UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-570-015
Investigation
POI 1/1/13-12/31/13
Public Document
E&C/OVI: iks/dwc

April 10, 2015

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

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

---

I. SUMMARY

The Department of Commerce (Department) determines that countervailable subsidies are being provided to producers and exporters of 53-foot domestic dry containers (dry containers) in the People's Republic of China (the PRC), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties:

General Issues

Comment 1: Whether the Department should correct the Ad Valorem subsidy rate with respect to loans that CIMC received during the POI from the China Export-Import Bank
Comment 2: Whether CIMC is a State owned enterprise (SOE) such that it could benefit from the loans to SOEs program
Comment 3: Whether the Preferential Lending to SOEs loan program is specific
Comment 4: Whether the Department should apply adverse facts available in calculating the benefit CIMC received under the preferential lending to SOEs program
Comment 5: The sales value to be used as denominators to calculate subsidy rates with respect to Singamas

Comment 6: Hot-Rolled Steel Sheet and Plate Less than Adequate Remuneration (LTAR) and whether the Department should reverse its findings regarding the hot-rolled LTAR benchmark.
- A) Whether the Department should use domestic Chinese steel prices on the record to determine whether the GOC provided hot-rolled steel for LTAR.
- B) Whether the Department properly found that "authorities" provided a financial contribution in the form of the provision of a good for LTAR
- C) Whether the Department properly found "Specificity"
- D) Benchmarks and calculation of benefit

Comment 7: Export Buyer's Credits Program
Comment 8: Scope Exclusion Request

II. BACKGROUND

A. Case History

On September 29, 2014, the Department published the *Preliminary Determination* for this investigation.[1] On September 30, 2014, China International Marine Containers (Group) Co., Ltd., Guangdong Xinhui CIMC Special Transportation Equipment Co., Ltd., Nantong CIMC-Special Transportation Equipment Manufacture Co., Ltd., Qingdao CIMC Container Manufacture Co., Ltd., Xinhui CIMC Wood Co., Ltd., and Xinhui CIMC Container Co., Ltd. (collectively, "CIMC") submitted ministerial error comments regarding the *Preliminary Determination*. On October 9, 2014, the Department responded to these comments, stating that the issues raised by CIMC were methodological in nature and did not constitute ministerial errors within the meaning of the Department's regulations.[2]

On November 6, 2014, the Department issued a post-preliminary analysis for CIMC, as well as Hui Zhou Pacific Container Co., Ltd., Qingdao Pacific Container Co., Ltd., and Qidong Singamas Energy Equipment Co., Ltd. (collectively, "Singamas").[3]

The Department conducted onsite verification of CIMC's, Singamas' and the Government of the People's Republic of China's (GOC) questionnaire responses. Verification at CIMC took place on November12-14, 2014[4]; verification at Singamas took place on November 17-19, 2014[5]; and verification at the GOC took place on November 21, 2014.[6]

---

[1] *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) (*Preliminary Determination*), and the accompanying Preliminary Decision Memorandum (Preliminary IDM).

[2] *See* Memorandum to Richard Weible, Director, Office VI, AD/CVD Operations, Enforcement and Compliance, "Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Allegation of a Ministerial Error in the Preliminary Determination," October 9, 2014, at 3.

[3] *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, "Countervailing Duty (CVD) Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China (PRC): Post-Preliminary Analysis Memorandum," November 5, 2014.

[4] *See* Memorandum to Richard Weible, Director, Office VI, AD/CVD Operations, Enforcement and Compliance, entitled "Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China (PRC): Verification Report of China International Marine Containers (Group) Co., Ltd. (CIMC Group) and its cross-owned affiliates CIMC Containers Holding Co., Ltd. (CIMC Holding); CIMC Wood Development Co., Ltd.

On February 6, 2015, CIMC, Singamas and its holding company, Singamas Container Holdings Limited (Singamas Holding); the GOC; Petitioner; and Crowley Maritime Corporation and Crowley Liner Services, Inc. and Sea Star Line, LLC (hereafter, collectively, "Crowley") filed case briefs. On February 12, 2015, CIMC, Singamas, Singamas Holding, the GOC, Petitioner, Crowley, and J.B. Hunt Transport, Inc. (J.B. Hunt) timely filed rebuttal briefs. Pursuant to the Department's request, Crowley and Petitioner filed additional scope comments to the record of this proceeding.[7]

B. Period of Investigation

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

III. SCOPE OF THE INVESTIGATION

The merchandise subject to investigation is closed (*i.e.*, not open top) van containers exceeding 14.63 meters (48 feet) but generally measuring 16.154 meters (53 feet) in exterior length, which are designed for the intermodal transport[8] of goods other than bulk liquids within North America primarily by rail or by road vehicle, or by a combination of rail and road vehicle (domestic containers). The merchandise is known in the industry by varying terms including "53-foot containers," "53-foot dry containers," "53-foot domestic dry containers," "domestic dry containers" and "domestic containers." These terms all describe the same article with the same design and performance characteristics. Notwithstanding the particular terminology used to describe the merchandise, all merchandise that meets the definition set forth herein is included within the scope of this investigation.

Domestic containers generally meet the characteristic for closed van containers for domestic intermodal service as described in the American Association of Railroads (AAR) Manual of Standards and Recommended Practices Intermodal Equipment Manual Closed Van Containers for Domestic Intermodal Service Specification M 930 Adopted: 1972; Last Revised 2013 (AAR Specifications) for 53-foot and 53-foot high cube containers. The AAR Specifications generally

---

(CIMC Wood); Guangdong Xinhui CIMC Special Transportation Equipment Co., Ltd. (Xinhui Special); Qingdao CIMC Containers Manufacture Co., Ltd. (Qingdao CIMC); Nantong CIMC-Special Transportation Equipment Manufacture Co., Ltd. (Nantong CIMC); Xinhui CIMC Container Co., Ltd. (Xinhui Container); and Xinhui CIMC Wood Co., Ltd. (Xinhui Wood) (collectively, CIMC)," January 14, 2015 (CIMC Verification Report).

[5] *See* Memorandum to Richard Weible, Director, Office VI, AD/CVD Operations, Enforcement and Compliance, entitled "Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China (PRC): Verification Report of Hui Zhou Pacific Container Co., Ltd. (HPCL), Qingdao Pacific Container Co., Ltd., (QPCL) and Qidong Singamas Energy Equipment Co., Ltd., (QSCL) and their holding company, Singamas Container Holdings Limited (SCHL) (collectively, "Singamas")," December 22, 2014 (Singamas Verification Report).

[6] *See* Memorandum to Richard Weible, Director, Office VI, AD/CVD Operations, Enforcement and Compliance, entitled "Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China (PRC): Verification Report of the Government of the People's Republic of China (GOC)," December 22, 2014 (GOC Verification Report).

[7] On April 2, 2015, the Department instructed all interested parties to this investigation that filed scope comments on the record of the companion AD investigation to file those comments and rebuttals on the record of this instant investigation.

[8] "Intermodal transport" refers to a movement of freight using more than one mode of transportation, most commonly on a container chassis for on-the-road transportation and on a rail car for rail transportation.

define design, performance and testing requirements for closed van containers, but are not dispositive for purposes of defining subject merchandise within this scope definition. Containers which may not fall precisely within the AAR Specifications or any successor equivalent specifications are included within the scope definition of the subject merchandise if they have the exterior dimensions referenced below, are suitable for use in intermodal transportation, are capable of and suitable for double-stacking[9] in intermodal transportation, and otherwise meet the scope definition for the subject merchandise.

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

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

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

[9] "Double-stacking" refers to two levels of intermodal containers on a rail car, one on top of the other.

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

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.[10] 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.[11]

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.[12] 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.[13] The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[14]

V. 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.[15] The Department finds the AUL in this proceeding to be 12 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised.[16] The Department notified the respondents of the AUL in the initial questionnaire and requested data accordingly.[17] No party in this proceeding disputed this allocation period.

---

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

[11] *Id*.

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

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

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

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

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

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

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 year in which each subsidy was approved. 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.[18] In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[19] The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[20]

In the *Preliminary Determination*, the Department determined that CIMC was cross-owned with a number of affiliates and, likewise, Singamas was also cross-owned with a number of affiliates. These companies included producers of subject merchandise or of inputs used in the production of the subject merchandise.[21] We received no comments on these determinations and there are otherwise no changes to the record in this investigation with regard to the respondents' affiliations. Thus, we continue to treat these companies as cross-owned with CIMC and Singamas respectively, as described in the *Preliminary Determination*,[22] for this final determination. Accordingly, we also continue to apply the same attribution methodology described in the *Preliminary Determination* for subsidies provided to certain entities of CIMC or Singamas, pursuant to certain subsections under 19 CFR 351.525(b)(6), as applicable.[23]

[18] *See*, *e.g.*, *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998).
[19] *Id.*
[20] *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[21] *See Preliminary Determination Decision* Memorandum at 7 to 9.
[22] *Id.* at 7-10.
[23] *Id.*

C. *Denominators*

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Final Calculation Memoranda," prepared for this investigation.[24] As a result of verification, we have revised certain sales values to calculate the subsidy rates in this final determination. Comments regarding minor corrections are addressed at Comments 1 and 5, below.

