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January 23, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Decision Memorandum for the Preliminary Determination

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I. SUMMARY

The Department of Commerce (the "Department") preliminarily determines that countervailable subsidies are being provided to producers and exporters of boltless steel shelving units prepacked for sale ("boltless steel shelving") in the People's Republic of China ("PRC"), as provided in section 703 of the Tariff Act of 1930, as amended (the "Act").

II. BACKGROUND

A. *Case History*

On August 24, 2014, the Department received countervailing duty ("CVD") and antidumping duty ("AD") Petitions concerning boltless steel shelving from the PRC, filed in proper form by Edsal Manufacturing Co., Inc. ("Petitioner").[1] On September 15, 2014, the Department initiated the CVD investigation of boltless steel shelving from the PRC and issued quantity and value ("Q&V") questionnaires to each of the 21 producer/exporters of boltless steel shelving named in the Petition for purposes of respondent selection.[2] The Department received 15 total responses,

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[1] *See* Letter from Petitioner, regarding Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China, dated August 26, 2013 ("Petition").

[2] In CVD investigations, the Department normally relies on U.S. Customs and Border Protection import data to select mandatory respondents. Because the value of imports for boltless steel shelving is based on data from harmonized tariff schedule basket categories that cover a wide variety of metal furniture and, thus, may overstate the import value, the Department resorted to Q&V data for respondent selection.

and 16 parties did not respond to our request for information.[3] On September 22, 2014, the Department published the notice of initiation for the AD and CVD investigations of boltless steel shelving from the PRC.[4] On October 30, 2014, the Department selected two mandatory respondent companies for this investigation[5] and, on October 31, 2014, issued CVD questionnaires to them and the Government of the PRC ("GOC"). The GOC and the two mandatory respondents filed initial questionnaire responses with the Department on December 18, 2014. Between December 30, 2014 and January 13, 2015, the Department issued supplemental questionnaires to the GOC and the two mandatory respondents; the mandatory respondents filed responses to these questionnaires between January 15 and 20, 2015. On January 16, 2015, Petitioner filed a request that the Department align the final determination of this CVD investigation with the companion AD investigation of boltless steel shelving from the PRC.

B. *Period of Investigation*

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

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, and as noted in the *Initiation*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation*.[6] We received scope comment submissions from Costco Wholesale Corporation ("Costco") and Whitmor Inc. ("Whitmor") on October 6, 2014. However, these submissions were requests to find certain products outside the scope, rather than on the scope language itself.[7] We intend to address these submissions in the corresponding antidumping duty investigation.

IV. SCOPE OF THE INVESTIGATION

The scope of the investigation covers boltless steel shelving units prepackaged for sale, with or without decks. The term "prepackaged for sale" means that, at a minimum, the steel vertical supports (*i.e.*, uprights and posts) and steel horizontal supports (*i.e.*, beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user. The scope also includes add-on kits. Add-on kits include, but are not limited to, kits that allow the end-user to add an extension shelving unit onto an existing boltless

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[3] *See* Memorandum from James C. Doyle, Director, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Respondent Selection," dated October 30, 2014 ("Respondent Selection Memo").

[4] *See Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 79 FR 56567 (September 22, 2014) ("*Initiation*"). On the same date we also published a notice of initiation for the AD investigation of boltless steel shelving from the PRC. *See Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China*, 79 FR 56562 (September 22, 2014).

[5] *See* "Respondent Selection" section, below.

[6] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); *see also Initiation*, 79 FR at 56568.

[7] *See* Costco's October 6, 2014 submission; Whitmor's October 6, 2014 submission.

steel shelving unit such that the extension and the original unit will share common frame elements (*e.g.*, two posts). The term "boltless" refers to steel shelving in which the vertical and horizontal supports forming the frame are assembled primarily without the use of nuts and bolts or screws. The vertical and horizontal support members for boltless steel shelving are assembled by methods such as, but not limited to, fitting a rivet, punched or cut tab or other similar connector on one support into a hole, slot or similar receptacle on another support. The supports lock together to form the frame for the shelving unit, and provide the structural integrity of the shelving unit separate from the inclusion of any decking. The incidental use of nuts and bolts or screws to add accessories, wall anchors, tie-bars or shelf supports does not remove the product from scope. Boltless steel shelving units may also come packaged as partially assembled, such as when two upright supports are welded together with front-to-back supports, or are otherwise connected, to form an end unit for the frame. The boltless steel shelving covered by this investigation may be commonly described as rivet shelving, welded frame shelving, slot and tab shelving, and punched rivet (quasi-rivet) shelving as well as by other trade names. The term "deck" refers to the shelf that sits on or fits into the horizontal supports (beams or braces) to provide the horizontal storage surface of the shelving unit.

The scope includes all boltless steel shelving meeting the description above, regardless of (1) vertical support or post type (including but not limited to open post, closed post and tubing); (2) horizontal support or beam/brace profile (including but not limited to Z-beam, C-beam, L-beam, step beam and cargo rack); (3) number of supports; (4) surface coating (including but not limited to paint, epoxy, powder coating, zinc and other metallic coating); (5) number of levels; (6) weight capacity; (7) shape (including but not limited to rectangular, square, and corner units); (8) decking material (including but not limited to wire decking, particle board, laminated board or no deck at all); or (9) the boltless method by which vertical and horizontal supports connect (including but not limited to keyhole and rivet, slot and tab, welded frame, punched rivet and clip).

Specifically excluded from the scope are:

- wall-mounted shelving, defined as shelving that is hung on the wall and does not stand on, or transfer load to, the floor;[8]
- wire shelving units, which consist of shelves made from wire that incorporates both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create the finished shelving unit;
- bulk-packed parts or components of boltless steel shelving units; and
- made-to-order shelving systems.

