice for selecting AFA rates first by looking at identical programs within a case and second by looking at similar programs in previous cases. This practice however cannot be followed blindly without consideration of the specific facts of a given case. More importantly, the reliance on this "practice" cannot supplant the statutory obligation to corroborate the AFA rate applied to

[387] *See* Memorandum to File, "Preliminary Results Interest Rate Benchmark Memorandum," (June 18, 2014) at Attachment 6.
[388] *Id*. at Attachment 6 and 7; *see also* 19 CFR 351.505.
[389] *See Lifestyle Enter. v. United States*, 768 F. Supp. 2d 1286, 1298 (CIT 2011) ("indications that a rate may not reflect commercial reality include significantly lower rates for cooperating respondents and the presence of more recent, conflicting data"), *reversed on other grounds*, 751 F.3d 1371 (Fed. Cir. 2014).
[390] *See Preliminary Results* and accompanying Decision Memorandum at 13.

a particular respondent.[391] In this case, reliance on this practice and the selection of the rate from *Coated Paper from the PRC* as the AFA rate would indeed contravene the corroboration statute and therefore it must not be followed. Accordingly, if the Department applies AFA for this program and, as a result, finds that the RZBC Companies benefit from the Export Buyer's Credit program during the POR, it should select an AFA from this review, preferably the rate the RZBC Companies received from the Export Seller's Credit program.

The RZBC Companies' Rebuttal Arguments:

- The Department had ample opportunity to review non-use of the program in the RZBC Companies' books and records. The Department makes no reference to the fact that the RZBC Companies either failed or provide or failed to cooperate to the best of their ability by not supplying the information requested of it at verification.[392]
- The RZBC Companies fully certified their statements under criminal penalty pursuant to the Department's regulations that (1) it never cooperated or assisted a U.S. customer in obtaining an EXIM Bank buyer's credit; (2) if a customer wanted to use the EXIM Bank buyer's credit program, the RZBC Companies must initiate the program, which the RZBC Companies explained it never had done; and (3) it never signed a sales contract of two million U.S. dollars or more during the period of review.[393]

Department's Position: The GOC and the RZBC Companies claim that the RZBC Companies' customers did not use this program during the POR and refer to "clear avenues" the Department could have taken to verify at the company level. At the government verification, officials from the EXIM Bank also stated that the RZBC Companies did not use the program during the POR.[394] The EXIM Bank officials stated that the bank maintains records of all loans to buyers and that they searched those records and found no entry for any of the customers' names given to them by the RZBC Companies.[395] The verifiers attempted to confirm the GOC official's statements by examining the bank's files and searching for the relevant customer names; however the official refused the request, asserting that such information was confidential.[396]

In prior CVD proceedings, we determined that it is the EXIM Bank that provides loans to the customers of Chinese producers under this program.[397] Accordingly, we found that the EXIM Bank of the GOC is the primary entity that possesses the supporting records that the Department needs to verify the accuracy of the claimed non-use of the export buyer's credit program.[398] During verification and in its case brief, the GOC argues that it provides the principal of the buyer's credit program directly to the Chinese producers while the foreign importers, *i.e.*, foreign buyers, repay the interest to the EXIM Bank.[399] We questioned EXIM Bank officials whether

[391] *See China Kingdom Imp. & Exp. Co. v. United States*, 31 CIT 1329, 1351 (2007) (explaining that the "mere existence of the practice was not a substitute for the Department's complying with the statute").
[392] *See* the RZBC Companies' Verification Report at 3 – 5.
[393] *See* the RZBC Companies' NSAQR at 8 – 9.
[394] *See* GOC's Verification Report at 2 – 3.
[395] *Id*.
[396] *Id*.
[397] *See, e.g., Wind Towers from the PRC*, and accompanying IDM at Comment 7.
[398] *Id.*.
[399] *See* GOC's Verification Report at 2 – 3.

the transfer of funds directly to the Chinese producer was explicit in the *Administrative Measures*. The EXIM Bank officials explained that it was not explicit in law, but understood in practice. Department officials proceeded to request the EXIM Bank officials to provide sample contracts and documentation to assist in understanding the disbursement of funds and its timeline. The Department provided EXIM Bank officials the option of redacting all business proprietary information to comply with its confidentiality requirements.[400] The EXIM Bank officials denied our request.[401] The Department cannot rely on the narrative assertions of the GOC; it was incumbent upon the GOC to provide a clear path of the disbursement process if the GOC asserts that non-use can be verified at the recipient Chinese producers. Therefore, we continue to find the Department's ability to determine non-use of this program hinges on its ability to examine usage records in the possession of the GOC.

At verification, officials from the EXIM Bank stated that the bank maintains records of all lending provided under the program.[402] It is for this reason that the verifiers sought to review the information maintained by the EXIM Bank. The GOC asserts that the EXIM officials offered screenshots of query results that EXIM Bank officials performed on its database and Department officials declined to accept it for the record. On this point we note that the Department's standard verification protocols are to test and confirm whether the information submitted in questionnaire responses is accurate and true. Accordingly, the Department's verification outline to the GOC was explicit that it would request to duplicate the queries in EXIM Bank's database.[403] However, as explained in the verification report, the GOC did not permit the verifiers to trace the data in the query results to the underlying database, thereby preventing the verifiers from completing their verification procedures.[404]

Thus, notwithstanding the non-use claims of the RZBC Companies and the GOC, we find that the GOC's refusal to allow the verifiers to examine the EXIM Bank database containing the list of foreign buyers that were provided assistance under the program during the POR precluded the Department from verifying the non-use claims made by the RZBC Companies and the GOC. The GOC and the RZBC Companies assert that there were "clear avenues" for the Department to verify non-use of the program with the Chinese exporter, *i.e.*, at the RZBC Companies' verification. The Department disagrees. The Department requested at the GOC verification sample documentation to fully understand the application process and how the funds from the Buyer's Credit program are distributed.[405] We were sensitive to the GOC's concerns regarding the business proprietary information contained in the documents and offered the suggestion of redacting the information and creating a public version.[406] The GOC refused to provide the requested information.[407] In the instant review, the Department did not have a "clear avenue" to verify at the company level as the GOC and the RZBC Companies assert. Had the Department attempted to verify non-use at the respondents' facility with only declarative statements as guidance, we could have done no more than speculate on how to confirm non-use; any

[400] *Id*.
[401] *Id*. at 3.
[402] *Id.*
[403] *See* Department's verification outline to GOC (August 28, 2014) at 5 – 6.
[404] *See* GOC's Verification Report at 2.
[405] *See* GOC's Verification Report at 2.
[406] *Id.*
[407] *Id.*

procedures we might have undertaken at the companies simply would have been guess work based on assumptions concerning the operations of the program. The GOC provided an oral explanation of how the respondent companies might be involved in the application process and the disbursement of funds, but the information and documentation the Department finds to be most probative for this program are loan applications, bank approval letters, and loan agreements because this documentation can then be tied to the EXIM Bank's audited financial statements. As a result, necessary information is missing from the record. Also, we find that the GOC failed to provide the requested information at verification and also significantly impeded this proceeding. Accordingly, the use of the facts available is warranted under sections 776(a)(1), (2)(A), (2)(C) and (2)(D) of the Act. We further find that by not providing the requested information, the GOC failed to cooperate by not acting to the best of its ability.

With regard to the applicable rate, the Department has an established practice for selecting AFA rates for programs for which no verified usage information was provided.[408] According to that practice,[409] for programs other than those involving income tax exemptions and reductions, we will apply the highest calculated rate for the identical program in the same proceeding if another responding company used the identical program. If no other company used the identical program within the proceeding, we will use the rate from the identical program in another CVD proceeding involving the country under investigation, unless the rate is *de minimis*. If there is no identical program match in any CVD proceeding involving the country under investigation, we will use the highest rate calculated for a similar program in another CVD proceeding involving the same country.