VI. BENCHMARKS AND DISCOUNT RATES

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." To calculate loan benchmarks in the *Preliminary Determination*, we followed the methodology first established in the *CFS from the PRC* investigation for calculating interest rate benchmarks for preferential loans and directed credit in the PRC.[25] Normally, the Department uses comparable commercial loans reported by the company as a benchmark.[26] However, as explained in *CFS from the PRC*, loans provided by Chinese banks reflect significant government intervention in

[24] *See* Department Memoranda, "Countervailing Duty Investigation of 53-Foot Dry Containers from the People's Republic of China: CIMC Final Calculation Memorandum," (CIMC Final Calculation Memorandum) and "Countervailing Duty Investigation of 53-Foot Dry Containers from the People's Republic of China: Singamas Final Calculation Memorandum," (Singamas Final Calculation Memorandum), both dated concurrently with this memorandum (collectively, Final Calculation Memoranda).

[25] *See Preliminary Determination* and Preliminary IDM at 10; *CFS from the PRC*, and CFR IDM at Comment 10. *See also* the Department's December 15, 2014, Memorandum to the file, "Additional Documents Memorandum," which includes the Department's 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," (May 18, 2012) (Public Body Memorandum); 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)); the Department Memorandum to David Spooner, Assistant Secretary, Import Administration, from Shauna Lee-Alaia, Lawrence Norton and Anthony Hill, Office of Policy, Import Administration, "The People's Republic of China (PRC) Status as a Non-Market Economy (NME)," (May 15, 2006) and Memorandum to David Spooner, Assistant Secretary, Import Administration, from Shauna Lee-Alaia, Lawrence Norton and Anthony Hill, Office of Policy, Import Administration, "Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China") China's status as a non-market economy ("NME")," (August 30, 2006) (collectively, Banking Memoranda); Department Memorandum, "Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy (March 29, 2007) (Georgetown Applicability Memorandum).

[26] *See* 19 CFR 351.505.

the banking sector and do not reflect rates that would be found in a functioning market.[27] Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department has selected an external market-based benchmark interest rate, consistent with the Department's practice.[28] No party commented on our interest rate benchmark methodology, and we will apply this same methodology for this final determination.

Similarly, in the *Preliminary Determination*, the Department used, as the discount rate for non-recurring subsidies, the long-term benchmark interest rate which we calculated in accordance with the methodology applied in previous PRC investigations.[29] No party commented on this methodology, and we will continue to apply this methodology for this final determination.

Provision of Hot-Rolled Sheet and Plate and I-Beams for LTAR

The Department's regulation at 19 CFR 351.511(a)(2) sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. 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").

In the *Preliminary Determination*, based on record evidence showing that state-owned producers accounted for at least 67 percent of the PRC production of hot-rolled sheet and strip (HRS), we found that the government played a predominant role in the HRS market in the PRC and that, consequently, domestic transactions were distorted by government involvement. Therefore, tier one domestic prices of HRS, including the price of HRS imports into the PRC, were not appropriate sources for a benchmark to determine adequate remuneration for the government provision of HRS plate, coil and I-beams. Accordingly, we resorted to tier two world market prices to determine the subsidy rate for the provision of HRS plate, coil and I-beams for LTAR in the *Preliminary Determination*. Based on the record information, we continue to rely on tier two world market prices for the final determination, but are making some adjustments to the benchmark as further explained below in the Analysis of Comments section under Comment 6D, in accordance with 19 CFR 351.511(a)(2)(ii).

To value ocean freight, we are continuing to rely on an average of ocean freight rates submitted by Petitioner and the ocean freight rates used by the Department in the investigation of *Steel Wire Rod from China* ("*SWR*"), which are on the record of this investigation, subject to some adjustments as described at Comment 6D.

---

[27] *See* CFS IDM at Comment 10. *See also* Banking Memoranda.

[28] For example, in *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) (*Lumber from Canada*), and accompanying Issues and Decision Memorandum at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

[29] *See Preliminary Determination* and Preliminary IDM at 13.

Provision of Electricity for LTAR

In the *Preliminary Determination*, as adverse facts available (AFA),[30] we relied on PRC provincial tariff schedules for electricity supplied by the GOC to derive the benchmark for measuring the benefit from electricity provided for LTAR to CIMC and Singamas.[31] We received no comments regarding the methodology used for this benchmark and, thus, we continue to use the same benchmark for this final determination.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or if an interested party or any other person: (A) withholds information that has been requested by the Department; (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 AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.[32] 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."[33]

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 "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."[34] The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[35]

In analyzing whether information has probative value, it is the Department's practice to examine

[30] *See Preliminary Determination* and Preliminary IDM at 22.
[31] *See* the GOC's April 21, 2014, questionnaire response at Exhibit H.11 and Memorandum to the File from Ilissa Kabak Shefferman, International Trade Compliance Analyst, entitled "Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from China: Preliminary Benchmark Memorandum," dated September 22, 2014 (Preliminary Benchmark Memorandum).
[32] *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).
[33] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA).
[34] *Id.* at 870.
[35] *Id.*

the reliability and relevance of the information to be used.[36] However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.[37]

For the Preferential Loans to State-Owned Enterprises Program and the Ex-Im Bank Export Buyer's Credit Program, we applied our CVD AFA methodology to determine the applicable subsidy rates. According to that practice,[38] 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*.[39] 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.[40]

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.[41] As explained above, in applying the AFA hierarchy, the Department seeks to identify identical program rates calculated for a cooperative respondent in the investigation or, if there are no such rates, from another investigation or administrative review. Alternatively, the Department seeks to identify similar program rates calculated in any proceeding covering imports from the PRC. Actual rates calculated based on actual usage by PRC companies are reliable where they have been calculated in the context of an administrative proceeding. Moreover, under our CVD AFA methodology, we strive to assign AFA rates that are the same in terms of the type of benefit, (*e.g.*, grant to grant, loan to loan, indirect tax to indirect tax) because these rates are relevant to the respondent. Additionally, by selecting the highest rate calculated for a cooperative respondent we arrive at a reasonably accurate estimate of the respondent's actual rate, and a rate that also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated

---

[36] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

[37] *See* SAA at 869-870.

[38] *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."

[39] *Id.*

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

[41] *See, e.g., Shrimp From the PRC*, and accompanying Issues and Decision Memorandum at 11-12.

fully."[42] Finally, the Department will not use information where circumstances indicate that the information is not appropriate as AFA.[43]

In the absence of record evidence concerning certain programs due to the GOC's and CIMC's failure to provide requested information, we 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. For the programs for which there is no program-type match, we have selected the highest calculated subsidy rate for any PRC program, from which the non-cooperative respondent could conceivably receive a benefit, to use as AFA. The relevance of these rates is that they are actual calculated CVD rates for PRC programs, from which the non-cooperative respondent could actually receive a benefit. Due to the lack of participation by the GOC and CIMC and the resulting lack of record information concerning these programs, the Department corroborated the rates it selected to use as AFA to the extent practicable for this final determination.[44]

As discussed below, due to the failure of the GOC and CIMC, in part, to respond to the Department's questionnaires concerning the programs at issue, the Department relied on information concerning PRC subsidy programs from other proceedings. In light of the above, the Department corroborated the rates it selected to use as AFA to the extent practicable for this final determination.[45] Because these rates reflect the actual behavior of the GOC with respect to similar subsidy programs, and lacking questionnaire responses or adequate information from the GOC and CIMC demonstrating otherwise, the rates calculated for cooperative respondents provide a reasonable AFA rate.

Application of Facts Available

Measuring Government Involvement in the I-Beam Production Market

We noted in the *Preliminary Determination* that the GOC stated it did not collect data relating to the total volume and value of domestic HRS I-beam producers.[46] However, record information showed that state-owned producers of HRS sheet and strip accounted for at least 67 percent of PRC production during the POI.[47] On this basis, we determined, as facts available, that the government's involvement in the HRS I-beam market was significant and distortive and, therefore, domestic prices in the PRC, including the prices of imports into the PRC, were not appropriate sources for determining the benchmark (*i.e.*, such a benchmark would reflect the distortions of the government presence).[48] We received no comments from interested parties

[42] *See* SAA at 870.
[43] *See, e.g., Non-Oriented Electrical Steel From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 61607 (October 14, 2014), and accompanying Issues and Decision Memorandum at 7-8.
[44] *See, e.g., Non-Oriented Electrical Steel From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 61606 (October 14, 2014) and accompanying Issues and Decision Memorandum at 7-8.
[45] *Id.* and accompanying Issues and Decision Memorandum at 7-8.
[46] *See* Preliminary IDM at 14.
[47] *See* the GOC's Initial Questionnaire Response, dated August 5, 2014 (GOC IQR) at Exhibit 34.
[48] *See* Preliminary IDM at 14, 29.

regarding these findings and, thus, for the reasons described in the *Preliminary Determination*, we continue to rely on tier two world market prices for this final determination.