Subject boltless steel shelving enters the United States through Harmonized Tariff Schedule of the United States ("HTSUS") statistical subheadings 9403.20.0018 and 9403.20.0020, but may also enter through HTSUS 9403.10.0040. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

[8] The addition of a wall bracket or other device to attach otherwise freestanding subject merchandise to a wall does not meet the terms of this exclusion.

V. ALIGNMENT

As noted above, on January 16, 2015, the Petitioner submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final determination in the companion AD investigation. Because the AD and CVD investigations have the same scope with regard to the merchandise covered, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), we are aligning the final CVD determination with the final determination in the companion AD investigation of boltless steel shelving from the PRC. The final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued on or about June 8, 2015.

VI. RESPONDENT SELECTION

Section 777A(e)(1) the Act directs the Department to calculate individual CVD subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if the Department determines it is not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to the producers/exporters accounting for the largest volume of the subject merchandise that can be reasonably examined.

As noted above, on October 30, 2014, the Department determined that it was not practicable to examine more than two respondents in the instant investigation.[9] Therefore, the Department selected, based on responses to the Q&V questionnaire, the two exporters/producers accounting for the largest volume of boltless steel shelving exported from the PRC during the POI: Nanjing Topsun Racking Manufacturing Co., Ltd. (“Topsun”) and Ningbo ETDZ Huixing Trade Co., Ltd. (“ETDZ”).[10]

VII. VOLUNTARY RESPONDENT TREATMENT

Section 782(a) of the Act directs the Department to calculate individual weighted-average dumping margins for companies not initially selected for individual examination who voluntarily provide the information requested of the mandatory respondents if (1) the information is submitted by the due date specified for exporters or producers initially selected for examination and (2) the number of companies that have voluntarily provided such information is not so large that individual examination would be unduly burdensome and inhibit the timely completion of the investigation.

The Department received requests for treatment as voluntary respondents from two companies, Meridian International Co., Ltd. (Shanghai) and Zhejiang Limai Metal Products Co., Ltd. (collectively “Meridian”) and Jiaxing Zhongda Metalwork Co., Ltd., Zhongda United Holding Group Co., Ltd. (Zhongda Group) and Jiaxing Zhongda Import & Export Co., Ltd. (Zhongda IE) (collectively “Zhongda”).[11] In determining whether to examine voluntary respondents, pursuant

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[9] *See* Respondent Selection Memo.
[10] *Id.*
[11] *See* Meridian’s November 14, 2014, submission, and Zhongda’s December 18, 2014, submission.

to section 782(a) of the Act, the Department considers whether examination of the voluntary respondents would be unduly burdensome and inhibit the timely completion of the investigation. Because this is an investigation involving a product with which the Department has no familiarity and companies that have never been subject to the Department's examinations, the Department is not selecting any voluntary respondents. Doing so would be unduly burdensome and would inhibit the timely completion of this investigation, pursuant to 782(a) of the Act.[12]

VIII. INJURY TEST

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission ("ITC") is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On August 26, 2014, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of boltless steel shelving from the PRC.[13]

IX. APPLICATION OF THE CVD LAW TO IMPORTS FROM THE PRC

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

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

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

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[12] For further discussion *see* Memo to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, regarding "Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Voluntary Respondent Selection," dated January 23, 2015.

[13] *See* Boltless Steel Shelving Units Prepackaged for Sale from China: Investigation No. 701–TA–523 and 731–TA–1259 (Preliminary) (August 2014); *Boltless Steel Shelving Units Prepackaged for Sale from China*, 79 FR 62465 (October 17, 2014).

[14] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) ("*CFS from the PRC*").

[15] *Id*. at Comment 6.

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

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

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

X. SUBSIDIES VALUATION

A. *Allocation Period*

The Department normally allocates the benefits from non-recurring subsidies over the average useful life ("AUL") of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[19] The Department notified the respondents of the AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

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

B. *Attribution of Subsidies*

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting interest between two corporations, or through common ownership of two (or more) corporations.[20] In certain circumstances, a large minority voting interest (for example, 40 percent) may also result in cross-ownership.[21] The Court of International Trade upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.[22]

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[19] *See* U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods. The IRS lists the AUL as 9.5 years, which we are rounding up, in accordance with our practice.

[20] *See*, *e.g.*, *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998).

[21] *Id.*

[22] *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

ETDZ

ETDZ responded to the Department's original and supplemental questionnaires on behalf of itself and its three suppliers of boltless steel shelving units.[23] ETDZ does not produce boltless steel shelving units, but is a trading company engaged in the sale of various types of products including metal products, chemical products and mineral products.[24] Because ETDZ is a trading company, we have cumulated benefits from subsidies to ETDZ with benefits from subsidies provided to ETDZ's producers/suppliers, in accordance with 19 CFR 351.525(c).

Topsun

Topsun reported that cross-ownership exists between Topsun and Nanjing Ruihai Helical Weld Pipe Co., Ltd ("Ruihai"). Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), between Topsun and Ruihai, through Topsun's ultimate ownership of Ruihai.[25] Because Topsun can use Ruihai's assets in the same way it uses its own,[26] in accordance with 19 CFR 351.525(b)(6)(vi), we are attributing subsidies received by Topsun to Ruihai.

In its initial questionnaire response, Topsun reported that it has an affiliate which is involved in the production process but did not claim cross-ownership.[27] Following this preliminary determination, we intend to request additional information regarding this affiliate to determine whether the companies are cross-owned. Accordingly, we preliminary determine that these companies are not cross-owned.

C. *Denominators*

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). For a further discussion of the denominators used, *see* the preliminary calculation memoranda.[28]

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23 *See, e.g.*, ETDZ's December 18, 2014 submission at 6.

24 *Id*.

25 The Department's regulations at 19 CFR 351.525(b)(6)(vi) state that cross-ownership exists when one corporation can use or direct the assets of another corporation in essentially the same way it can use its own. Normally, however, "this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations."