The GOC argues that we should use as AFA the RZBC Companies' Export Seller's lending rate. However, this program is not an identical program. Because the Department has not calculated a rate for the Export Buyer's Credits program in this review, and has not calculated a rate for the program in another CVD PRC proceeding, the Department's practice is to identify the highest rate calculated for a similar program in another CVD PRC proceeding. Consistent with *Solar Cells from the PRC*, we determine that a lending program is similar to the program at issue because the credits function as short-term or medium-term loans. We, therefore, determine that the highest calculated rate for a comparable lending program is 10.54 percent calculated for preferential policy lending in *Coated Paper from the PRC.*

The GOC argues that application of our practice in this case does not reflect commercial reality and is contrary to the statute because the *Coated Paper from the PRC* policy lending rate is outdated and irrelevant to the RZBC Companies. We disagree. In *Coated Paper from the PRC*, the policy lending program covered loans from banks in the PRC (whether policy banks or state-owned commercial banks). Likewise, the Export Buyer's Credit program involves loans from a PRC bank. A government lending program in one proceeding is a reasonable proxy for a government lending program in another proceeding. This is not a dumping proceeding in which

[408] When the AFA determination applies solely to the financial contribution and specificity prongs of the countervailability determination, the Department may still calculate a rate using information supplied by the company respondents.
[409] *See, e.g.*, *Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences."

individual companies may have different experiences; this is a CVD proceeding involving loans from government banks, just as *Coated Paper from the PRC* was. Although the rate from *Coated Paper from the PRC* is a few years old, we have used that rate as an adverse rate in other proceedings, and therefore the GOC has been on notice regarding it. Thus, we can reasonably infer that because of the GOC's decision not to cooperate and not to permit verification, it knows that the actual usage of this program would lead to a rate at least as high as 10.54 percent. The purpose of adverse inferences is to ensure that a party does not achieve a better result by not cooperating than if it had cooperated fully.[410]

Further, we disagree with the GOC and RZBC Companies that the chosen rate is unsuitable because it reflects an "uncreditworthy" rate. As noted, the Department does not have the necessary information about the operation of the Buyer's Credit program to calculate a subsidy rate. This program differs from other subsidy programs typically examined by the Department in that the government provides funds to the buyers of respondents' merchandise with the goal of increasing respondents' sales. At verification, the GOC refused to provide information concerning buyers that participated in this program during the POR. Therefore, because we lack information regarding the specifics of the companies that benefit, it would be inappropriate to make speculative adjustments to the AFA hierarchy on the basis of alleged company-specific factors. In other words, even if such an adjustment for creditworthiness makes sense, the agency lacks the necessary information on the record regarding the companies that received this credit including, for example, the GOC's analysis of these companies' creditworthiness, to make any adjustment to the rate. Even though the RZBC Companies, as the producer, directly benefitted through the production and the distribution of their products,[411] that benefit was based on the creditworthiness of the buyers.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall corroborate that information, to the extent practicable. To corroborate secondary information, the Department will examine the reliability and relevance of the information to be used, but need not prove that the selected facts available are the best alternative information.[412] In this case, the preferential policy lending rate of 10.54 percent is an appropriate rate to apply because it is a rate calculated in a CVD PRC final for a similar program based on the treatment of the benefit. In the absence of information from the responding party, the rate calculated in another proceeding provides the most reliable and relevant information about the government's practices regarding these kinds of programs. Many factors go into the calculation of a rate in any proceeding. For lending programs these may include, among other things, the size of the loan, the interest rate on the loan, the term of the loan, the benchmark interest rate selected, and the size of the company's sales. When selecting an AFA rate, the Department is, by definition, operating with a lack of verifiable and reliable evidence about the impact of such factors in the case at hand. In the absence of reliable information to control for a comparison of such factors between another case

[410] *See* SAA at 870.
[411] *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy*, 63 FR 40474, 40480 (July 29, 1998); *Final Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products From Austria*, 50 FR 33369 (August 19, 1985); and *Final Affirmative Countervailing Duty Determination; Certain Agricultural Tillage Tools From Brazil*, 50 FR 34525 (August 26, 1985).
[412] *See SAA* at 869-870.

and the case at hand, the Department corroborated the rate selected to the extent practicable, *i.e.*, by relying on a rate calculated for a similar program in a prior proceeding pertaining to the PRC.

Comment 7: Whether to Apply AFA to Steam Coal and Sulfuric Acid Purchases

Steam Coal

Petitioners' Arguments:

- The Department should find that all of RZBC Co.'s purchases of steam coal confer a countervailable subsidy, as AFA, because the Department was not able to fully trace and verify the steam coal purchased. Before verification, the record showed numerous inconsistencies and discrepancies in the corroborating documents RZBC provided, and showed a new and complicated supply chain. Petitioner also previously mentioned that bulk imports of steam coal are often co-mingled in storage.
- At verification, RZBC failed to provide a full sales trace for several RZBC purchases. Documents provided for sales traces did not indicate all the information required and/or did not provide purchase/sales links between each party involved in the supply chain. Certain documents stating that all steam coal provided to RZBC was not purchased in the PRC are dated well after the sales traced, and comprise "mere assertions," rather than probative evidence.
- Verification also revealed significant mistakes regarding reported suppliers and product purchased. For one sales trace, RZBC reported one entity as the input supplier, but underlying documents showed the supplier to be a different entity. For another traced sale, the documents showed that the transaction between the input supplier and first trading company was not of steam coal, but another product, while other sales documents provided for that sale were related to steam coal.

The RZBC Companies' Rebuttal Arguments:

- The record demonstrates that the RZBC Companies fully cooperated and acted to the best of their ability (*e.g.*, even obtaining certifications from unaffiliated suppliers), which, based on the regulations, prevents the Department from applying AFA.
- Several of Petitioners' arguments are speculative because nothing on the record shows that: RZBC Co.'s steam coal bulk imports were co-mingled; RZBC Co.'s supporting sales documents or certifications from trading companies were falsified; or RZBC Co.'s purchased the imported steam coal and sulfuric acid from domestic producers.
- The trading company certifications that RZBC Co. provided are legitimate and more than mere assertions; they are based on the trading companies' business experience. Furthermore, the fact that their dates are not contemporaneous with the input purchases reflects that RZBC Co. requested them after receiving the Department's questionnaire and did not fabricate them.
- RZBC Co.'s misidentification of an input supplier is a simple error, and it does not negate the primary fact that the input supplier was foreign. Likewise, RZBC Co.'s error in including the sale of another product as a steam coal sale only further supports the conclusion that that sale is not countervailable because that product is not used in the production process for citric acid.
- RZBC Co. provided an unbroken sales link between all entities in its supply chain with the certifications submitted by each trading company, all of which were further

supplemented by copious amounts of other substantiating documents. While RZBC Co.'s supply chain is complex, this only supports the fact that its supply chain is not fabricated. Petitioners are okay with RZBC Co.'s domestic purchases of inputs from equally complicated supply chains as those used for foreign purchases, and therefore cannot find issue with the complexity of the supply chains for foreign purchases.

- If the Department finds that Petitioners' assertion of co-mingled imports is correct, then the only conclusion the Department can come to is that those imports are not countervailable because it is impossible to know the origin of those inputs.

Sulfuric Acid

Petitioners' Arguments:

- As with RZBC Co.'s steam coal purchases, the sulfuric acid purchases of RZBC Co. and RZBC Juxian should be found to confer a countervailable subsidy, based on AFA, because at verification, RZBC failed to provide an unbroken link in its complicated supply chain between the imported input and the ultimate sales to RZBC Co. and RZBC Juxian. As a result, the source of the sulfuric acid used by RZBC Co. and RZBC Juxian was not verified.

The RZBC Companies' Rebuttal Arguments:

- Similar to the record regarding its steam coal purchases, the record regarding sulfuric acid shows that RZBC Co. cooperated fully and to the best of its ability in providing large quantities of supporting documentation, including an unbroken chain of certifications from its unaffiliated sulfuric acid suppliers and country of origin documents covering all sulfuric acid purchases.
- Petitioners have provided no evidence or explanation demonstrating the contrary.