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

For the *Preliminary Determination*, we applied as facts available the inland freight rate reported by Nantong CIMC for some of its purchases of HRS to the "CIF Shanghai" purchases, for which CIMC did not report freight.[49] Likewise, we applied as facts available the average inland freight reported by Nantong CIMC and Qingdao CIMC to all purchases of HRS products reported by Xinhui Container, Xinhui Special, and QSCL.[50] We received no comments from interested parties regarding this methodology and, thus, we continue to rely on the same information for inland freight for this final determination.

Electricity for LTAR

Nantong CIMC was unable to report electricity usage separately for valley, normal and peak time periods. Thus, for the *Preliminary Determination*, we applied, as facts available, one benchmark price to calculate a benefit for electricity for Nantong CIMC, using the average of the valley, normal, and peak prices that the Department used in the electricity program calculations for the remaining CIMC companies.[51] We received no comments from interested parties regarding this methodology and, thus, we continue to rely on the same information to derive the electricity benchmark for this final determination.

Application of Adverse Facts Available

Input Producers are "Authorities"

In the *Preliminary Determination*, in light of the GOC's failure to cooperate to the best of its ability, we found, based on AFA, that certain producers that supplied HRS Sheet and Plate and HRS I-Beam Producers to CIMC and Singamas were authorities within the meaning of section 771(5)(B) of the Act.[52] For this final determination, we continue to determine, as AFA, that certain producers of these inputs are authorities, for the reasons described in the *Preliminary Determination*. Arguments from interested parties concerning this determination are discussed below at Comment 6B.

Provision of HRS is Specific

In the *Preliminary Determination*, in light of the GOC's failure to cooperate to the best of its ability, we found, based on AFA, that the provision of HRS is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.[53] For this final determination, we continue to determine, as AFA, that the provision of HRS is specific, for the reasons described in the *Preliminary*

[49] *Id.* at 14.
[50] *Id.*
[51] *Id.* at 14-15.
[52] *Id.* at 17-19.
[53] *Id.* at 19-20.

Determination. Arguments from interested parties concerning this determination are discussed below at Comment 6C.

Provision of Electricity for LTAR

We stated in the *Preliminary Determination* that we relied on the facts available with an adverse inference in finding that the provision of electricity to CIMC and Singamas constitutes a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, and that the program is specific within the meaning of section 771(5A)(D) of the Act.[54] We also relied on AFA in selecting the benchmark for determining the existence and amount of the benefit,[55] and selected the highest electricity rates on the record for the applicable rate and user categories.[56] We received no comments from interested parties regarding this methodology, and, thus, we continue to rely on the same methodology for this final determination.

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

In the *Preliminary Determination*, in light of the GOC's failure to cooperate to the best of its ability, we found, based on AFA, that under the Export Seller's Credits program, the China Ex-Im Bank provides a financial contribution within the meaning of sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and the program is specific within the meaning of section 771(5A)(A) and (B) of the Act.[57] Only CIMC reported receiving support under this program.[58] For this final determination, we continue to determine, as AFA, that this program provides a financial contribution that is specific and, thus, countervailable.

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

The Department has determined that the use of AFA is warranted in determining the countervailability of the Export Buyer's Credits program. As discussed below in Comment 7, among other things, the GOC refused the Department's request to examine or query electronic databases regarding recipients of export buyer's credits, thus preventing full review and verification of the program's operation. Pursuant to section 776(a)(2)(D) of the Act, when an interested party provides information that cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination. We also find that, in refusing to permit verification of the non-use of the program, the GOC significantly impeded the proceeding, within the meaning of section 776(a)(2)(C) of the Act. 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 examine the source of information that it placed on the record regarding this issue. Accordingly, we find that an adverse inference is warranted. As AFA, we find, as discussed below under Comment 7, that both CIMC and Singamas benefited

[54] *Id.* at 15.
[55] *Id.* at 15-16.
[56] *Id.* at 16.
[57] *Id.*
[58] *Id.*

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.[59]

GOC - Preferential Loans to State-Owned Enterprises

In the *Preliminary Determination*, in light of the GOC's failure to cooperate to the best of its ability, we found, based on AFA, that the Preferential Loans to State-Owned Enterprises program is specific within the meaning of section 771(5A) of the Act.[60] For this final determination, we continue to find, as AFA, that this program is specific to SOEs. Arguments from interested parties concerning this determination are discussed below at Comment 3.

CIMC – Preferential Loans to State-Owned Enterprises

At the verification of CIMC's questionnaire responses, the Department rejected CIMC's submission purporting to represent minor corrections of previously unreported loans outstanding during the POI to certain cross-owned companies.[61] The Department determines that the use of facts available pursuant to sections 776(a)(2)(A), 776(a)(2)(B) and 776(a)(2)(D) of the Act is warranted in determining CIMC's use of and benefit from these apparent subsidies because CIMC withheld information that was requested by the Department at the time it was requested, failed to provide information that was requested by the deadline for submission of that information, and provided information that could not be verified.[62] Further, we find that by failing to report all of its loans, CIMC failed to cooperate to the best of its ability regarding providing necessary information on this program and, thus, we determine that an adverse inference is warranted with respect to this program pursuant to section 776(b) of the Act. As AFA, we find, as discussed below under Comment 4, that CIMC benefited 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.[63]

Other Grants to CIMC

In our Post-Preliminary Analysis, we found countervailable two grants received by Nantong CIMC: Nantong Municipal Science & Project Tech Project Fund and Nantong Special Fund on Energy Saving & Industry Recycling.[64] In response to questioning regarding these programs, the GOC stated that it was unable to respond. Specifically, the GOC declined to provide the laws

[59] *See Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Photovoltaic Products From the PRC*), and accompanying Issues and Decision Memorandum at Comment 16.
[60] *See* Preliminary IDM at 16-17.
[61] *See* CIMC Verification Report at page 3 and Exhibit 2.
[62] *See* Letter to Liu Fang, First Secretary, Embassy of the People's Republic of China, dated June 13, 2014 (Initial Questionnaire).
[63] *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, 70202 (November 17, 2010) (*Coated Paper Investigation Amended Final*).
[64] *See* Post-Preliminary Analysis Memorandum at 5-8.

and regulations governing either program.[65] This information is necessary for determining whether these programs are specific within the meaning of section 771(5A) of the Act.

Consequently, we continue to find in this final determination that necessary information is not available on the record and that the GOC withheld information that was requested of it. Thus, we are resorting to the facts available under sections 776(a)(1) and (a)(2)(A) of the Act. Furthermore, we find that the GOC failed to cooperate to the best of its ability in complying with our request 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. Thus, 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 Nantong Municipal Science & Project Tech Project Fund and Nantong Special Fund on Energy Saving & Industry Recycling are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. We also note that the Department has determined similar programs in previous proceedings to be *de jure* specific.[66]

Other Grants to Singamas

In our Post-Preliminary Analysis, we found countervailable two grants received by Singamas during the POI: Incentives to Further Promote Industrial Economy, *also known as* "Incentives for Further Promoting Faster Development of Industrial Economies," and Advance Unit for Enterprise Investment, *also known as* "Award for Elite Persons and Enterprises for their Contributions in 2012."[67] While the GOC noted the general purpose of these programs and confirmed that Singamas' cross-owned companies were the only mandatory respondents in this investigation to receive these grants during the POI, it declined to respond to additional questions regarding either program.

Consequently, we continue to find for this final determination that necessary information is not available on the record and that the GOC withheld information that was requested of it within the meaning of sections 776(a)(1) and (a)(2)(A) of the Act. Specifically, the GOC did not provide the laws or regulations governing these programs, nor did it answer any questions regarding the total grant amounts awarded under these programs to all recipients during the POI. We also find that the GOC failed to cooperate to the best of its ability in complying 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 information that would allow the Department to conduct a *de jure* or *de facto* specificity analysis. Therefore, 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 these programs are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

[65] *See* GOC 10/22/2014 SQR at 2.
[66] *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 from the PRC 2011*) and accompanying Issues and Decision Memorandum at 31-32.
[67] *See* Post-Preliminary Analysis at 8-10.

VII. ANALYSIS OF PROGRAMS

A. Programs Determined To Be Countervailable

1. Preferential Loans to SOEs

We determine that the provision of loans from state-owned commercial banks (SOCBs) to SOEs under this program constitutes a financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. The loans provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.[68] Further, as explained in the *Preliminary Determination*, we requested information related to this program from the GOC twice. The GOC failed to provide adequate responses to our questions both times. As a result, necessary information is not on the record. In cases where an interested party withholds information that has been requested or where there is not enough information on the record for us to determine whether a program is specific, we use facts otherwise available.[69] Furthermore, an adverse inference is warranted where a party fails to cooperate by not acting to the best of its ability to comply with a request for information from the Department.[70] Therefore, as discussed above, we determine, as AFA, that this program is specific to SOEs.