26 *See* Topsun's November 14, 2014, submission at 5.

27 *See* Topsun's December 18, 2014, submission at 2.

28 *See* Memorandum to the File, through Scot T. Fullerton, Program Manager, from Paul Walker, Case Analyst, "Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Ningbo ETDZ Huixing Trade Co., Ltd. Preliminary Calculation Memo," dated concurrently with this memorandum ("ETDZ Calculation Memo"), and Memorandum to the File, through Scot T. Fullerton, Program Manager, from Susan Pulongbarit, Case Analyst, "Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Nanjing Topsun Racking Manufacturing

XI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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, *inter alia*, 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. For purposes of this preliminary determination, we find it necessary to apply adverse facts available ("AFA") with respect to the GOC's responses to questions on the alleged provision of electricity for less than adequate remuneration ("LTAR") and its responses to questions on the alleged provision of hot-rolled coiled steel ("HRCS") for LTAR, as described below. In addition, we find it necessary to apply AFA with respect to those companies that received our Q&V questionnaire, but did not respond.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[29] 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."[30]

A. *Electricity for LTAR*

As discussed below under the section "Programs Preliminarily Found to be Countervailable," the Department is investigating whether the GOC provided electricity for LTAR. The GOC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act and whether such a provision was specific with the meaning of section 771(5A) of the Act. In both the Department's original questionnaire and the December 30, 2014, supplemental questionnaire, for each province in which a respondent is located, the Department asked the GOC to provide a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital

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Co., Ltd. Preliminary Calculation Memo," dated concurrently with this memorandum ("Topsun Calculation Memo").

[29] *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).

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

expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. The GOC provided no provincial-specific information in response to these questions in its initial questionnaire response.[31] The Department reiterated these questions in a supplemental questionnaire and the GOC did not provide the requested information in its supplemental questionnaire response.[32]

Consequently, we preliminarily determine that the GOC withheld necessary information that was requested of it, and thus, that the Department must rely on facts otherwise available in making our preliminary determination pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates we selected are derived from information from the record of the instant investigation and are the highest electricity rates on this record for the applicable rate and user categories.[33]

B. *HRCS for LTAR*

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

For each producer that the GOC claimed was privately owned by individuals during the POI, we requested identification of the owners, members of the board of directors, or managers of the producers who were also government or Chinese Communist Party ("CCP") officials or representatives during the POI. The GOC did not provide this requested information for any producer. Instead, the GOC argued that "even if an owner, a director or a manager of the input producers is a Government or CCP official, this individual can never have any additional responsibility, authority and/or capacity regarding the operation of the company as a consequence of his/her official or representative identity."[34] Because the GOC did not provide information we need for our analysis, we asked for this information a second time, in a supplemental questionnaire issued on January 13, 2015. The GOC referred back to its December

[31] *See* the GOC's December 18, 2014 submission at 33-38.
[32] *See* the GOC's January 15, 2015 submission at 1-7.
[33] *See* Preliminary Benchmark Memo.
[34] *See* the GOC's December 18, 2014 submission at 22-23.

18, 2014 initial questionnaire response and stated that it could not provide additional information.[35] The GOC did not identify the individual owners, members of the board of directors, or senior managers of the producers who were CCP officials during the POI for any producer. The Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in the PRC, such that the CCP is part of the governing structure of the PRC.[36] We have explained our understanding of the CCP's involvement in the PRC's economic and political structures in past proceedings.[37] With regard to the GOC's claim that PRC law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.[38]

The information we requested regarding the role of CCP officials in the management and operations of these producers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. The GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The GOC's responses in prior CVD proceedings involving the PRC demonstrate that it is, in fact, able to access information similar to what we requested.[39] Additionally, pursuant to section 782(c) of the Act, if the GOC could not provide any information, it should have promptly explained to the Department what attempts it undertook to obtain this information and proposed alternative forms of providing the information.[40]

We preliminarily find that the GOC has withheld information that was requested of it, and thus, that the Department must rely on "facts otherwise available" in issuing our preliminary determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, we preliminarily find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of

[35] *See* the GOC's January 21, 2015 submission at 3.
[36] *See* Memorandum to the File, from Paul Walker, Case Analyst, "Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Placement of Additional Information on the Record" at Attachments A and B (January 23, 2015) ("Public Body Memoranda").
[37] *Id*.
[38] *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010) and accompanying Issues and Decision Memorandum at 6 and 65.
[39] *See, e.g., High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) ("*Steel Cylinders*") and accompanying Issues and Decision Memorandum at 13.
[40] Section 782(c)(1) of the Act states "If an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority of the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party." Furthermore, the Department's questionnaire explicitly informs respondents that if they are unable to respond completely to every question in the attached questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, the respondents must notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response.

facts available pursuant to section 776(b) of the Act. As AFA, we infer that the members of the board of directors, owners and/or senior managers of certain producers are CCP officials, and therefore that these producers are "authorities" within the meaning of section 771(5)(B) of the Act.