Department's Position: The Department thoroughly verified the books and records of the RZBC Companies and finds that the RZBC Companies acted to the best of their ability in providing the Department with substantiation for their sulfuric acid and steam coal purchases. Sections 776(a)(1) and (2) of the Act provide that the Department, subject to section 782(d) of the Act, shall apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. 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 fails to cooperate by not acting to the best of its ability to comply with a request for information.

We agree with Petitioners that the RZBC Companies used complex supply chains to procure their sulfuric acid and steam coal during the POR.[413] We further agree that prior to verification, the record showed several discrepant facts about specific purchases of sulfuric acid and steam coal.[414] However, as the statute explains, the application of AFA is exclusively dependent upon whether a respondent cooperated and acted to the best of its ability in providing the Department

[413] *See* Petitioners' Case Brief at 28, 33.
[414] *Id.* at 29.

with the information requested. The record shows that the RZBC Companies answered all of the Department's questions related to their purchases of sulfuric acid and steam coal, and supplied the Department with multiple and varied documents in support of their responses.[415] The RZBC Companies' supply chains involve numerous unaffiliated trading companies,[416] which the RZBC Companies cannot coerce into participating in the proceeding. Nevertheless, the RZBC Companies, upon the Department's request, contacted each unaffiliated party and obtained stamped, original company certifications attesting to the foreign sources of the sulfuric acid and steam coal sold to the RZBC Companies.[417] At verification, the RZBC Companies further provided print outs from trading company websites, PRC customs import documents, certificates of origin, and numerous other sales documents that showed a consistent fact pattern.[418] While not every transaction between unaffiliated input supplier, unaffiliated trading company, and the RZBC Companies is supplemented by a full set of sales documents, there is nothing in the large number of supporting documents to indicate the inputs were sourced domestically. Further, for each randomly selected tracing exercise performed during verification, the RZBC Companies provided at least one source document that indicated the foreign origin of the input under examination, thereby demonstrating that the RZBC Companies did not procure the input in question from a PRC-based firm acting as a GOC authority.[419]

With regard to the trading company certifications being dated shortly after the Department issued its questionnaire to the RZBC Companies, we find this does not negate the validity of the certifications, but simply reflects the RZBC Companies' attempts to cooperate with the Department and to obtain information from their unaffiliated suppliers. Petitioners also note two discrepant items in the RZBC Companies' questionnaire responses and verification documents: an incorrect supplier name in a narrative response regarding one sale, and a sales document identifying a product other than steam coal.[420] We find that these single, isolated errors do not overwhelm the large amount of substantiation the RZBC Companies provided in support of their reported information. Further, in both instances, the documentation confirmed that the RZBC Companies obtained the inputs in question from outside of the PRC.[421] Finally, regarding Petitioners' assertion that bulk shipments of steam coal are often co-mingled in storage, Petitioners made the assertion without corroborating proof that such a situation exists in the instant review.[422] Therefore, for the final results, we did not apply AFA to the RZBC Companies' purchase of sulfuric acid or steam coal indicated to be sourced outside the PRC. *See* Final Results Calculation Memorandum.

Comment 8: Whether to Exclude Freight Surcharges for Limestone Flux

The RZBC Companies' Arguments

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[415] *See* RZBC Co.'s IQR at III-18 – III-23, Exhibits 11 and 15; RZBC Juxian's IQR at III-17 – 21 and Exhibit 9; RZBC Companies' 2SQR at 3 - 5, 7 – 9, Exhibits 7 – 10, 13 – 16, 21 – 24, 28; RZBC Companies' Verification Report at 5 – 11, VE-8, VE-13 - 14, VE-16, and VE-19.
[416] *See* RZBC Companies' Verification Report at 5 – 11, VE-8, VE-13 - 14, VE-16, and VE-19.
[417] *Id.* at VE-13, at 36 – 46, 63 – 74; VE-8, at 46 – 105; VE-16, at 132 – 139, 153 – 163.
[418] *Id.* at 5 – 11, VE-8, VE-13 - 14, VE-16, and VE-19.
[419] *See, e.g., id.* at VE-8, at 45; VE-13, at 36 – 46.
[420] *See* Petitioners' Case Brief at 29, 32 – 33.
[421] *See* RZBC Companies' Verification Report at VE-13, at 63 – 74, 90 – 96.
[422] *Id.* at 29.

- The inclusion of "flat rack collapsible container" rates stands in sharp contrast to every other case where the "flat rack collapsible container rates" were placed on the record. In those cases, the Department determined not to use the information because there was no record evidence that the product incurred the "Special Equipment Service" surcharge.[423] In *Seamless Pipe from the PRC*, the Department removed the "flat rack" expense from the Maersk pricing data because Petitioners failed to establish that "flat rack" containers were required to ship the product "or that they necessarily incur a special charge."[424] Flat rack containers are specialized containers that incur an extra expense. Moreover, the RZBC Companies submitted similar Maersk pricing information showing that the commodity group does not require "flat rack collapsible containers" and the only difference in pricing between the RZBC Companies' reported freight expenses and Petitioners' distorted "flat rack" freight values is the "Special Equipment Service" surcharge.

Petitioners' Rebuttal Arguments

- In *Citric Acid Third Review*, the Department ruled that "the international freight pricing data sourced by Petitioners has a commodity description of 'salt, sulphur, earths and stone, plastering materials, lime, cement, marble, granite,'" and the record contained no information "the 'special equipment service' fee included in those data is not required for this commodity; therefore we will continue to use the international freight pricing data on the record because" it most "accurately reflects RZBC Companies' purchases of GCC."[425] In addition, and contrary to the RZBC Companies' assertions, Petitioners submitted information demonstrating that flat rack containers are used for this commodity. Exhibit 4 of Petitioners' April 21, 2014, benchmark submission includes pictures from jumbobagchina.com which shows jumbo bags of calcium carbonate being loaded onto a flat-rack container.[426] This record evidence completely contradicts the RZBC Companies' arguments. Therefore, the Department should continue to use the international freight benchmarks submitted by Petitioners for the Calcium Carbonate Program.

Department's Position: As explained in 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration using a tier one or tier two benchmark pursuant to 19 CFR 351.511(a)(2)(i) or (ii), respectively, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Contrary to RZBC Companies' arguments, in *OCTG from the PRC*

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[423] *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010) (*Seamless Pipe from the PRC*) and accompany IDM Comment 9.C.(excluding the "special equipment service" surcharge because there was no evidence that product incurred the surcharge); *see also Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2011*,78 FR 9368 (February 8, 2013) (*OCTG from the PRC*), and accompanying Decision Memorandum at p. 21-22 "Provision of Steel Rounds," and unchanged in the final results (excluding the "flat rack" surcharge because there is no record evidence that "flat rack" and the surcharge are reflective of what a firm would pay to import the product, in accordance 19 CFR 351.511(a)(2)(iv)).
[424] *Id*.
[425] *See Citric Acid Third Review* and accompanying IDM at 93.
[426] The issue is moot. *See* Department's position.

there was sufficient information on the record of that proceeding to conclude that the respondent did not incur the "flat rack" "special equipment service" fee. However, in the instant review, RZBC Companies did not provide information on the record that it does not incur these fees; therefore, we will continue to use the international freight pricing data on record and will not make any changes for the final results.[427]

Comment 9: Whether the Provision of Calcium Carbonate for LTAR is Specific to RZBC Companies' Purchases

The RZBC Companies' Arguments:

- In *Citric Acid Third Review*, the RZBC Companies argued that Petitioners' new subsidy allegation of less than adequate remuneration covered precipitated calcium carbonate (PCC) rather than the RZBC Companies' limestone flux input.[428] Given that the RZBC Companies did not use PCC in their production during the POR, the Department should not countervail RZBC Companies' limestone flux purchases, because Petitioners never alleged that limestone flux was sold for LTAR.