One of the respondents, CIMC, is an SOE (see Comment 2, below, for further discussion regarding this finding).

As explained above, in light of the unreported information presented by CIMC at verification, the Department determines that the use of facts available pursuant to section 776(a)(2)(A) of the Act is warranted in determining the countervailability of these apparent subsidies because CIMC withheld information that was requested by the Department at the time it was requested. Because CIMC failed to report all of its loans, we determine that it failed to cooperate to the best of its ability regarding this program, and we determine that an adverse inference is warranted pursuant to section 776(b) of the Act. As adverse facts available, we find, as discussed below under Comment 4, that CIMC benefited 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

2. Export Seller's Credits from China Ex-Im Bank

CIMC Group reported loans from China Ex-Im Bank that were outstanding during the POI.[71] Consistent with *Citric Acid from the PRC 2011*, we find that the loans provided by China Ex-Im Bank under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act.[72] The loans also provide a benefit under section 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or

[68] *See* section 771(5)(E)(ii) of the Act.
[69] *See* sections 776(a)(1) and 776(a)(2)(A) of the Act.
[70] *See* section 776(b) of the Act.
[71] *See* CIMC 7/28/2014 IQR on page E-13 and Exhibit E-6.
[72] *See Citric Acid from the PRC 2011*, and accompanying Issues and Decision Memorandum at 13.

anticipated exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(A) and (B) of the Act.[73]

To calculate the benefit under this program, we compared the amount of interest CIMC Group paid on the outstanding loans to the amount of interest the company would have paid on comparable commercial loans. In conducting this comparison, we used the interest rates described in the "Benchmarks and Discount Rates" section above. As discussed in Comment 1, below, we divided the total benefit amount by CIMC Group's Container Business Sector's export sales for the POI. On this basis, we find that CIMC received a countervailable subsidy of 1.13 percent *ad valorem*.

3. Export Buyer's Credits Program

Through this program, China Ex-Im Bank provides loans at preferential rates for the purchase of exported goods from the PRC. In the *Preliminary Determination*, the Department found that this program was not used by the company respondents, based on their initial responses. However, the Department was not able to verify the reported non-use of export buyer's credits during verification of the GOC.

We determine that the Export Buyer's Credit Program involves a financial contribution from China Ex-Im Bank, within the meaning of sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. Further, we determine that this program is specific because it is contingent upon export performance, within the meaning of sections 771(5A)(A) and (B) of the Act. As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are determining, based on AFA, that both CIMC and Singamas used this program during the POI. Our determination regarding the use of AFA and our selection of the appropriate rate for this program are explained in further detail under Comment 7, below. On this basis, we determine a countervailable subsidy rate of 10.54 percent *ad valorem* for CIMC and Singamas under this program.

4. Provision of Electricity for LTAR

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

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

Consistent with our approach in *Wind Towers from the PRC*, we first calculated the respondent's

[73] *Id.*

variable electricity costs by multiplying the monthly kWh consumed at each price category (*e.g.*, peak, normal, and valley, where appropriate) by the corresponding electricity rates paid by the respondent during each month of the POI.[74] Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by the respondent during the POI from the monthly benchmark variable electricity costs.

To measure whether CIMC or Singamas (*i.e.*, QPCL, HPCL, and HSCL) received a benefit with regard to its base rate (*i.e.*, either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to the companies by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the company's consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by the company during the POI from the benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from the respondent's variable electricity payments and base rate payments.[75]

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

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

The Department is examining whether the HRS sheet and plate purchased by CIMC and Singamas were provided at LTAR. As instructed in the Department's questionnaires, the respondent companies identified the suppliers and producers from whom they purchased HRS sheet and plate during the POI.[76]

The GOC reported that the respondent companies purchased HRS sheet and plate from companies that the GOC has classified as SOEs, as well as from companies that the GOC claimed to be "privately-held." We understand the GOC's classification of certain companies as "SOEs" to mean that those companies are majority-owned by the government. As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.[77] The GOC exercises meaningful control over these

[74] *See Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) and accompanying Issues and Decision Memorandum at 21-22.
[75] For more information on the respondent's electricity usage categories and the benchmark rates we have used in the benefit calculations, *see* Preliminary Benchmark Memorandum. For the calculations, *see* CIMC Preliminary Calculation Memorandum and Singamas Preliminary Calculation Memorandum. This remains unchanged for this final determination.
[76] *See* CIMC 7/28/2014 IQR at Exhibits A-7, B-7, C-7 and CIMC 9/2/2014 SQR at Exhibits Supp. A-8, C-24, and F-4; *see also* Singamas 7/28/2014 IQR at Exhibit 30 and 9/4/2014 SQR at Exhibit 73.
[77] *See* Memorandum from Ilissa Kabak Shefferman, International Trade Compliance Analyst, to the File, "Placement of information onto the record" at Attachment 1 (September 22, 2014).

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 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.[78] Further, we find that the respondents received a benefit to the extent that the price they paid for the HRS sheet and plate produced by these suppliers was for LTAR.[79]

Further, as explained in the "Use of Facts Otherwise Available and Adverse Inferences" section of this memorandum and in Comment 6 below, we are also treating the other domestic producers that supplied HRS sheet and plate to the respondent companies to be "authorities" under the Act. Therefore, we continue to determine that the provision of HRS sheet and plate from all domestic producers is a financial contribution in the form of a provision of a good under section 771(5)(D)(iii) of the Act and that the respondents received a benefit to the extent they paid a price at LTAR for the HRS sheet and plate from these suppliers, pursuant to section 771(5)(E)(iv) of the Act.

As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section of this memorandum above, and in the comments discussed at Comment 6, we continue to determine that the GOC is providing HRS sheet and plate to a limited number of industries and enterprises, and, hence, that the subsidy is specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

Finally, regarding benefit, the Department identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services pursuant to 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in 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.[80] This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.[81]

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving PRC buyers and sellers that can be used to determine whether the GOC authorities sold HRS sheet and plate to the respondents for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion

[78] *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.
[79] *See* section 771(5)(E)(iv) of the Act.
[80] *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."
[81] *Id.*

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.[82]

In its initial questionnaire response, the GOC reported the total volume and value of domestic production of HRS sheet and strip that is accounted for by companies in which the GOC maintains a majority ownership or management interest.[83] It stated that it did not collect this data for HRS sheet and plate producers.[84] Accepting the GOC's claim that it does not collect the requested data for HRS sheet and plate producers, we are instead relying on record information which shows that state-owned producers of HRS sheet and strip account for at least 67 percent of PRC production during the POI.[85] On this basis, we find that the government's involvement in the HRS sheet and strip market is predominant and distortive. Consequently, the use of domestic producer prices in the PRC is inappropriate for deriving a benchmark because such a benchmark would reflect the distortions from the government's involvement.

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.[86]

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. Comments from parties on this issue are addressed at Comment 6A.

Given that we have determined that no tier one benchmark prices are available, we next evaluated information on the record to determine whether there is a tier two world market price available to producers of subject merchandise in the PRC. Petitioners and CIMC both submitted prices that they suggest are appropriate.[87]

---

[82] *See Countervailing Duties; Final Rule*, 63 FR at 65377.
[83] *See* GOC IQR at Exhibit 34.
[84] *Id.* at 29.
[85] *Id.* at Exhibit 34.
[86] *See Lumber from Canada*, at "There Are No First Tier Benchmarks Available".
[87] *See* Letter from CIMC to the Department entitled "Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Global Hot-Rolled Steel Price Information, September 8, 2014; *see also* Letter from Stoughton Trailers LLC entitled "53-Foot Domestic Dry Containers from the People's Republic of China, September 8, 2014.

HRS Plate Benchmark

CIMC submitted benchmark prices for HRS plate.[88] CIMC sourced its benchmark prices from MEPS (International) Ltd., Metal Bulletin, Steel Orbis, and SBB-Platts. The Department's regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Accordingly, we calculated a simple average of the following prices submitted by CIMC: Metal Bulletin, Steel Orbis (FOB Ukraine), and SBB-Platts (FOB CIS). However, as in the *Preliminary Determination*, we have not relied on certain MEPS (International) Ltd. prices or the SBB-Platts prices because record information does not delineate the basis for the prices (*e.g.*, Ex Works, FOB, *etc.*); therefore, we are uncertain whether these prices include delivery charges such as inland and ocean freight. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Therefore, if these prices did not include delivery charges, and we used these prices in our benchmark, this would be inconsistent with 19 CFR 351.511(a)(2)(iv). If we did add delivery charges to these prices, and these prices already included delivery charges, then we would be including such delivery charges twice. Therefore, we are not including these prices in our benchmark. This is consistent with case precedent in which the Department rejected prices that would not allow us to make the appropriate adjustments under 19 CFR 351.511(a)(2)(iv).[89]

Petitioner submitted benchmark prices for ocean freight based on Maersk freight rates in 2013 for shipments of steel in a 40-foot standard container from Hamburg, Germany and Felixstowe, Great Britain to Qingdao, China.[90] Neither CIMC nor Singamas submitted benchmark data for ocean freight. However, CIMC did submit certain prices for HRS sheet in coils and for plate from various regions of the world. To calculate ocean freight that more accurately reflects the regional FOB export prices used to compile HRS benchmark prices, we used an average of the ocean freight rates submitted by Petitioner and the ocean freight rates used by the Department in the *SWR* investigation, which we have placed on the record of this case.[91] The POI for both *SWR* and this investigation is 2013. The freight rates from *SWR* cover a wide range of freight rates that reflect exports from various countries in the Global Trade Atlas (GTA) data submitted by Petitioner, and the HRS sheet and plate exports submitted by CIMC. We modified the calculation of the ocean freight benchmark as described at Comment 6D below.