In addition, as AFA, we find the provision of HRCS to be specific. The Department asked the GOC to provide a list of industries in the PRC that purchase HRCS directly and to provide the amounts (volume and value) purchased by each of the industries, including the boltless steel shelving industry.[41] The Department requests such information for purposes of its *de facto* specificity analysis. The GOC provided a list of industries that used ferroalloy metal in 2007, an excerpt of the national standard on "Industries Classification in National Economy," which reflect all the economic activities in the PRC and includes steel producer sectors, and an excerpt of the general categorization of all economic activities under the United Nation's "International Standard Industrial Classification for All Economic Activities."[42] This information submitted by the GOC, however, is insufficient because it does not report the actual PRC industries that purchased HRCS and the volume and value of each industry's respective purchase for the POI, and the prior two years, as we requested. The GOC stated that it does not collect official data regarding the industries in the PRC that purchase HRCS directly.[43]

Consistent with past proceedings, we preliminarily determine that this claim is contradicted by the GOC's submission of a list of industries that used ferroalloy metal in 2007.[44] Therefore, consistent with past proceedings,[45] we preliminarily determine that necessary information is not available on the record and that the GOC has withheld information that was requested of it, and, thus, that the Department must rely on "facts available" in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of HRCS is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. We note that that the Department has previously found the provision of hot-rolled steel in China to be specific because hot-rolled steel is only provided to steel consuming industries, and thus, is only provided to a limited number of industries.[46]

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[41] *See*, *e.g.*, the Department's letter to Topsun at Initial Questionnaire at Section II, question E.8.
[42] *See* the GOC's December 18, 2014 submission at Exhibits 22 and 23, respectively.
[43] *Id*. at 29.
[44] *See Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) ("*Wind Towers*"), and accompanying Issues and Decision Memorandum at Comment 13 (where the Department found that the GOC's list of industries that used ferroalloy metal in 2002 supported a conclusion that the GOC tracks industry consumption information and failed to comply with our request for information). *See also Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) ("*Sinks*") and accompanying Issues and Decision Memorandum at Comment 8 (where the GOC provided a list of industries that purchased the input).
[45] *See Wind Towers* at Comment 13.
[46] *See Steel Cylinders* at 17.

C. *Non-responsive Companies to the Q&V Questionnaire*

Last, as noted above, although the Department issued 21 Q&V questionnaires, 16 companies did not respond to our request for information.[47] Accordingly, we preliminary determine that the Non-Responsive Companies withheld necessary information that was requested of them, failed to provide information within the deadlines established and significantly impeded this proceeding. Thus, the Department will rely on facts otherwise available in making our preliminary determination with respect to these companies, pursuant to sections 776(a)(2)(A)-(C) of the Act.

Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not responding to the Q&V questionnaire, the Non-Responsive Companies did not cooperate to the best of their ability to comply with the request for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that the Non-Responsive Companies do not obtain a more favorable result by failing to cooperate than if they had fully complied with our request for information.

We have included all programs initiated on under investigation in the determination of the AFA rate. Although the GOC provided no information on 17 of 19 programs, we are adversely inferring from the Non-Responsive Companies' decision not to participate in this investigation that they, in fact, use these programs. We note that the Department has either countervailed these programs before, or finds that current record information supports that these programs constitute financial contributions and meet the specificity requirements of the Act.[48] It is the Department's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[49] Specifically, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program and the rate is not *de minimis*. If there is no identical program match within the investigation, or if the rate is *de minimis*, the Department uses the highest non-*de minimis* rate calculated for the same or for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for the same or for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably

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[47] Hereafter referred to as the "Non-Responsive Companies."

[48] *See* CVD Initiation Checklist.

[49] *See, e.g.*, *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009) and accompanying Issues and Decision Memorandum at "Application of Facts Available, Including the Application of Adverse Inferences"); *see also Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions Final Determination*), and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies."

be used by the non-cooperating company.[50] However, with respect to income tax programs, we apply an adverse inference that the Non-Responsive Companies paid no income taxes during the POI. The standard corporate income tax rate in China is 25 percent. We, therefore, find the highest possible benefit for all income tax exemption and reduction programs combined is 25 percent (*i.e.*, the income tax programs combined provide a countervailable benefit of 25 percent.)

In using AFA for the Non-Responsive Companies, we are guided by the Department's methodology detailed above.[51] Accordingly, we preliminarily determine the AFA countervailable subsidy rate is 55.75 percent *ad valorem*.[52]

Section 776(c) of the Act provides that, when the Department relies on secondary information, rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[53] The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[54]

The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[55] With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.[56]

The Department has reviewed the information concerning PRC subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this case. The relevance of these rates is that they are actual calculated CVD rates for PRC programs, from which these companies could actually receive a benefit. Due to the lack of participation by these companies and the resulting lack of

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50 *See, e.g.*, *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) ("*Thermal Paper from the PRC*") and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available Rate."

51 *See* Memorandum to James C. Doyle, Office Director, through Scot T. Fullerton, Program Manager, from Paul Walker, Case Analyst, "Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Application of Adverse Facts Available for Non-Cooperative Companies," dated concurrently with this memorandum.

52 *Id*.

53 *See* SAA at 870.

54 *Id*.

55 *Id*. at 869-870.

56 *See, e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

record information concerning these programs, the Department has corroborated the rates it selected to use as AFA to the extent practicable for this preliminary determination. The chart below summarizes the calculation of the AFA rate.

<table>
<tr><th><u>Summary</u></th><th><u>AFA Rate (percent)</u></th></tr>
<tr><td>Export Seller's Credits and Export Buyer's Credits from the Export-Import Bank of China[57]</td><td>1.76</td></tr>
<tr><td>Two Free/Three Half Program for FIEs[58]</td><td rowspan="7">25.00</td></tr>
<tr><td>Income Tax Reductions for Export Oriented FIEs</td></tr>
<tr><td>Income Tax Benefits for FIEs Based on Geographic Location</td></tr>
<tr><td>Local Income Tax Exemption and Reduction Programs for Productive FIEs</td></tr>
<tr><td>Income Tax Reduction for High or New Technology Enterprises</td></tr>
<tr><td>Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law</td></tr>
<tr><td>Import Tariff and VAT Reductions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries</td></tr>
<tr><td>Tax Rebates Based on Location in Shiqiao Town Industrial Cluster Zone[59]</td><td>1.68</td></tr>
<tr><td>Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies[60]</td><td>1.68</td></tr>
<tr><td>VAT Refunds for FIEs Purchasing Domestically Produced Equipment[61]</td><td>9.71</td></tr>
<tr><td>Provision of Hot Rolled Coil Steel[62]</td><td>14.34</td></tr>
<tr><td>Provision of Electricity for LTAR[63]</td><td>0.25</td></tr>
<tr><td>GOC and Sub-Central Government Subsidies for the Development of Famous Brands and World Top Brands[64]</td><td>0.58</td></tr>
<tr><td>Special Fund for Energy Savings Technology Reform[65]</td><td>0.58</td></tr>
</table>

57 *See Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) and accompanying Issues and Decision Memorandum at "6. Export Loans."