Petitioners' Rebuttal Arguments:

- The Department already rejected this argument in *Citric Acid Third Review* and should do so again here. The Department rejected the RZBC Companies' "argument that limestone flux and calcium carbonate are two different commodities and, thus, two different inputs requiring separate subsidy initiations."[429] The Department cited record evidence that the chemical composition of calcium carbonate in the form of both GCC, which includes limestone flux, and PCC are chemically identical, *i.e.*, $CaC0_3$.[430] Thus, the Department found "that GCC and PCC constitute different grades of the same input, calcium carbonate," and that the Department appropriately included RZBC Companies' input purchases "of GCC, *i.e.*, limestone flux, in our analysis of whether the Calcium Carbonate Program inputs were sold at LTAR prices during the POR.[431] The RZBC Companies' argument in this segment offers no basis for the Department to reverse its earlier determination. Accordingly, the Department should reject RZBC Companies' argument in the final results.

Department's Position: The Department's findings that authorities provided the RZBC Companies with calcium carbonate for LTAR was in accordance with the law. The statute requires that Petitioners allege "the elements necessary for the imposition of {a countervailing duty under section 702(b) of the Act} and provide information reasonably available to the petitioner supporting those allegations."[432] The Department's regulations stipulate that a party alleging a countervailable subsidy during an administrative review must do so within twenty days of all responses to the Department's initial questionnaire, unless the Department states otherwise.[433]

[427] *See OCTG from the PRC* and accompanying IDM at Comment 13D.
[428] *See Citric Acid Third Review* and accompanying IDM at Comment 11.
[429] *Id*. at 68.
[430] *Id*.
[431] *Id*.
[432] *See* Section 702(b)(1) of the Act.
[433] *See* 19 CFR 351.301(d)(4)(i)(B). This citation reflects the regulations in effect at the time of the third review.

Regardless of Petitioners' obligations, however, the statute also requires that the Department investigate a practice "which appears to be a countervailable subsidy, but was not included in the countervailing duty petition."[434]

In *Citric Acid Third Review*, Petitioners submitted a timely allegation concerning the provision of "calcium carbonate" and provided an explanation and evidence for why the alleged program satisfied each element of a countervailable subsidy. After evaluating this information, the Department reasonably found that the allegation satisfied the statutory standard and was "supported by adequate information that was reasonably available to Petitioners."[435]

The RZBC Companies provided information about their limestone flux purchases in response to Commerce's questions about calcium carbonate, and provided benchmark information for measuring a potential benefit resulting from their purchases of limestone flux.[436] Based on those submissions, the Department found that ground calcium carbonate and precipitated calcium carbonate constituted "different grades of the same input," citing information that both ground calcium carbonate and precipitated calcium carbonate producers attended an annual meeting for calcium carbonate producers, and that "the fundamental chemical composition of $CaCO_3$ is what matters to the chemical reaction {used for producing citric acid}."[437] The Department is not barred from considering that information in the context of its investigatory duties, and, in fact, the statute mandates the opposite.[438] We therefore continued to countervail the provision of limestone flux for LTAR, in accordance with our findings in *Citric Acid Third Review*.

Comment 10: Whether to Average Benchmark Prices

GOC's Arguments:

- The regulation that provides for the averaging of market prices to determine a benchmark is inconsistent with section 771(5)(E)(iv) of the Act and should not be followed. The main objective in calculating a benchmark, both according to regulation and statute, is to compare an allegedly subsidized price to a market price, as long as that market price is reasonably available to the respondent. The regulations require that certain "prevailing market conditions" be taken into account in other calculations to obtain the most specific results possible, but only require generic averages in calculating benchmarks.

Although the same deadline applies under Commerce's revised regulations at 19 CFR 351.301(c)(2)(iv)(B), the revised regulations did not apply to the third review. *See Definition of Factual Information and Time Limits for Submission of Factual Information*, 78 FR 21246 (April 10, 2013).

[434] *See* section 775(1) of the Act. *See also* 19 CFR 351.311 (stating that Commerce "will examine the practice, subsidy, or subsidy program if {it} concludes that sufficient time remains before the scheduled date for the final determination or final results of review.").

[435] *See Citric Acid Third Review* and accompanying IDM at "Provision of Calcium Carbonate for LTAR"; *see also* section 702(b)(1) of the Act.

[436] *Id.*

[437] *See Citric Acid Third Review* and accompanying IDM at Comment 12.

[438] *See* section 775(1) of the Act. *See also Allegheny Ludlum Corp. v. United States*, 24 CIT 452, 462 n.12, 112 F. Supp. 2d 1141, 1151, n.12 (2000) (finding that Congress' intent in adding that statutory provision "was to avoid 'unnecessary separate' investigations and 'increased expenses and burdens,'" and that "Congress . . . clearly intended that all potentially countervailable programs be investigated and catalogued{.}"), *quoting* Sen. Rep. No. 96-249, at 98 (1979), reprinted at U.S.C.C.A.N. 381, 484.

- The Department should at least use the lowest market price for each month, per input. By using the average market price on the record, the Department implies that half the market prices placed on the record are inadequate, even though all prices on the record are market prices, and therefore, adequate. Any LTAR benefit calculated by using a price higher than the lowest market price on the record is inflated, and the respondent is thereby penalized for not purchasing at average market levels.

Petitioners' Rebuttal Arguments:

- As the Department explained in the final results of the prior review, averaging reliable benchmark data results in a world market price, which is the objective of tier two benchmark methodology. Further, the Department also explained that using only the lowest market price is as arbitrary as using only the highest market price on the record, so in order to calculate the most robust *world* market price benchmark possible, it is reasonable to average all available, applicable data.

Department's Position: We disagree with the GOC's position that 19 CFR 351.511(a)(2)(ii) is inconsistent with section 771(5)(E)(iv) of the Act.[439] As we stated in *Citric Acid Third Review*, the Department's practice of averaging benchmark data to develop a world benchmark price is a reasonable interpretation of the statute.[440] Section 771(5)(E)(iv) of the Act states that "the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review." While the structure of 19 CFR 351.511(a)(2) and the statute itself express a preference for using a market price in the country subject to the review, such a market price in the country under review may not be available, as is the case in the instant review. The regulation at 19 CFR 351.511(a)(2) fills the necessary gap in the statute by allowing the Department to consider "a world market price" as the benchmark. As the Court has explained, "{w}hen there are no usable tier-one prices, a tier-two benchmark is established using an average of available, comparable world market prices."[441]

The regulation at 19 CFR 351.511(a)(2)(ii) stipulates that when there is more than one such price on the record, the Department will average them together to arrive at a *world* market price.[442] To derive the most robust world market price possible, we averaged all prices on the record together. As we explained in *Citric Acid Third Review*, if the Department were to select only the lowest world price as its benchmark, it would be arbitrarily excluding data on the record just as if

[439] *See* GOC's Case Brief at 24.
[440] *See Citric Acid Third Review,* and accompanying IDM at Comment 13.E., citing to *Hangzhou Spring Washer Co. v. United States*, 387 F. Supp. 2d 1236, 1240 (CIT 2005) ("{i}n determining whether Commerce's interpretation and application of the antidumping statute is in accordance with law, this Court must consider 'whether Congress has directly spoken to the precise question at issue,' and if not, whether the agency's interpretation of the statute is reasonable") (quoting *Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842-43 (1984)); *Mittal Canada, Inc. v. United States*, 461 F. Supp. 2d 1325, 1330 (CIT 2006) ("{b}ecause the statute leaves a gap for the agency to fill, and because {the regulation} fills that gap, the Court owes Chevron deference to the agency, and will overturn its regulation only if it is unreasonable, arbitrary, or capricious").
[441] *See ADM v. United States*, 917 F. Supp. 2d at 1343.
[442] *See Countervailing Duties*, 63 FR 65348, 65377 (November 25, 1998) ("if there are no useable market-determined prices stemming from *actual* transactions, we will turn to *world* market prices that *would be available* to the purchaser. We will consider whether the market conditions in the country are such that it is reasonable to conclude that the purchaser could obtain the good or service on the *world* market") (emphasis added).

it selected only the highest price.[443] Absent record evidence justifying the exclusion of a data set, the Department considers it reasonable to average all available data in order to determine a robust benchmark price. Most importantly, again, the statute does not define "adequate remuneration" as being only the lowest prices available in the market. In fact, it does not define that term at all, but rather simply directs the Department to examine the prevailing market conditions in determining adequacy. The regulation reasonably effectuates the statute.