For Qingdao CIMC's and Nantong CIMC's inland freight rates, we continue to utilize inland freight rates reported by both companies. For a further discussion of inland freight rates used for

[88] *See* Letter from CIMC entitled "Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Global Hot-Rolled Steel Price Information," dated September 8, 2014 (CIMC HRS Benchmark Prices).
[89] *See High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying Issues & Decision Memorandum at 18-19 (HPSCs Final Decision Memorandum).
[90] *See* Petitioner's submission on benchmarks dated September 8, 2014, at pages 3-4 and table 6.
[91] *See* Petitioner's submission on benchmarks dated June 2, 2014 entitled "Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Submission of Factual Information- Benchmark Data," which we are placing on the record of this at Attachment 3 of the Preliminary Benchmark Memorandum).

all CIMC respondent companies, refer to the *Application of Facts Available* section of this memorandum and the CIMC Preliminary Calculation Memorandum. For Singamas' inland freight rates, we utilized inland freight rates reported by QPCL and HPCL.[92] For QPCL, we applied facts available as described in detail in the calculation memorandum for Singamas.[93] For both companies' calculations, we also added the applicable VAT and import duties, at the rates reported by the GOC.

HRS Coil Benchmark

Petitioner and CIMC submitted benchmark prices for HRS sheet in coils.[94] Petitioner submitted two separate sets of benchmark prices based on GTA statistics. The first set of benchmark prices reflected the monthly world export prices for all tariff codes underlying HTS 7225.30, which is the tariff code identified by CIMC and Singamas in their responses. The second set of benchmark prices excluded export data that either were "basket" HTS categories or covered different steel than that used by CIMC and Singamas. CIMC sourced its benchmark prices from American Metal Market (AMM), MEPS (International) Ltd., Metal Bulletin, Steel Orbis and SBB-Platts.

As with HRS Plate above, we continue to reject certain MEPS (International) Ltd. prices or the SBB-Platts prices that lack information delineating the basis for the prices (*e.g.*, Ex Works, FOB, etc.), because we are unable to determine whether these prices include delivery charges such as inland and ocean freight.[95]

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, as described in Comment 6D , we first calculated simple averages across data sources per country or region to determine an average unit value for each country. Then, we weight averaged those country- and region-specific unit prices to create single monthly weighted-average benchmark prices for HRS, and calculated a simple average of the GTA prices submitted by Petitioner and the following prices submitted by CIMC: AMM, Metal Bulletin, Steel Orbis (FOB Turkey, FOB Russia, FOB Ukraine), and SBB-Platts (FOB B Sea, FOB Blk Sea, FOB Bld Sea Eur/Mt, FOB Blk Sea US$/CWt, FOB Blk Sea US$/Mt, FOB Blk Sea US$/St, Russia Black Sea FOB, Turkey FOB and Brazil FOB).

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

[92] *See* Singamas September 4, 2014, SQR at CVD-74.
[93] *See* Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from China: Preliminary Determination Calculations for Singamas, Memorandum from Yasmin Nair and David Cordell, International Trade Compliance Analysts, to Richard Weible, Office Director, September 22, 2014 (Singamas Preliminary Calculation Memorandum).
[94] *See* CIMC HRS Benchmark Prices *and* Letter from Stoughton Trailers, LLC entitled "53-Foot Domestic Dry Containers from the People's Republic of China," September 8, 2014 (Petitioner Benchmark Prices).
[95] *See* 19 CFR 351.511(a)(2)(iv).

companies' facilities. For ocean freight, we utilized the same rates calculated for the HRS plate benchmark, as described above in the HRS Plate Benchmark section, and as modified and addressed in Comment 6D below and in the Final Calculation Memoranda. For Qingdao CIMC and Nantong CIMC inland freight rates, we utilized inland freight rates reported by both companies. For a further discussion of inland freight rates used for all CIMC respondent companies, refer to the *Application of Facts Available* section of this memorandum. For Singamas' inland freight rates, we calculated a benchmark as described above in the HRS Plate Benchmark section. For both companies' calculations, we also added the applicable VAT and import duties, at the rates reported by the GOC.

Comparing these adjusted HRS plate and coil benchmark prices to the prices paid by CIMC and Singamas producers for their HRS plate and sheet in coil purchases, we measured a benefit to the extent that the price paid by the respondents was less than the benchmark price. Pursuant to 19 CFR 351.525(b)(6)(ii), we divided this difference by the combined total POI sales of respondent producers (exclusive of intercompany sales) in 2013, as described above in the "Attribution of Subsidies" section. On this basis, we determine that CIMC received a countervailable subsidy of 5.06 percent *ad valorem* under this program and Singamas received a countervailable subsidy of 5.77 percent *ad valorem*.

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

The Department is examining whether CIMC and Singamas benefited from the Two Free/Three Half Program for FIEs. Under Article 8 of the FIE Tax Law, an FIE that is "productive" and scheduled to operate for more than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years. According to the GOC, the "Two Free, Three Half" program was terminated under the *Enterprise Income Tax Law* (EITL) effective January 1, 2008, but companies already enjoying the preference were permitted to continue paying taxes at reduced rates.

The Department has previously found this program to be countervailable.[96] Consistent with earlier cases, we continue to determine that the "Two Free, Three Half" income tax exemption/reduction program provides a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue foregone by the GOC and it provides a benefit to the recipient in the amount of the tax savings.[97] We also determine that the exemption/reduction is limited as a matter of law to certain enterprises, *i.e.*, productive FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.[98]

CIMC reported that it did not use the Two Free/Three Half Program.[99] Upon examination of all CIMC cross-owned companies' financial statements and tax documents, we continue to determine that CIMC did not use this program.[100]

[96] *See* Solar Cells IDM at 15-16 and Comment 25.
[97] *Id*.
[98] *Id.*
[99] *See* CIMC 7/28/2014 IQR at pages A-23, B-21, C-22, D-21, E-21 *and* CIMC 8/4/14 IQR at pages F-23, G-19.
[100] *See* CIMC 7/28/2014 IQR at pages A-23, B-21, C-22, D-21, E-21,and CIMC 8/4/2014 IQR at pages F-23, G-19, I-19, and J-20.

Singamas reported that only one of its cross-owned companies, HPCL, benefited from the Two Free/Three Half Program. To calculate the benefit, we treated the income tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the company's tax rate to the rate it would have paid in the absence of the program. We calculated the countervailable subsidy rate of 0.39 percent *ad valorem* for Singamas by dividing the total benefit during the POI by the combined total POI sales by respondent producers (*i.e.*, QPCL, HPCL and QSCL), exclusive of intercompany sales, in accordance with the attribution rule under 19 CFR 351.525(b)(6)(ii).

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

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

The Department previously determined that this program is *de jure* specific and, thus, found it countervailable.[101] Consistent with earlier cases, we continue to determine that this program constitutes a countervailable subsidy.[102] The exemption/reduction is a financial contribution in the form of revenue foregone by the GOC, and it provides a benefit to the recipient in the amount of the tax savings.[103] We also determine that the exemption/reduction afforded by the program is limited as a matter of law to certain enterprises, *i.e.*, HNTEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

Nantong CIMC and Xinhui Special were recognized as HNTEs during the POI.[104] As a result, the government reduced both companies' income tax rate from 25 percent to 15 percent pursuant to this program. To calculate the benefit, we compared the income tax rate that Nantong CIMC and Xinhui Special would have paid in the absence of the program (25 percent) to the income tax rate that the companies actually paid (15 percent). We treated the income tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To calculate the benefit for the POI, we divided the benefit by a denominator comprised of combined sales of producers Nantong CIMC, Xinhui Special, Qingdao CIMC and Xinhui Container (exclusive of inter-company sales), pursuant to the attribution rule under 19 CFR 351.525(b)(6)(ii).

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

[101] *See* Solar Cells IDM at 16-17 and Comment 25.
[102] *Id.*
[103] *Id. See also* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[104] *See* CIMC 7/28/2014 IQR at pages A-23 and C-22.