58 PRC Corporate Tax Rate in Effect During Period of Investigation. *See* the GOC's December 18, 2014 submission at Exhibit 7.

59 *See Certain Steel Grating from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32362 (June 8, 2010) and accompanying Issues and Decision Memorandum at "Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment."

60 *Id.*

61 *See New Pneumatic Off-the-Rad Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 18, 2010) at "C. VAT and Import Duty Exemptions on Imported Material," unchanged in *New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011).

62 *See* "Analysis of Programs" section, below.

63 *Id.*

64 *See Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) ("*Isos*") and accompanying Issues and Decision Memorandum at "Analysis of Programs; Special Fund for Energy Saving Technology."

65 *Id.*

International Market Exploration (SME) Fund[66]	0.58
Export Assistance/Outward Expansion Grants in Guangdong Province[67]	0.08
Guangdong Province Funds to Support the Adoption of E-Commerce by Foreign Trade Enterprises[68]	0.58
Technology to Improve Trade Research and Development Fund[69]	0.58
Rental/Purchase Assistance in Ningbo Municipality Yinzhou District Southern Commercial Zone[70]	0.58
Total *Ad Valorem* Rate	55.75

D. *Inland Freight Rates Reported by ETDZ's Suppliers*

ETDZ's suppliers did not report inland freight for purchases of HRCS. Section 351.511(a)(2)(iv) of the Department's regulations directs the Department to use delivered prices "to reflect the price a firm actually paid or would pay if it imported the product" in measuring the adequacy of remuneration. Thus, this section of the regulations directs us to include inland freight in the PRC in the benchmark. Therefore, for our preliminary determination, we are relying on the facts available to determine the inland freight rate for ETDZ's suppliers. As a consequence, for our preliminary determination as facts available, we valued ETDZ's suppliers' inland freight using an average of Topsun's monthly freight expenses.[71]

E. *ETDZ's Self-reported Subsidies*

ETDZ self-reported that it received several additional subsidies (*i.e.*, exhibition subsidy, foreign trade bureau award, export credit insurance, and export subsidy for high-tech merchandise).[72] The GOC has not yet provided complete responses to the Department's questions regarding these programs. Accordingly, we preliminarily determine that necessary information is not available on the record, and thus, that the Department must rely on facts otherwise available in making our preliminary determination with respect to these programs, pursuant to section 776(a)(1) of the Act. We discuss each of these programs, and the application of facts available to each below.

XII. ANALYSIS OF PROGRAMS

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

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66 *Id.*
67 *See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) and accompanying Issues and Decision Memorandum at "Funds for Outward Expansion of Industries in Guangdong Province."
68 *See Isos* at "Analysis of Programs; Special Fund for Energy Saving Technology."
69 *Id.*
70 *Id.*
71 *See* ETDZ Calculation Memo; Topsun Calculation Memo.
72 *See* ETDZ's December 18, 2014 submission at 20-22.

A. *Programs Preliminarily Determined to Be Countervailable*

1. *Electricity for LTAR*

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

In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. However, where possible, the Department will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. ETDZ, and its suppliers, as well as Topsun provided data on the electricity the companies consumed and the electricity rates paid during the POI.[73]

As noted above, the GOC did not provide the information requested by the Department as it pertains to the provision of electricity for LTAR program despite multiple requests for such information. We find that, in not providing the requested information, the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC pursuant to section 776(b) of the Act and determine that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D) and 771(5A)(D) of the Act. To determine the existence and amount of any benefit from this program, we relied on the respondents' reported information on the amounts of electricity used, and the rates the respondents paid for that electricity, during the POI. We compared the rates paid by the respondents for their electricity to the highest rates that they could have paid in the PRC during the POI.

To calculate the benchmark, we selected the highest rates in the PRC for the type of user (*e.g.*, "General Industry," "Lighting," "Base Charge/Maximum Demand") for the general, high peak, peak, normal, and valley ranges, as provided by the GOC.[74] The electricity rate benchmark chart is included in the Preliminary Benchmark Memo. This benchmark reflects an adverse inference, which we drew as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.

To measure whether the respondents received a benefit under this program, we first calculated the electricity prices the respondents paid by multiplying the monthly kilowatt hours or kilovolt amperes consumed for each price category by the corresponding electricity rates charged for each price category. Next, we calculated the benchmark electricity cost by multiplying the monthly consumption reported by the respondents for each price category by the highest electricity rate charged for each price category, as reflected in the electricity rate benchmark

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[73] *See*, *e.g.*, Topsun's December 18, 2014 submission at Exhibit CVD-10(a); ETDZ Huixing's December 18, 2014 submission at Exhibit 9.

[74] *See* the GOC's December 18, 2014 submission at Exhibit 35.

chart. To calculate the benefit for each month, we subtracted the amount paid by the respondents for electricity during each month of the POI from the monthly benchmark electricity price. We then calculated the total benefit for each company during the POI by summing the monthly benefits for each company.[75]

Respondents reported efficiency adjustments in their electricity rate charts.[76] Consistent with *Plywood*, we did not include these charges in calculating the benefit for this program.[77]

To calculate the subsidy rate pertaining to the GOC's provision of electricity for LTAR, we divided the benefit amount calculated for each respondent by the appropriate total sales denominator, as discussed in the "Subsidy Valuation Information" section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable subsidy of 0.002 percent *ad valorem* for the ETDZ companies, and 0.25 percent *ad valorem* for Topsun.[78]

2. *HRCS for LTAR*

The Department is investigating whether GOC authorities provided HRCS to producers of boltless steel shelving for LTAR. The respondent companies identified the suppliers and producers from whom they purchased HRCS during the POI. In addition, they reported the volume, unit of measurement, total value, and VAT paid during the POI.