With regard to the GOC's hypothetical example demonstrating that an average benchmark price leads to an inflated LTAR benefit,[444] as in *Citric Acid Third Review*,[445] the GOC points to no evidence on the record of this segment to suggest that the benefit would be similarly inflated here. Accordingly, the Department will average the benchmark prices on the record to arrive at the most robust world market price possible. *See* Final Results Calculation Memorandum.

Comment 11: Whether to Use Inland Freight Benchmark Data for Steam Coal

Petitioners' Arguments:

- Pursuant to the Department's practice in prior reviews of this order, the Department should use inland freight benchmark data provided by all parties to calculate a "robust" benchmark that truly reflects what a company would pay to transport an imported input to its plant.

The RZBC Companies' Rebuttal Arguments:

- The inland freight value for coal reported by Petitioners represents the difference between RZBC's steam coal purchase price and the Haver domestic mine price of an unspecified coal type. Conversely, RZBC's reported inland freight costs were verified by the Department. If the Department chooses to use the Haver coal prices for the final results, it should use them as benchmark data rather than inland freight.

Department's Position: Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm *actually paid or would pay* if it imported the product, including delivery charges and import duties. This means that, whenever possible, it is the Department's preference to use a respondent's own purchase information when calculating inland freight on its inputs. We stated in the *Preliminary Results* that because the RZBC Companies purchased steam coal from domestic sources, and hence did not provide inland freight information from port to RZBC Companies' factory for their steam coal purchases; we relied on RZBC Companies' reported inland freight expense to transport citric acid from their plant to the port.[446] We used the same proxy to calculate inland freight for RZBC Co.'s calcium carbonate in the *Preliminary Results*,[447] which Petitioners did not challenge.

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[443] *See Citric Acid Third Review,* and accompanying IDM at Comment 13.E.
[444] *See* GOC's Case Brief at 27.
[445] *See Citric Acid Third Review,* and accompanying IDM at Comment 13.E.
[446] *See Preliminary Results,* and accompanying preliminary decision memorandum at 19.
[447] *Id.* at 22.

We acknowledge that in *Citric Acid Second Review*, we used Petitioners' Haver coal mine prices to calculate inland freight for the steam coal benchmark. However, in the most recently completed review covering 2011, we relied on RZBC Companies' reported inland freight expense to transport citric acid from their plant to the port as a proxy to calculate inland freight for RZBC Companies' purchases of steam coal and RZBC Co.'s purchases of calcium carbonate.[448] In addition, officials from the Department verified inland freight information RZBC Companies provided for their transport of citric acid from plant to port and found the data to be reliable.[449] Moreover, there is no evidence on the record to suggest that PRC prices for inland freight are unreliable and should be discarded in favor of tier two benchmark data. In such cases, we find that using information that reflects a respondent's own experience, even if it relates to a different input or product, provides the most accurate benchmark for inland freight.[450] Therefore, for the final results, we will continue to use RZBC Companies' reported inland freight for citric acid delivery from plant to port in calculating their steam coal benchmarks. *See* Final Results Calculation Memorandum.

Comment 12: Whether to Include Hazardous Shipping Charges in International Freight Calculations for Sulfuric Acid and Caustic Soda Benchmarks

Petitioners' Arguments:

- To be consistent with the prior review of this order, the Department should include hazardous shipping charges in the RZBC Companies' suggested international freight rates for their two highly volatile inputs, which the RZBC Companies failed to include.

RZBC Companies' Rebuttal Arguments:

- Consistent with its practice in prior segments of this case, the Department should continue to use the RZBC Companies' submitted benchmark freight data for their calculations of the sulfuric acid freight benchmark.

Department's Position: In the *Preliminary Results*, we used Petitioners' submitted international freight data to calculate the sulfuric acid benchmark;[451] according to the source documents Petitioners provided, all the data submitted included hazardous shipping charges, *i.e.*, "dangerous cargo service" charges.[452] Petitioners' international freight data, both in its original

[448] *See Citric Acid Third Review*, and accompanying IDM at 23, 26.
[449] *See* RZBC Companies' Verification Report at 10 – 11, VE 14.
[450] *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) and accompanying IDM at 28 ("Concerning inland freight, we calculated company-specific inland freight rates using cost data supplied by the Alnan Companies and Changzheng Evaporator"); *see also* the Department's IQ to the RZBC Companies (July 15, 2013) at page III-12 – III-13, in which the DOC requested the inland freight charged to transport the steam coal from the port to the respondent's factory as well as the inland freight charged to transport subject merchandise to the nearest port. Thus, in the event that the respondent was not able to report the inland freight charged to transport steam coal from the port to the factory, the Department would have, as a proxy, the inland freight charged to transport subject merchandise to the port.
[451] *See* Memorandum to the File, "Preliminary Results Calculation Memorandum for RZBC Co., Ltd. ("RZBC Co."); RZBC Import & Export Co., Ltd. ("RZBC IE"); RZBC (Juxian) Co., Ltd. ("RZBC Juxian"); and RZBC Group Co., Ltd. ("RZBC Group") (collectively, "RZBC Companies")," (June 18, 2014) at Attachment II.
[452] *See* Letter from Petitioners, "Citric Acid And Certain Citrate Salts From China-- Submission of World Market Price Benchmark Data," (April 21, 2014) at Exhibit 9; *see also* letter from Petitioners, "Citric Acid And Certain

factual information submission and rebuttal factual information submission, was sourced from Maersk's website and covered a total of 15 international routes to Shanghai.[453] The RZBC Companies also submitted international freight data based on Maersk shipping rates for five of the routes already covered by Petitioners' international freight data, but exclusive of hazardous shipping fees.[454] In order to avoid duplication of Maersk benchmark data for the five routes covered by both Petitioners' and RZBC Companies' data, we excluded RZBC Companies' data set. Contrary to the RZBC Companies' assertion, this practice is, in fact, consistent with how we calculated international freight for sulfuric acid in *Citric Acid Third Review* and *Citric Acid Second Review*, as we have consistently used international freight data for the sulfuric acid benchmark that includes hazardous shipping charges, while avoiding duplication of routes.[455] *See* Final Results Calculation Memorandum.

With regard to caustic soda, we did not calculate a benchmark in the *Preliminary Results* or Post-Preliminary Results because we did not find the LTAR program to be specific.[456] For the final results, however, we will calculate a benchmark for caustic soda, and will include international freight data that contains hazardous shipping charges, where available. *See* Final Results Calculation Memorandum.

Comment 13: How to Ensure That World Market Prices Used in Benchmarks Are Reasonably Available in China

RZBC Companies' Arguments:

- The regulations require that the Department use world market prices "where it is reasonable to conclude" that such prices are available in the country at issue. Neither the Department nor Petitioners cited to evidence suggesting that the world market prices used were available to RZBC in China. The Department should use RZBC's submitted world benchmark data, which includes data from countries shown to have exported the inputs to China, but still excludes exports to and from China.

Petitioners' Rebuttal Arguments:

- The Department should reject this argument, which it has done in prior segments of this case. As the Department has previously explained, the fact that a particular country did not export to the PRC in a particular POR does not mean that the export prices represented are not indicative of a world market that would otherwise bear on the inputs in question.

Department's Position: We disagree with the RZBC Companies' interpretation of the regulations. As we stated in *Citric Acid Third Review* and *Wind Towers from the PRC*, and

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Citrate Salts From the People's Republic Of China/ Submission of Rebuttal Freight Rates," (May 1, 2014) at Exhibit 4.