8. Enterprise Tax Law Research and Development Program Grants

Article 30.1 of the EITL created a new program regarding the deduction of research and development expenditures by companies, which allows enterprises to deduct from taxable income research expenditures incurred in the development of new technologies, products, and processes. Article 95 of Regulation 512 provides that, if eligible research expenditures do not "form part of the intangible assets value," an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount. Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets costs. Xinhui Special, Nantong CIMC, Qingdao CIMC and Xinhui Wood reported benefitting from this program during the POI. The Department previously found in *Wind Towers from the PRC* and *Solar Cells from the PRC* that this program constitutes a countervailable subsidy.[105]

The Department verified the specificity of this program in *Wind Towers from the PRC*.[106] This income tax deduction is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also continue to determine that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with research and development in eligible high-technology sectors and, thus, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program to Xinhui Special, Nantong CIMC, Qingdao CIMC and Xinhui Wood, we treated the tax credits as recurring benefits, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax the companies would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). We then divided the tax savings by the appropriate total sales denominator (exclusive of inter-company sales), as described in the "Subsidies Valuation" section above, pursuant to the attribution rules under 19 CFR 351.525(b)(6)(ii) and 19 CFR 351.525(b)(6)(iv).

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

[105] *See* Wind Towers IDM at 18-19 and Comment 17; *see also* Solar Cells IDM at 17 and Comment 25.
[106] *See* Wind Towers from the PRC IDM at 18-19.

9. Post-Preliminary Grant Programs[107]

Grant Programs Received by CIMC

Grants to CIMC Group

Supported Fund of Patent Application, *also known as* "Special Fund for Intellectual Property Rights"

CIMC Group stated that it applied for funding under this program by providing evidence of expenses incurred in filing patent and invention applications relating to technological intellectual property with local science and technology authorities in Shenzhen City. CIMC Group stated that this is not a recurring program.[108]

The GOC stated that this program, which it named "Special Fund for Intellectual Property Rights," was established in 2011 to promote development of certain intellectual property rights (*e.g.*, patents, trademarks and copyrights). The program is provided pursuant to the *Measures for Administration of Special Fund on Intellectual Property Rights in Shenzhen* (*Special Fund on IPs*), and is administered by the Market Supervision and Administration Bureau of Shenzhen and the Financial Committee of Shenzhen. The GOC stated that CIMC Group was the only respondent that received benefits related to this program during the POI.[109]

To apply for funds under this program, companies may apply via the official website of the administering agency. After receiving an application, the agency will conduct a "desk review" of the application. In some instances, the agency may request a meeting with the applicant company on a seasonal basis to accept and review applications at their own premises.[110] According to Article 7 of the *Special Fund on IPs*, applicants who are classified by the municipal government as belonging to "strategic emerging industries" receive preferential consideration upon application for funding under this program. Article 7 also requires that more than 80 percent of the fund is to be used in support of invention patent, PCT patent application, overseas trademark registration, computer software copyright registration, "and others."[111]

The Department continues to determine that grants received under this program constitute a financial contribution, in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act, and confer a benefit in the amount of the grants under section 771(5)(E) of the Act and 19 CFR 351.504(a).

Furthermore, based on the fact that "strategic emerging industries" receive preferential treatment under this program and that the majority of funding is limited to intellectual property rights

[107] *See* Post-Preliminary Analysis Memorandum.
[108] *See* CIMC's September 29, 2014, supplemental questionnaire response (CIMC 9/29/2014 SQR) at Exhibit 4.
[109] *See* GOC's October 9, 2014, supplemental questionnaire response (GOC 10/9/2014 SQR) at 2-3 and Exhibit 86.
[110] *See* GOC's 10/9/2014 SQR at 5.
[111] *Id*. at 2 of Exhibit 86.

development, we continue to find this program to be *de jure* specific under section 771(5A)(D)(i) of the Act.[112]

To calculate the subsidy rate from this program, we divided the amount of the grant by the total POI sales of Xinhui Special, Nantong CIMC, Qingdao CIMC and Xinhui Container, pursuant to the attribution rule under 19 CFR 351.525(b)(6)(ii),[113] which yields a countervailable subsidy under this program of 0.01 percent *ad valorem* for the POI.

2013 Shenzhen Standard Strategic Funding Plan Fund, *also known as* "Standardization Implementation Program"

CIMC Group received a grant under this program during the POI. CIMC Group stated that it applied for a grant under this program by providing evidence of its contributions and/or amendments to certain national and industrial standards relating to general business operations. CIMC Group stated that this is not a recurring program.[114]

The GOC stated that this program was established by the Shenzhen Finance Committee in 2008 to promote the standardization of manufacturing and other business activities. According to the GOC, the program is jointly administered by the Shenzhen Finance Committee and the Market Supervision and Administration Bureau of Shenzhen and funded by Shenzhen Municipality.

To apply for funds under this program, companies file an application complete with relevant supporting documents to the municipal authority. After the municipal authority conducts a preliminary review of the application, it will forward eligible projects to the Evaluation Commission for further consideration. The municipal authority publicizes the proposed projects and, if no objections are raised during the period of public notice, the municipal authority notifies the applicants and issues the program funds jointly with the municipal finance department.[115]

[112] In previous proceedings, the Department determined similar types of programs relating to technological innovation and intellectual property rights to be *de jure* specific. *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 Issues and Decision Memorandum at 34 (finding "Technical Standards Awards" *de jure* specific "to certain enterprises, namely those involved in technical standards projects, which comply with the direction of industrial development in the Changzhou Municipality and Xinbei District, pursuant to section 771(5A)(D)(i) of the Act."); *Citric Acid from the PRC 2011*, and accompanying Issues and Decision Memorandum at 31 (finding the program "Technology Innovation Advanced Unit Award" *de jure* specific "because the grant is limited to enterprises with technology innovation projects.").

[113] We requested other sales information from the respondent based upon revenue reported in the CIMC Group's 2013 annual report in order to determine whether this information would serve as an appropriate sales denominator for this program; however, CIMC did not respond to our request for information. For further discussion regarding the sales denominator utilized for this calculation, *see* Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from China: Preliminary Determination Calculations for CIMC, Memorandum from Yasmin Nair and Ilissa Kabak Shefferman, International Trade Compliance Analysts, to Richard Weible, Office Director, September 22, 2014 (CIMC Preliminary Calculation Memorandum).

[114] *See* CIMC 9/29/2014 SQR at Exhibit 5.

[115] *See* GOC's 9/3/2014 SQR at 20-25 and GOC's 9/12/2014 SQR at 1-4.

The GOC stated that the standardization activities eligible for this program should conform to Shenzhen industrial policy and development goals, be conducive to enhancing innovation and development of scientific and technological industrialization advancements, help improve domestic and international competitiveness of Shenzhen and be conducive to personal and property safety, health and environmental protection.[116] Moreover, the GOC sets maximum grant amounts that correlate to the type of standardization under which the applicant applies and what role the applicant plays in formulating and/or conforming to such standards. For example, an applicant conforming to a newly formulated standard will receive more funding under the program than an applicant that conforms to a revised standard. Furthermore, an applicant that plays a leading role in completion of a newly formulated standard will receive more funding than an applicant that plays a supporting role for the same standard.[117]

The Department determines for this final determination that a grant received under this program constitutes a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act, and confers a benefit in the amount of the grant within the meaning of section 771(5)(E) of the Act and 19 CFR 351.504(a). Furthermore, because this grant is limited to projects conforming to Shenzhen industrial policy and technological innovation, we find this program to be *de jure* specific under section 771(5A)(D)(i) of the Act, consistent with the Department's findings in prior proceedings, such as *Citric Acid from the PRC 2011*.[118]

To calculate the subsidy rate from this program, we divided the amount of the grant by the total POI sales of Xinhui Special, Nantong CIMC, Qingdao CIMC and Xinhui Container,[119] resulting in a countervailable subsidy under this program of 0.01 percent *ad valorem*. CIMC Group also received grants under this program prior to the POI. To calculate the benefit from these grants, we first applied the "0.5 percent expense test" as described in the "Allocation Period" section above and pursuant to 19 CFR 351.524(b)(2).[120] Because the benefit of these grants did not exceed the 0.5 percent threshold, these grants were expensed in the year of receipt.

[116] *See* GOC's 9/3/2014 SQR at 25.
[117] *See* GOC's 9/12/2014 SQR at 1-2.
[118] In other cases, the Department has determined similar types of programs relating to technological innovation to be *de jure* specific. *See, e.g., Citric Acid from the PRC 2011,* and accompanying Issues and Decision Memorandum at 31-32 (discussing Technology Innovation Advanced Unit Award; Shandong Province Science and Technology Development Fund, which the Department found *de jure* specific because "receipt of assistance under the program is limited in law to certain enterprises, *i.e.*, companies with science and technological development projects").
[119] We requested other sales information from the respondent based upon revenue reported in the CIMC Group's 2013 annual report in order to determine whether this information would serve as an appropriate sales denominator for this program; however, CIMC did not respond to our request for information. For further discussion regarding the sales denominator utilized for this post-preliminary calculation, *see* CIMC Preliminary Calculation Memorandum.
[120] *See Preliminary Determination*, and accompanying Preliminary IDM at 6.