The GOC reported that the respondent companies purchased HRCS from companies that the GOC has classified as SOEs, as well as from companies that the GOC considered to be "privately-held."[79] We understand the GOC's classification of certain companies as "SOEs" to mean that those companies are majority-owned by the government. As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.[80] The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute "authorities" within the meaning of section 771(5)(B) of the Act, and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.[81] Further, we find that the respondents received a benefit to the extent that the price they paid for the HRCS produced by these suppliers

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[75] *See* ETDZ Calculation Memo and Topsun Calculation Memo.
[76] *See*, *e.g.*, ETDZ's December 18, 2014 submission at Exhibit 8; Topsun's December 18, 2014 submission at Exhibit CVD-10(a). Topsun refers this this as a "Power Adjustment Charge."
[77] *See Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013) ("*Plywood*") and accompanying Issues and Decision Memorandum at Comment 3 (where the Department did not include efficiency adjustments in the electricity benefit calculation).
[78] *See* ETDZ Calculation Memo and Topsun Calculation Memo.
[79] *See* the GOC's December 18, 2014 submission at 16-18.
[80] *See* Public Body Memorandum.
[81] *See Oil Country Tubular Goods from the People's Republic of China; Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) and accompanying Issues and Decision Memorandum at Comment 6.

was for LTAR.[82] As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are treating the domestic producers of HRCS that the GOC has classified as non-"SOEs" to be "authorities" under the Act. Therefore, we preliminarily determine that the HRCS supplied by all domestic producers is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act, and the respondents received a benefit to the extent that the prices they paid for the HRCS produced by these suppliers was for LTAR, pursuant to section 771(5)(E)(iv) of the Act.[83]

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

Finally, regarding the benefit, the Department identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services pursuant to 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in 19 CFR 351.511(a)(2)(i), the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.[84] This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.[85]

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving PRC buyers and sellers that can be used to determine whether the GOC authorities sold HRCS to the respondents for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country may be considered significantly distorted and may not be an appropriate basis of comparison for determining whether there is a benefit.[86]

In its initial questionnaire response, the GOC stated that it does not maintain volume and value information on domestic production of HRSC that is accounted for companies with government ownership.[87] Instead the GOC only provided volume data for production of HRSC accounted for by State Holding Companies.[88] In other cases the GOC was able to provide this information for

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[82] *See* section 771(5)(E)(iv) of the Act.
[83] *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.
[84] *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada,* 67 FR 15545 (April 2, 2002) ("*Lumber from Canada*") and accompanying Issues and Decision Memorandum at "Market-Based Benchmark."
[85] *Id*.
[86] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998).
[87] *See* the GOC's December 18, 2014 submission at 27.
[88] *Id*.

other types of hot rolled steel products; therefore, we requested the GOC to provide this information for hot rolled steel since it stated that it does not maintain this data for HRSC. In response, the GOC referred back to its December 18, 2014 initial questionnaire response and stated that it could not provide additional information.[89] This claim is contradicted by the GOC's submission of information in past proceedings which showed that state-owned producers of hot-rolled sheet and strip account for at least 67 percent of PRC production in 2013.[90] As a result, we have preliminarily relied upon the distortion findings from prior determinations in which the GOC provided production data for other hot rolled steel products.

Consequently, because of the GOC's predominant involvement in the HRCS market, the use of private producer prices (tier 1) in the PRC would not be an appropriate benchmark because such a benchmark would reflect the distortions of the government presence. As we explained in *Softwood Lumber from Canada*:

> Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.[91]

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

Given that we have preliminarily determined that no tier one benchmark prices are available, we next evaluated information on the record to determine whether there is a tier two world market price available to producers of subject merchandise in the PRC. ETDZ and Topsun both submitted prices that they suggest are appropriate.[92] ETDZ and Topsun sourced their benchmark prices from American Metal Market ("AMM"), MEPS (International) Ltd. ("MEPS"), Metal Bulletin, Steel Orbis and SBB-Platts. The Department's regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Accordingly, we calculated a simple average of the prices submitted by ETDZ and Topsun. However, we have not relied on certain Steel Orbis prices or certain SBB-Platts prices because record information does not delineate the basis for the prices (*e.g.*, Ex Works, FOB, *etc*.); therefore, we are uncertain whether these prices include delivery charges such as inland and ocean freight. Under 19 CFR

[89] *See* the GOC's January 21, 2015 submission at 5.
[90] *See Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 79 FR 58320 (September 29, 2014) ("*Containers*") and accompanying Decision memorandum at "Analysis of Programs; Provision of Hot-Rolled Sheet and Plate for LTAR."
[91] *See Lumber from Canada* at "There Are No First Tier Benchmarks Available."
[92] *See* ETDZ's December 24, 2014 submission at Exhibits 3-7; Topsun's December 24, 2014 submission at Exhibit BM-3. Topsun also submitted hot-rolled plate benchmarks, but we have not considered these because the subsidy program at issue involves HRCS, and parties have placed HRCS benchmark information on the record.