453 *Id.*

454 *See* the RZBC Companies' Factual Information at Exhibit 22.

455 *See Citric Acid Third Review*, and accompanying IDM at Comment 13.G.; *see also* Memorandum to the file, "Final Results Calculations Memorandum for RZBC Co., Ltd., RZBC Import & Export Co., Ltd., RZBC (Juxian) Co., Ltd., and RZBC Group Co., Ltd. (collectively, RZBC Companies or RZBC)," (November 29, 2012).

456 *See* Post-Preliminary Results, at 5.

consistent with 19 CFR 351.511(a)(2)(ii), we have not used world export prices where it is reasonable to conclude that they would *not* be available to purchasers of these inputs in the PRC.[457] To the contrary, we interpret this provision of our regulations within the context of our goal to derive the most robust benchmarks possible.[458] The fact that some data sources contain prices between countries other than the PRC does not diminish the fact that they provide information concerning what an unfettered market would bear for RZBC Companies' inputs during the POR.[459] The RZBC Companies did not provide any evidence to support their assertion that Chinese producers are precluded from purchasing these inputs on the world market at the prices reported. Therefore, we continue to utilize all appropriate series of price data for each provision of inputs for LTAR. *See* Final Results Calculation Memorandum.

Comment 14: How to Treat Steam Coal Benchmark Data Reported on CIF Basis

The RZBC Companies' Comments:

- The Department used benchmark data submitted by Petitioners that was reported on a CIF basis, meaning that international freight is already included in the data. Therefore, for the final results, the Department should exclude international freight from these benchmark data to ensure international freight is not double counted.

No rebuttal comments were submitted.

Department's Position: The data at issue represents steam coal prices from Japan and Korea that was sourced from Platts and reported on a Cost, Insurance and Freight (CIF) basis.[460] We agree, in principal, with the RZBC Companies that market prices reported on a CIF basis that already include international freight should not have additional international freight cost added to them.[461]

However, the Platts market prices for steam coal, as reported to the Department, do not distinguish the portion attributable to international freight from the portion attributable to the steam coal itself. Therefore, we cannot prevent the double counting of international freight for the Platts data by extracting the international freight cost already included in the reported prices. *See* Final Results Calculation Memorandum.

Comment 15: Whether to Account for Grade or Specification of Sulfuric Acid, Steam Coal, and Limestone Flux In Benchmarks

Sulfuric Acid

The RZBC Companies' Comments:

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[457] *See Citric Acid Third Review*, and accompanying IDM at Comment 13.A.; *see also Wind Towers from the PRC*, and accompanying IDM at Comment 15.
[458] *Id.*
[459] *Id.*
[460] *See* Petitioners' Factual Information Submission at Exhibit 12.
[461] *See* the RZBC Companies' Case Brief at 17.

- The record clearly shows that: a) the RZBC Companies purchase its sulfuric acid in bulk, by the tank load; and b) there are significant price differences between various grades of sulfuric acid.
- The only prices on the record that reflect bulk sulfuric acid prices are those the RZBC Companies submitted from the CRU Group, which makes this the best and most accurate pricing information.

Petitioners' Rebuttal Comments:

- The CIT has already rejected the argument that the Department should calculate company-specific world benchmarks, explaining that such a calculation is appropriate for tier one benchmarks, but not tier two benchmarks.
- GTIS data is provided by customs services around the globe, largely consisting of industrial, bulk transactions, and so it is reasonable to conclude that GTIS data largely represents bulk pricing.

Steam Coal

The RZBC Companies' Comments:

- While the Department did exclude less specific data, *i.e.*, data pertaining to anthracite coal, which is distinct from steam coal, it also, without explanation, rejected more specific bituminous coal data from Colombia, Poland, Russia, and Australia. Meanwhile, the Department included less specific, basket data from GTIS.
- If the Department continues to exclude the more specific data from the above-mentioned countries, it should also exclude the less specific, basket GTIS data. At the least, the Department should only use the world market price data RZBC submitted, which accounts for other comparability factors, *i.e.*, quantity sold.

Petitioners' Rebuttal Comments:

- There is nothing to suggest that the Department excluded the coal data from Colombia and other above-mentioned countries because they were not specific enough to RZBC's purchases of steam coal.
- RZBC cites no record evidence to support excluding GTIS data.

Limestone Flux

The RZBC Companies' Arguments:

- The Department should use only the RZBC Companies' reported limestone flux value from India.[462] The RZBC Companies' reported value is the only benchmark value on the record that is specific to the RZBC Companies' raw material input, *i.e.*, limestone flux (Indian HS 2521.00.10) and, therefore, represents the best and most accurate information on which to value the RZBC Companies' raw material input for purpose of calculating any benefit.[463] Furthermore, it is the Department's practice to "compute benefit calculations for input for LTAR programs using benchmark price data for the particular

[462] *See* the RZBC Companies' Factual Information at 1.
[463] *See* the RZBC Companies' Factual Information at Exhibits 1, 10 and 12.

input product under examination."[464] Therefore, for the final results the Department should use the benchmark price that is specific to the RZBC Companies' input.

- The GTIS data for HTS 2521.00.00 is not specific to limestone flux and should be excluded from the benchmark calculation similar to the PCC value. The GTIS data for HTS 2521.00.00 are based on a single basket HTS category that includes material other than limestone flux, such as bulk limestone and other calcareous material.[465] Thus, the inclusion of the basket HTS subheading in the benchmark calculation, when there is more specific pricing information on record for the RZBC Companies' limestone flux, would result in a distortive calculation that does not accurately reflect a world benchmark price for the actual raw material purchased and used by the RZBC Companies in their production process.
- Petitioners submitted pricing information from *Metal Bulletin* for ground calcium carbonate (GCC) or ground limestone measuring between 50-22 microns, 22-10 microns, 3 microns (untreated), 1.1-0.07 microns (stearate coated and uncoated).[466] Based on the submitted information, it is easy to observe that prices for GCC vary significantly depending on the particle size of the ground limestone, *i.e.*, the smaller the particles the higher the price of the GCC, and whether the GCC is treated, *i.e.*, treated GCC is more expensive than untreated GCC.
- Petitioners reported GCC pricing information for 50-22 microns sold at an average price of 23.50 USD/short ton with pricing increasing steadily to a high of 235 USD/short ton for the 1.1-0.7 untreated GCC. Thus, the significantly smaller sized particles resulted in a price that is 10 times more than the larger particle material. The prices also varied significantly between GCC that was untreated and treated. This is shown by the fact that the treated/coated GCC sold at an average price of 335 USD/short ton, or almost 15 times that of the uncoated 50-22 micron GCC.[467]
- The RZBC Companies' limestone flux is larger in size than any of Petitioners' submitted benchmarks. For example, the largest particle size of 50-22 micron GCC that sold at a price of 23.50 USD/short ton and is untreated is smaller than the RZBC Companies' purchases of untreated limestone flux at the mesh standard of 250 which converts to 60 microns.[468] This fact is unrebutted and there is no reason that the benchmark prices for the much smaller particle sizes and treated GCC should be used as benchmarks for the RZBC Companies' limestone flux.
- The only price submitted by Petitioners that is potentially specific to the RZBC Companies' limestone flux is the GCC measuring between 50-22 microns.[469] Therefore, for the final results the Department should only rely on the most specific benchmarks that match the RZBC Companies' limestone flux: the RZBC Companies' reported India value and Petitioners' value reported values for GCC at 50-22 micron are the only specific values on the record.[470]

[464] *See Citric Acid Third Review* and accompanying IDM at Comment 12.
[465] *See* the RZBC Companies' Factual Information at Exhibit 12.
[466] *See* Petitioners' Factual Information at Exhibit 1.
[467] *Id.*
[468] *See* the RZBC Companies' Rebuttal Factual Information (May 1, 2014) at Exhibit 4.
[469] *See* Petitioners' Factual Information at Exhibit 1.
[470] *See* the RZBC Companies' Pre-Preliminary Comments at Attachment 1.