Grants to Nantong CIMC

Nantong Municipal Science & Project Tech Project Fund

Nantong CIMC applied for and received funding under this program in 2011, 2012, and 2013.[121]

The GOC stated that this program is intended to support the scientific and technological innovation of Nantong City's economy by providing assistance to projects deemed to be innovative. The funds granted under this program typically are not more than 30 percent of the total investment of each project. This program is co-administered by the Bureau for Science and Technology of Nantong City and the Bureau of Finance of Nantong City.[122]

To apply for funds under this program, companies file an application to district-level authorities. Once approved at the district level, the application is forwarded to city-level counterpart authorities for final review and approval. For this final review process, the city-level authorities review and verify on-site, when needed, the applicant's creditworthiness, innovative capacity and financial and technological perspectives of the project, among other elements. Once completed, the city-level authorities issue a preliminary decision list, which is published for public comment. After the public comment period is completed, a final decision will be made and a contract will be signed which sets forth specific research and development targets and "verifiable specifics." Regarding eligibility, the GOC stated that companies located in certain designated areas may be favorably considered, as well as companies from certain designated industries such as marine engineering, new materials and energy-saving industries.[123] The GOC reported that Nantong CIMC was the only respondent in this investigation that received funding under this program.

In response to further questioning regarding this program, the GOC stated that it was unable to respond. Specifically, the GOC declined to provide the laws and regulations governing this program.[124] This information is necessary for determining whether the program is specific within the meaning of section 771(5A) of the Act.

Consequently, we continue to find in this final determination, as we did in the post-preliminary analysis,[125] that necessary information is not available on the record and that the GOC withheld information that was requested of it. Thus, we are resorting to the facts available under section 776(a)(1) and (a)(2)(A) of the Act. Furthermore, we find that the GOC failed to cooperate to the best of its ability in complying with our request 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. Thus, 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 Nantong Municipal Science & Project Tech Project Fund is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. We also note that in previous

[121] *See* Post Preliminary Analysis Memorandum at 5.
[122] *See* GOC 10/22/2014 SQR at 1-2.
[123] *Id*. at 4-5.
[124] *See* GOC 10/22/2014 SQR at 2.
[125] *See* Post-Preliminary Analysis Memorandum at 6.

proceedings, such as *Citric Acid from the PRC 2011*, the Department has determined similar programs to be *de jure* specific.[126]

Finally, we find that grants received under this program constitute a financial contribution in the form of a direct transfer of funds, pursuant to section 771(5)(D)(i) of the Act, and confer a benefit under section 771(5)(E) of the Act and 19 CFR 351.504(a).

To calculate the subsidy rate from this grant program, we divided the amount of the grant conveyed to Nantong CIMC by the total POI sales of Xinhui Special, Nantong CIMC, Qingdao CIMC and Xinhui Container, pursuant to the attribution rule under 19 CFR 351.525(b)(6)(ii), resulting in a countervailable subsidy of 0.01 percent *ad valorem*.[127] Nantong CIMC also received grants under this program prior to the POI. To calculate the benefit from these grants, we first applied the "0.5 percent expense test" as described in the "Allocation Period" section above and pursuant to 19 CFR 351.524(b)(2). Because the benefit of these grants did not exceed the 0.5 percent threshold, these grants were expensed in the year of receipt.

Nantong Special Fund on Energy Saving & Industry Recycling

Nantong CIMC received a grant under this program during the POI. Nantong CIMC filed applications with local government agencies and was given final funding approval.[128]

The GOC stated that this program was established in 2012 to promote rapid upgrading and transformation of Nantong City's industrial sectors. The GOC reported that funding under this program, which normally does not exceed more than 10 percent of investment in equipment or is less than 500,000 RMB, whichever is lower, is provided to industrial projects implemented by manufacturing enterprises for purposes of technological transformation, "green" manufacturing and others. The administering authority of this program is the Commission of Economy and "Informationization" of Nantong City.[129]

To apply for funding under this program, companies need to file an application with an audit report to district-level authorities. Once the district-level authorities complete a preliminary review of the application, it is forwarded to the city-level administering authority within ten days after the application deadline. The city-level authorities conduct a second preliminary review and submit applications to a group of experts for peer review or an on-site verification, if necessary. A final decision will be made based on the outcome of this second preliminary review, with the signing of an implementation agreement.[130] Regarding eligibility, the GOC stated that the program is focused on projects supporting "green" manufacturing and technological upgrading, especially those with more than one million RMB investment in equipment and with an energy savings of more than 200 tons of standard coal.[131]

[126] *See, e.g.*, *Citric Acid from the PRC 2011*, and accompanying Issues and Decision Memorandum at 31-32.
[127] For further discussion regarding the sales denominator utilized for this post-preliminary calculation, *see* CIMC Preliminary Calculation Memorandum.
[128] *See* CIMC 9/2/2014 SQR at Exhibit Supp. C-16.
[129] *See* GOC 10/22/2014 SQR at 9-10.
[130] *Id*. at 12.
[131] *Id*. at 14.

In response to further questioning regarding this program, the GOC stated that it was unable to respond. Specifically, the GOC declined to provide the laws and regulations governing this program.[132] This information is necessary for determining whether the program is specific within the meaning of section 771(5A) of the Act.

Consequently, we continue to determine in this final determination, as we did for the post-preliminary analysis, that necessary information is not available on the record and that the GOC withheld information that was requested of it within the meaning of section 776(a)(1) and (a)(2)(A) of the Act.[133] Consequently, we are resorting to facts otherwise available. Furthermore, we find that the GOC failed to cooperate to the best of its ability in complying with our request 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. Therefore, 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 Nantong Municipal Science & Project Tech Project Fund is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. We also note that in prior proceedings, such as *Citric Acid from the PRC 2011,* the Department has determined similar programs to be *de jure* specific.[134]

Finally, we find that grants received under this program constitute a financial contribution in the form of a direct transfer of funds, and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively, and 19 CFR 351.504(a).

To calculate the subsidy rate from this grant program, we divided the amount of the grant conveyed to Nantong CIMC by the total POI sales of Xinhui Special, Nantong CIMC, Qingdao CIMC and Xinhui Container, pursuant to the attribution rule under 19 CFR 351.525(b)(6)(ii), resulting in a countervailable subsidy of 0.01 percent *ad valorem*.[135]

Grant Programs Received by Singamas

Grants to QSCL:

Incentives to Further Promote Industrial Economy, *also known as* "Incentives for Further Promoting Faster Development of Industrial Economies"

QSCL received a grant under this program on April 26, 2013. QSCL stated that the program was administered by the Development and Reform Commission of Qidong Government, and the payment was for the year 2012 but was received in 2013.[136] QSCL further stated that a grant was also received by QSCL on September 18, 2013, for the year 2013. QSCL stated that it did

[132] *See* GOC 10/22/2014 SQR at 2.
[133] *See* Post-Preliminary Analysis Memorandum at 7-8.
[134] *See Citric Acid from the PRC 2011*, and accompanying Issues and Decision Memorandum at 31-32.
[135] For further discussion regarding the sales denominator utilized for this post-preliminary calculation, *see* CIMC Preliminary Calculation Memorandum.
[136] *See* Singamas' August 25, Supplemental Questionnaire response (Singamas 8/25/2014 SQR) at 12.

not undertake any application and approval process to receive benefits under the program.[137] Singamas stated that this is not a recurring program.[138]

The GOC stated that this program, literally translated as "Incentives for Further Promoting Faster Development of Industrial Economies," was established by the Qidong City government in Jiangsu Province in 2012 to stabilize the local economy during a period of "complicated macroeconomic and business conditions." The GOC stated that Qidong Singamas Energy Equipment Co., Ltd. was the only respondent in this investigation that received assistance under this program. The GOC declined to respond to any additional questions regarding this program.[139]

Consequently, we determine in this final determination, as we did in the post-preliminary analysis, that necessary information is not available on the record and that the GOC withheld information that was requested of it within the meaning of section 776(a)(1) and (a)(2)(A) of the Act.[140] Specifically, the GOC did not provide the laws or regulations governing this program, nor did it answer any questions regarding the total grant amounts awarded under this program to all recipients during the POI. We also find that the GOC failed to cooperate to the best of its ability in complying with our request 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 information that would allow the Department to conduct a *de jure* or *de facto* specificity analysis. Therefore, 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 this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

Finally, we find that grants received under this program constitute a financial contribution in the form of a direct transfer of funds pursuant to section 771(5)(D)(i) of the Act, and confer a benefit under section 771(5)(E) of the Act and 19 CFR 351.504(a).