351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Therefore, if these prices did not include delivery charges, and we used these prices in our benchmark, this would be inconsistent with 19 CFR 351.511(a)(2)(iv). If we did add delivery charges to these prices, and these prices already included delivery charges, then we would be including such delivery charges twice. Therefore, we are not including these prices in our benchmark. This is consistent with case precedent in which the Department rejected prices that would not allow us to make the appropriate adjustments under 19 CFR 351.511(a)(2)(iv).[93]

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we added to the monthly benchmark prices ocean freight and inland freight charges that would be incurred to deliver steel plate from a Chinese port to the companies' facilities. Although ETDZ submitted suggested benchmarks for ocean freight, these were not contemporaneous, and thus, we did not use them.[94] To calculate ocean freight that more accurately reflects the regional FOB export prices used to compile HRCS benchmark prices, we used the ocean freight rates submitted and used in the PRC investigations *SWR* and *Containers*, which we have placed on the record of this investigation.[95] The POI for *Containers*, *SWR* and this investigation is 2013. The freight rates in *Containers* and *SWR* cover a wide range of freight rates that reflect exports of steel from various countries in the benchmark data submitted by ETDZ and Topsun. We calculated a simple average of the ocean freight rates from these investigations.

For the inland freight rates incurred by Topsun, we utilized the inland freight rates it reported. For a further discussion of inland freight rates used by ETDZ, refer to the Application of Facts Available section of this memorandum. For both companies' calculations, we also added the applicable VAT and import duties, at the rates reported by the GOC.

Comparing the adjusted HRCS benchmark prices to the prices paid by ETDZ's suppliers and Topsun, we measured a benefit to the extent that the price paid by the respondents was less than the benchmark price. Pursuant to 19 CFR 351.525(b)(6)(ii), we divided this difference by the combined total POI sales of respondent producers in 2013, as described above in the "Attribution of Subsidies" section. On this basis, we preliminarily determine that ETDZ received a countervailable subsidy of 12.17 percent *ad valorem* under this program and Topsun received a countervailable subsidy of 14.28 percent *ad valorem*.

[93] *See Steel Cylinders* at 18-19.

[94] *See* ETDZ's December 24, 2014 submission at Exhibit 11.

[95] *See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 FR 38490 (July 8, 2014) ("*SWR*") and accompanying Decision Memorandum at 30. *See also* the Benchmark Memo for the specific ocean freight data from the *Containers* and *SWR* investigations.

3. *Exhibition Subsidy*

ETDZ self-reported that it received an exhibition subsidy.[96] The criteria for ETDZ to receive this grant are that it must be registered in Ningbo, and have participated in city-supported foreign exhibitions.[97] The Ningbo Bureau of Foreign Trade and Ningbo Bureau of Finance approved ETDZ's subsidy.[98] According to the *Notice on the 2013 Application of Subsidies for Foreign Exhibition*, the purpose of this program is to help recipients promote their foreign trade and enter new foreign markets.[99]

We preliminarily determine that this grant was provided by the Government of Ningbo and that it constitutes a financial contribution under section 771(5)(D)(i) of the Act. We further determine preliminarily that this grant confers a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504(a).

In order to conduct the analysis of whether a program is specific under section 771(5A) of the Act, it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire, because it is only the government that has access to the information required for a complete analysis of specificity. The GOC has not yet provided a complete response to the specificity questions related to this program.[100] As a result, we are resorting to the use of FA within the meaning of section 776(a)(1) of the Act because the necessary information from the GOC concerning the manner in which this program is administered is not on the record. Based on the information contained in ETDZ's questionnaire response,[101] we preliminarily determine that the program is specific under sections 771(5A)(A) and (B) of the Act because the program provides grants to companies to promote their foreign trade and enter new foreign markets.[102] The Department intends to provide the GOC with another opportunity to provide complete specificity information for this program.

To calculate the benefit for the grant that ETDZ received during the POI, we divided the amount received by ETDZ by its total POI export sales, as described above under the "Attribution of Subsidies" section. On this basis, we preliminarily determine that ETDZ received a countervailable subsidy of 0.00 percent *ad valorem*.[103]

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[96] *See* ETDZ's December 18, 2014 submission at 20-22.
[97] *Id.* at Appendix 1.
[98] *Id.* at Exhibit 14.
[99] *Id.*
[100] *See* the GOC's January 20, 2015 submission at 29-40.
[101] *See* ETDZ's December 18, 2014 submission at 22 and Appendix 1.
[102] *See, e.g.*, *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) ("*Aluminum Extrusions*") at Section VII.M (where the Department applied FA in its specificity finding by relying on information provided the respondent, when the GOC did not respond to the Department's questions).
[103] *See* ETDZ Calculation Memo.

4. *Foreign Trade Bureau Award*

ETDZ self-reported receiving a foreign trade bureau award in 2013.[104] The criteria for ETDZ to receive this grant are that it must have increased its general exports and be one of the top 30 exporting companies in Ningbo.[105] The Ningbo Foreign Trade & Economic Cooperation Bureau approved ETDZ's subsidy.[106]

We preliminarily determine that this grant was provided by the Government of Ningbo and that it constitutes a financial contribution under section 771(5)(D)(i) of the Act. We further determine preliminarily that this grant confers a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504(a).

In order to conduct the analysis of whether a program is specific under section 771(5A) of the Act, it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire, because it is only the government that has access to the information required for a complete analysis of specificity. The GOC has not yet provided a complete response to the specificity questions related to this program.[107] As a result, we are resorting to the use of FA within the meaning of section 776(a)(1) of the Act because the necessary information from the GOC concerning the manner in which this program is administered is not on the record. Based on the information contained in ETDZ's questionnaire response, which indicates that it received the grant because it is an exporter,[108] we preliminarily determine that the program is specific under sections 771(5A)(A) and (B) of the Act.[109] The Department intends to provide the GOC with another opportunity to provide complete specificity information for this program.