Petitioners' Rebuttal Arguments

- The record does not support the RZBC Companies' suggestion of a significant difference between the GTIS Indian export AUV submitted by the RZBC Companies and the "basket category" covered by HTS 2521.[471] HTS 2521 is defined as "Limestone flux; limestone and other calcareous stones, of a kind used for the manufacture of lime."[472] The eight digit HTS category 2521.0010 contains precisely the same language except for the added qualifier that the limestone is "L.D., below 1% SiO_2."[473]
- The RZBC Companies failed to disclose or otherwise discuss this language in their case brief; the cited qualification appears to have nothing to do with the size of the limestone flux powder (or rocks). Rather, the qualification appears to include limestone flux containing a certain amount of silicon dioxide, *i.e.*, SiO_2.[474]
- Furthermore, the one inspection report submitted by the RZBC Companies gives no indication that the RZBC Companies' purchases of limestone flux are dependent upon silicon dioxide levels.[475]
- As a result, RZBC has failed to demonstrate that this single Indian export AUV is the only appropriate data point for use in the Department's tier- two world benchmark.
- Petitioners do not dispute that *Metal Bulletin* collects pricing data for varying sizes of limestone powder (or stones).[476] The Department correctly averaged these prices together in the preliminary results in order to construct a benchmark for "limestone flux."
- The RZBC Companies' lone inspection report is not conclusive evidence that all of RZBC Companies' purchases of limestone flux are 60 microns in size, as the RZBC Companies claims in their case brief. As a result, for the final results, the Department should continue to include the *Metal Bulletin* prices with all of the other data points that it used to construct the Calcium Carbonate Program benchmark.

Department's Position: We disagree with the RZBC Companies that the Department must only utilize export prices on the record that clearly demarcate a quantity of shipment, particle size or other nuanced specification reflective of their own specific input purchases.[477] As an initial matter, we note that in making their argument, the RZBC Companies cite to 19 CFR 351.511(a)(2)(i) as the regulation the Department must comply with when deriving benchmarks in the instant case.[478] However, that regulation only applies in instances where the Department can compare "the government price to a market-determined price for the good or service resulting from actual transactions in the country in question."

In the instant review, such a comparison is not possible, in which case the regulations at 19 CFR 351.511(a)(2)(ii) instruct the Department as follows: "{i}f there is no useable market-determined price with which to make the comparison under paragraph (a)(2)(i) of this section, the Secretary will seek to measure the adequacy of remuneration by comparing the government

[471] *See* the RZBC Companies' Factual Information at Exhibit 12.
[472] *Id*.
[473] *Id*.
[474] *Id*.
[475] *See* the RZBC Companies' Rebuttal Factual Information at Exhibit 4.
[476] *See* Petitioners' Factual Information at Exhibit 1.
[477] *See* the RZBC Companies' Case Brief at 4 – 10.
[478] *Id.* at 5.

price to a world market price where it is reasonable to conclude that such a price would be available to purchasers in the country in question." There is nothing on the record to suggest that the world market prices used in the *Preliminary Results* and the Post-Preliminary Results are not reasonably available to the RZBC Companies.

Furthermore, under 19 CFR 351.511(a)(2)(ii), "there is no requirement that the benchmark used in the Department's LTAR analysis be identical to the good sold by the foreign government…In fact, the imposition of such a requirement would likely disqualify most, if not all, potential benchmarks under consideration in a LTAR analysis."[479] In other words, there is no requirement that the Department calculate world market prices solely reflective of a respondent's particularities, such as the size of its input purchases; to the contrary, doing so would detract from calculating a truly *world* market price.[480] Additionally, in interpreting this tier two benchmark regulation, it is the Department's practice to calculate a world market price that is as robust as possible in order to capture the range of possible market prices and variances that occur when market principles govern transactions.[481]

For example, with regard to sulfuric acid, rejecting GTIS data in favor of CRU Group data, as the RZBC Companies suggest, would result in the discarding of hundreds of market prices from 64 countries in favor of 24 market prices from northwestern Europe, Japan and South Korea. Limiting the abundant and available world market price data on the record to the few data that only and explicitly reflect bulk shipments, results in a skewed benchmark that cannot be considered a *world* market price. Furthermore, we agree with Petitioners in stating that GTIS data is collected from customs agencies around the world, and hence, represent industrial and commercial shipments of goods, which are typically large. Therefore, we will continue to use all appropriate series of data from the *Preliminary Results* and Post-Preliminary Results to create a robust world market price for each input provision. *See* Final Results Calculation Memorandum.

Comment 16: Whether to Account for Quantities Sold for Limestone Flux, Sulfuric Acid, and Steam Coal Benchmarks

The RZBC Companies' Comments:

- In order for the Department to meet its statutory obligation of calculating the most accurate benchmarks possible, if the Department continues to use less specific market price data with respect to grade and specification, it must account for other factors, such as quantity sold and method of delivery.
- Accordingly, the Department must: a) for limestone flux, exclude all prices on the record for quantities less than 30 metric tons (which is consistent with freight rates the Department used in its *Preliminary Results* and with RZBC's purchase information on the record); b) for sulfuric acid, exclude all prices on the record for quantities less than 28.8 metric tons (which is consistent with the weight Petitioners used to calculate their

[479] *See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009), and accompanying IDM at Comment 12.
[480] *See Archer Daniels*, 968 F. Supp. 2d at 1279 (rejecting RZBC's attempts to force Commerce to use "benchmark prices that are nearly identical to reported purchases" because the regulation "does not manifest such a stringent standard").
[481] *See, e.g., Citric Acid Third Review*, and accompanying IDM at Comment 13.

submitted freight rates, and consistent with RZBC's purchase information on the record); and c) for steam coal, exclude similarly inappropriate quantity-based GTIS data.

Petitioners' Rebuttal Comments:

- RZBC confuses the tier one benchmark requirements with those of tier two. The plain language of the regulations differentiates tier one benchmarks, in which the Department must consider comparability factors such as quantities sold, from tier two benchmarks, in which the Department will average available market prices and make due allowances for comparability.
- The Department rejected this argument repeatedly in past citric acid reviews, explaining that the regulations do not require that benchmark data be limited to significant producers of an input. Further, limiting tier two benchmark data to certain sizes of transactions would distort the proper calculation of an actual *world* market price.

Department's Position: Similar to the Department's position explained directly above in Comment 15, we disagree with the assertion that the Department's statutory or regulatory obligations require it to calculate world market prices that only reflect a respondent's specific purchasing circumstances.[482] Limiting the world market prices used to a minority of the prices on the record is contrary to the Department's practice and to the calculation of a robust, reasonable *world* market price.[483] Therefore, we will continue to use all world market prices from the *Preliminary Results* and Post-Preliminary Results to calculate a benchmark for limestone flux, sulfuric acid, and steam coal. *See* Final Results Calculation Memorandum.

Comment 17: How to Calculate Benchmarks Using GTIS Data

The RZBC Companies' Comments:

- The statute and regulations require that the Department use world benchmarks, not country benchmarks. The Department's country-specific, two-step averaging of GTIS data results in highly distortive benchmarks that give small exporters of an input equal weight to large. If the Department chooses to use the less specific GTIS data, RZBC submitted single "world" GTIS benchmark prices, so there is no excuse to not use them.
- In *Turkish Rebar (2014)*, Commerce admitted that simple-averaging country data creates skewed results, and that data should be weighted when it is reported in a uniform manner. In this case, the GTIS data on the record is weightable, and should therefore be weighted to calculate a true "world" price. The other, non-weightable data on the record are more specific than the GTIS data, so they should still be included and simple averaged with the weighted GTIS data.

Petitioners' Rebuttal Comments:

- The Department has previously rejected this argument, and should do so again because in this case, while the GTIS data is weightable, the data from the other myriad sources is

[482] *See* the RZBC Companies' Case Brief at 10 – 11.
[483] *See,e.g., Citric Acid Third Review*, and accompanying IDM at Comment 13; *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 (2014)*), and accompanying IDM at Comment 11; *Turkish Rebar (2014)*, and accompanying IDM at Comment 1.

not, and therefore does not provide the Department with uniform data. The Department also should not solely use the GTIS data RZBC submitted, as RZBC suggests, because that does not create a robust world market price, but rather a self-serving price that does not adhere to tier two benchmark methodology.

- The difference between this case and *Turkish Rebar (2014)* is that here, the Department received data from seven sources, reported in different manners, and in *Turkish Rebar (2014)*, the Department only received data from GTIS and one other source, the latter of which it did not use.
- RZBC notes low outliers in the Department's un-weighted country-month benchmark data as an example of why it skews the benchmarks in favor of small exporting countries, but there are also high outliers as a result of the Department's methodology, which is indicative of the Department's appropriately robust benchmark that covers a large spectrum of available data.

Department's Position: Based on the facts of this particular case, for the final results, we are weight averaging the GTIS data on the record while continuing to utilize the data from other non-GTIS sources. Specifically, for each input in the final results, we first calculated simple averages across data sources per country to determine an average unit value for each country. Then, we weight averaged those country-specific unit prices to create single monthly weighted-average benchmark prices for each input. For example, to create the calcium carbonate monthly benchmark prices, we used weightable data from GTIS and the unweightable data from the Metal Bulletin; both data sources reported prices for the United States and the United Kingdom, and GTIS reported data for additional countries. To utilize both data sources for the January 2012 benchmark, we first simple averaged the January unit prices for the United States from GTIS with the prices reported in the Metal Bulletin. We followed the same process for the United Kingdom data reported in both sources. Finally, we weight averaged the unit prices from the United States, United Kingdom, and all other countries represented in the GTIS data using the GTIS quantity data to create one weighted-average world market price for calcium carbonate in January 2012.

By weight averaging the GTIS unit prices in this instance, and furthermore, by continuing to include the other, non-GTIS data on the record, we maintain the most robust world market price possible that reflects the spectrum of conceivable prices available under market principles. *See* Final Results Calculation Memorandum.

Comment 18: Whether to Reconsider the Countervailability of the Provision of Land for LTAR and Recalculate The Land Benchmark

The RZBC Companies' Arguments:

- In the *Preliminary Results*, the Department continued to countervail three pieces of land purchases the RZBC Companies reported in *Citric Acid Third Review* and calculated a net subsidy rate. The Department, however, failed to analyze the record and the RZBC Companies' responses. As discussed in the prior review, these three pieces of land were not used in the production of subject merchandise, and therefore there is no showing that the land purchases benefitted the company in any other manner during the period of review. In short, because the land did not provide financial assistance that benefited the

RZBC Companies' production or manufacturing operations, directly or indirectly, it is not countervailable.[484] Therefore, for purposes of the final results, the Department should decline to impose any countervailing duty based on the three pieces of land purchased during the period January 1, 2010, through the end of the POR.

- If the Department continues to countervail this program then the Department should use the most complete and up-to-date value for industrial land in Thailand. It has been the Department's preference to use Thai land prices to calculate the LTAR benefit of land purchases in the PRC. Unlike the Department's prior land value, the RZBC Companies submitted a new land benchmark in their Benchmark Submission dated April 21, 2014, at Exhibit 25. The land prices submitted reports industrial land prices from 13 provinces in Thailand, rather than the single price from the province of Bangkok that the Department has used in the past. As such the prices submitted are more representative of the actual land purchased by the RZBC Companies because the prices represent prices from several provinces, rather than a single benchmark from Bangkok which is clearly not representative of the RZBC Companies' land purchases. Moreover, the land prices submitted by the RZBC Companies are more contemporaneous than those used by the Department in *Preliminary Results*. Therefore, if the Department calculates any benefit for the RZBC Companies' land purchases, then the Department should use the more specific and more contemporaneous benchmark information submitted by the RZBC Companies in the final results.

Petitioners' Rebuttal Arguments:

- The Department previously considered and rejected the RZBC Companies' argument in *Citric Acid Third Review*.[485] As the Department stated, the RZBC Companies "received {their} benefit at the time of purchase, when it paid a preferential land price due to {their} strategic emerging industries status." The Department continued that whether RZBC thereafter constructed "a production facility or converted it to commercial property is of no consequence." The Department noted that section 771(5)(C) of the Act, does not require the Department to consider the effect of the subsidy in determining whether a subsidy exists, and this instruction to not consider the effect of the subsidy is also present in the Department's regulations at 19 CFR 351.503(c). The Department also noted that "the land-use rights contracts do not indicate the purchases are contingent upon the completion of citric acid facilities" and thus "the subsidy is not tied to a particular product" under 19 CFR 351.525(b)(5)(i). The RZBC Companies' case brief in this segment of the proceeding offers no basis for the Department to reverse its prior determination. Accordingly, the Department should continue to countervail the provision of land for LTAR to enterprises in Strategic Emerging Industries in Shandong Province in the final results.
- There is absolutely no information on the record that the additional land parcels submitted by RZBC from Songkhla, Saraburi, Samut Sakom, Samut Prakam, Rayong, Rachaburi, Prachinburi, Nakom Ratchasima, Chonburi, Chachoeng Sao, and Ayutthaya are comparable to the RZBC Companies' three parcels acquired from the government in Shandong Province.[486]

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[484] *See Citric Acid Third Review* at Comment 10.
[485] *See Citric Acid Third Review* and accompanying IDM at 65 – 66.
[486] *Id*. at 64.

- Moreover, the land being countervailed in this review is a non-recurring subsidy that was countervailed previously.[487] The Department does not revisit non-recurring subsidy findings. [488] Therefore, the RZBC Companies should have suggested a benchmark for the land acquisitions at issue here in the prior reviews when the non-recurring subsidy calculation was set and allocated over the AUL of the land.[489]

Department's Position: As the Department discussed in *Citric Acid Third Review* at Comment 10, section 771(5)(C) of the Act expressly states that the Department "is not required to consider the effect of the subsidy in determining whether a subsidy exists…." The Department's CVD regulations also state that the Department shall not consider the effect of the subsidy when conducting its subsidy analysis:

> In determining whether a benefit is conferred, the Secretary is not required to consider the effect of the government action on the firm's performance, *including its prices or output, or how the firm's behavior otherwise is altered.*[490]

"Once the firm receives the financial contribution, it does not matter whether the firm used the government funds, or some of its own funds that were freed up as a result of the subsidy, for the stated purpose or the purpose that we evince."[491]

With regard to the land benchmark, the 2012 land benchmark information the RZBC Companies submitted on the record is not transaction-specific and therefore not reliable. In contrast, the Department used actual transaction prices for its benchmark in *Citric Acid Third Review*.[492] In addition, the RZBC Companies misrepresents the Department's land benchmark as "a single price from the province of Bangkok." The Department's land benchmark consists of 36 price points from five provinces within Thailand. Further, we find that the RZBC Companies failed to sufficiently demonstrate that: (1) our land benchmark is not comparable to their land purchase; (2) price points from seven additional provinces would make the benchmark more representative of their land purchase; (3) and that a recalculation of the allocated benefit stream is warranted. Therefore, the Department continues to countervail the "Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Shandong Province" and a recalculation of the allocated benefit stream is not warranted.

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[487] *See Preliminary Results* and accompanying Decision Memorandum at 23.
[488] *See* 19 CFR 351.524.
[489] *Id*.
[490] *See* 19 CFR 351.503(c), emphasis added.
[491] *See Preamble* at 63 FR 65403; *see also*, *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) (*Bottom Mount Combination Refrigerator-Freezers From Korea*) and accompanying IDM at Comment 3.
[492] *See Citric Acid Third Review* and its accompanying IDM at "Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Shandong Province." Our land benchmark utilized actual transaction prices in 2010 and adjusted for inflation for 2011.

CONCLUSION

We recommend applying the above methodology for these final results.

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Agree Disagree

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Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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Date