To calculate the benefit for the grant that ETDZ received during the POI, we divided the amount received by ETDZ by its total POI export sales, as described above under the "Attribution of Subsidies" section. On this basis, we preliminarily determine that ETDZ received a countervailable subsidy of 0.01 percent *ad valorem*.[110]

5. *Export Credit Insurance*

ETDZ self-reported receiving an export credit insurance subsidy.[111] The criterion for ETDZ to receive this grant is that it must purchase export credit insurance.[112]

We preliminarily determine that this grant was provided by the GOC and that it constitutes a financial contribution under section 771(5)(D)(i) of the Act. We further determine preliminarily

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104 *See* ETDZ's December 18, 2014 submission at 20-22.
105 *Id.* at Appendix 3.
106 *Id.* at Exhibit 15.
107 *See* the GOC's January 20, 2015 submission at 28.
108 *See* ETDZ's December 18, 2014 submission at 22 and Appendix 3.
109 *See*, *e.g.*, *Aluminum Extrusions* at Section VII.M (where the Department applied FA in its specificity finding by relying on information provided the respondent, when the GOC did not respond to the Department's questions).
110 *See* ETDZ Calculation Memo.
111 *See* ETDZ's December 18, 2014 submission at 20-22.
112 *Id.* at Appendix 2.

that this grant confers a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504(a).

In order to conduct the analysis of whether a program is specific under section 771(5A) of the Act, it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire, because it is only the government that has access to the information required for a complete analysis of specificity. The GOC did not provide a complete response to the specificity questions related to this program.[113] As a result, we are resorting to the use of FA within the meaning of section 776(a)(1) of the Act because the necessary information from the GOC concerning the manner in which this program is administered is not on the record. Based on the information contained in ETDZ's questionnaire response, which indicates that it received the grant because it purchased export credit insurance,[114] we preliminarily determine that the program is specific under sections 771(5A)(A) and (B) of the Act because receipt of this grant is contingent upon export performance.[115] The Department intends to provide the GOC with another opportunity to provide complete specificity information for this program.

To calculate the benefit for the grant that ETDZ received during the POI, we divided the amount received by ETDZ by its total POI export sales, as described above under the "Attribution of Subsidies" section. On this basis, we preliminarily determine that ETDZ received a countervailable subsidy of 0.01 percent *ad valorem*.[116]

6. *Export Subsidy for High-tech Merchandise*

ETDZ self-reported receiving an export subsidy for high-tech merchandise.[117] ETDZ did not provide any information on this subsidy, however, based on its description, the receipt of benefits under this program is contingent upon export performance.

We preliminarily determine that this grant was provided by the GOC and that it constitutes a financial contribution under section 771(5)(D)(i) of the Act. We further determine preliminarily that this grant confers a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504.

In order to conduct the analysis of whether a program is specific under section 771(5A) of the Act, it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire, because it is only the government that has access to the information required for a complete analysis of specificity. The GOC has not yet provided a complete response to the specificity questions related to this program.[118] As a result, we are resorting to the use of FA within the meaning of section 776(a)(1) of the Act because the necessary information from the GOC concerning the manner in which this program is

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[113] *See* the GOC's January 20, 2015 submission at 19-27.
[114] *See* ETDZ's December 18, 2014 submission at 22 and Appendix 2.
[115] *See*, *e.g.*, *Aluminum Extrusions* at Section VII.M (where the Department applied FA in its specificity finding by relying on information provided the respondent, when the GOC did not respond to the Department's questions).
[116] *See* ETDZ Calculation Memo.
[117] *See* ETDZ's December 18, 2014 submission at 20-22.
[118] *See* the GOC's January 20, 2015 submission at 28.

administered is not on the record. Based on the information contained in ETDZ's questionnaire response, which indicates that it received this subsidy based upon export performance,[119] we preliminarily determine that the program is specific under sections 771(5A)(A) and (B) of the Act.[120] The Department intends to provide the GOC with another opportunity to provide complete specificity information for this program.

To calculate the benefit for the grant that ETDZ received during the POI, we divided the amount received by ETDZ by its total POI export sales, as described above under the "Attribution of Subsidies" section. On this basis, we preliminarily determine that ETDZ received a countervailable subsidy of 0.02 percent *ad valorem*.[121]

B. *Programs Preliminarily Determined Not to Be Used by ETDZ or Topsun During the POI*

The Department preliminarily determines that the following programs were not used by ETDZ or Topsun during the POI:

1. *"Two Free/Three Half" Program for FIEs*
2. *Income Tax Reductions for Export Oriented FIEs*
3. *Income Tax Benefits for FIEs Based on Geographic Location*
4. *Local Income Tax Exemption and Reduction Programs for Productive FIEs*
5. *Income Tax Reduction for High or New Technology Enterprises*
6. *Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law*
7. *Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies*
8. *Import Tariff and VAT Reductions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encourage Industries*
9. *VAT Refunds for FIEs Purchasing Domestically Produced Equipment*
10. *GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands*
11. *Special Fund for Energy Savings Technology Reform*
12. *International Market Exploration Fund (SME Fund)*
13. *Export Assistance/Outward Expansion Grants in Guangdong Province*
14. *Guangdong Supporting Fund*
15. *Guangdong Province Funds to Support the Adoption of E-Commerce by Foreign Trade Enterprises*
16. *Technology to Improve Trade Research and Development Fund*
17. *Export Seller's Credits and Export Buyer's Credits from the Export-Import Bank of China*

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[119] *See* ETDZ's December 18, 2014 submission at 22 and Appendix 3.
[120] *See*, *e.g.*, *Aluminum Extrusions* at Section VII.M (where the Department applied FA in its specificity finding by relying on information provided the respondent, when the GOC did not respond to the Department's questions).
[121] *See* ETDZ Calculation Memo.

C. *Programs for Which Additional Information Is Needed*

ETDZ and one of its suppliers self-reported the receipt of additional grants. We need to solicit further information from both companies and the GOC regarding some of these grant programs; therefore, we intend to include an analysis of these programs in a post-preliminary determination.

XIII. VERIFICATION

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

XIV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓ Agree   ______ Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

23 JANUARY 2015
Date