To calculate the subsidy rate from this grant program, we divided the amount of the grant conveyed to QSCL by the total POI sales of QSCL, QPCL and HPCL, pursuant to the attribution rule under 19 CFR 351.525(b)(6)(ii), resulting in a countervailable subsidy rate of 0.02 percent *ad valorem*.

B. Programs Determined to Confer No Benefit in the POI

1. <u>"Famous Brands" Program</u>

CIMC Group reported receiving two, non-recurring grants during the AUL under the Famous Brands program.[141] This program is administered at the central, provincial and municipal government levels. Qualifying companies receive grants, loans and other incentives to enhance export activity.

[137] *Id.* at 13.
[138] *Id.* at 14.
[139] *See* GOC's 10/9/2014 SQR at 1.
[140] *See* Post-Preliminary Analysis Memorandum at 9.
[141] *See* CIMC 9/2/2014 SQR at page Supp. E-3.

We continue to determine that the grants received under the famous brands program constitute a financial contribution in the form of a direct transfer of funds, and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively, and 19 CFR 351.504(a). We find this program to be specific under sections 771(5A)(A) and (B) of the Act.[142]

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

2. Other Grant to Singamas

Singamas reported receiving one grant during the AUL.[143] The grant was received by HPCL under a program to encourage export-oriented industries. This grant constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act and is specific because it is contingent on export within the meaning of section 771(5A)(B) of the Act. To calculate the benefit from the grant, we first applied the "0.5 percent expense test" as described in the "Allocation Period" section above. We used the smallest denominator, *i.e.*, export sales, to measure the benefit received. In calculating a benefit for this grant to Singamas, we determine that it does not meet the 0.5 percent threshold for allocation over the AUL period, pursuant to 19 CFR 351.524(b)(2). Therefore, we continue to determine that this grant received by Singamas provided no benefit during the POI because the benefit from the grant was expensed prior to the POI in the year of receipt.

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

The Department is examining whether the HRS I-beams which CIMC and Singamas purchased were provided at less than adequate remuneration. As instructed in the Department's questionnaires, Singamas identified the suppliers and producers from whom it purchased HRS I-beams during the POI.[144] CIMC reported that it did not purchase this input during the POI.[145]

The GOC reported that Singamas purchased HRS I-beams from companies that the GOC has classified as SOEs, as well as from companies that the GOC claims to be "privately-held." We understand the GOC's classification of certain companies as "SOEs" to mean that those companies are majority-owned by the government. As explained in the Public Body

[142] *See Pre-Stressed Concrete 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 "Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level."
[143] *See* Singamas' Third Supplemental Response, dated August 25, 2014 at 8
[144] *See* Singamas' July 28, 2014 submission at Exhibit CVD-33.
[145] *See* CIMC 7/28/2014 IQR at pages A-18, B-17, C-18, D-17, and E-17 *and* 8/4/2014 IQR at pages F-19, G-16, I-15, J-16.

Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.[146] 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 continue to find for this final determination that these entities are "authorities" within the meaning of section 771(5)(B) of the Act and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.[147] Further, we find that the respondents received a benefit to the extent that the price they paid for the HRS I-beams produced by these suppliers was for LTAR under section 771(5)(E)(iv) of the Act.

Further, as explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are also treating the other domestic producers that supplied HRS I-beams to the respondents as "authorities" under the Act. Therefore, we continue to determine that the provision of I-beams from all domestic producers is a financial contribution in the form of a provision of a good under section 771(5)(D)(iii) of the Act and that the respondents received a benefit to the extent they paid a price at LTAR for the HRS I-beams from these suppliers.

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

Finally, regarding benefit, the Department identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services pursuant to 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.[148] This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

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

[146] *See* Memorandum from Ilissa Kabak Shefferman, International Trade Compliance Analyst to the File, "Placement of information onto the record" at Attachment 1 (September 22, 2014).
[147] *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.
[148] *See* Lumber IDM at "Market-Based Benchmark."

considered significantly distorted and may not be an appropriate basis of comparison for determining whether there is a benefit.[149]

As discussed, above, in "Application of Facts Available," we are relying on record information[150] showing that state-owned producers of HRS sheet and strip account for at least 67 percent of PRC production during the POI and, thus, we finding that the government has a predominant and distortive role in the market. Consequently, the use of domestic producer prices in the PRC is inappropriate for deriving a benchmark because such a benchmark would reflect the distortions of the government's involvement.

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

To calculate the benefit during each month of the POI, we used as a benchmark a monthly, weighted-average world market price for I-beams obtained from the Global Trade Atlas (GTA).[151]

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

Petitioner submitted benchmark ocean freight prices based on Maersk freight rates in 2013 for shipments of steel in a 40-foot standard container from Hamburg, Germany and Felixstowe, Great Britain to Qingdao, China.[152] Neither CIMC nor Singamas submitted benchmark data for ocean freight. To calculate ocean freight that more accurately reflects the regional FOB export prices used to compile HRS benchmark prices, we used an average of the ocean freight rates submitted by Petitioner and the ocean freight rates used by the Department in the *SWR* investigation, which we have placed on the record of this case, as discussed above.[153] We calculated a simple average of the two ocean freight rates submitted by Petitioner and modified our *Preliminary Determination* by using the individual average USD/MT freight calculations from the *SWR* investigation when calculating the simple average.

---

[149] *See Countervailing Duties; Final Rule*, 63 FR at 65377.
[150] *See* GOC IQR at Exhibit 34.
[151] *See* Calculation Worksheets and Singamas Preliminary Calculation Memorandum, Memoranda in which we explain the methodology that is unchanged in the Final Determination other than using the minor corrections to reported I-Beams.
[152] *See* Petitioner submission on benchmarks dated September 8, 2014, at pages 3-4 and table 6.
[153] *See Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 FR 38490 (July 8, 2014), and accompanying Preliminary Decision Memorandum at 30 (final determination not yet issued); *and* Petitioner's submission on benchmarks dated June 2, 2014 entitled "Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Submission of Factual Information- Benchmark Data", which we are placing on the record of this proceeding at Attachment 3 of the Preliminary Benchmark Memorandum).

We also added the VAT and import duties applicable to imports of HRS I-beams into the PRC. We compared these prices to Singamas actual purchase prices, including any taxes and delivery charges incurred to deliver the product to the respondent's plants.[154]

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

4. Advance Unit for Enterprise Investment, *also known as* "Award for Elite Persons and Enterprises for their Contributions in 2012"

QSCL stated that it received a grant under this program during the POI. QSCL stated the program was administered by the Development and Reform Commission of Qidong Government, and the payment was received in 2013.[155] QSCL stated that it did not undertake any application and approval process to receive benefits under the program. Singamas stated that this is not a recurring program.[156]

The GOC stated that this program, literally translated as "Award for Elite Persons and Enterprises for their Contributions in 2012," was established in 2013 by Huiping Town Government in Qidong City, Jiangsu Province. The purpose of this program is to award "natural persons and enterprises" for their contribution to the development to the local community. The GOC stated that QSCL was the only mandatory respondent in this instant case to receive this grant during the POI.[157] The GOC declined to respond to any additional questions regarding this program.

Consequently, we determine in this final determination, as we did in the post-preliminary analysis, that necessary information is not available on the record and that the GOC withheld information that was requested of it within the meaning of section 776(a)(1) and (a)(2)(A) of the Act.[158] Specifically, the GOC did not provide the laws or regulations governing this program, nor did it answer any questions regarding the total grant amounts awarded under this program to all recipients during the POI. We also find that the GOC failed to cooperate to the best of its ability in complying with our request 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 information that would allow the Department to conduct a *de jure* or *de facto* specificity analysis. Therefore, an adverse inference is warranted in the application of facts

[154] *See* Singamas' Preliminary Calculation Memorandum in which we explain the methodology that is unchanged in the Final Determination, other than using the minor corrections to reported I-Beams.
[155] *Id.* at 18.
[156] *Id.*
[157] *See* GOC's 10/9/2014 SQR at 1-2.
[158] *See* Post-Preliminary Analysis Memorandum at 10.

available under section 776(b) of the Act. In drawing an adverse inference, we find that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

Finally, we find that grants received under this program constitute a financial contribution in the form of a direct transfer of funds pursuant to section 771(5)(D)(i) of the Act, and confer a benefit under section 771(5)(E) of the Act and 19 CFR 351.504(a).

To calculate the subsidy rate from this grant program, we divided the amount of the grant conveyed to QSCL by the total POI sales of QSCL, QPCL, and HPCL, pursuant to the attribution rule under 19 CFR 351.525(b)(6)(ii), resulting in a countervailable subsidy rate that is less than 0.005 percent in the POI, and as such, this rate does not have an impact on Singamas' overall subsidy rate. Thus, consistent with our practice, we have not included this program in our net subsidy rate calculations for Singamas.

VIII. ANALYSIS OF COMMENTS

CIMC Issues

Comment 1: Whether the Department should correct the *ad valorem* subsidy rate with respect to loans that CIMC received during the POI from the China Export-Import Bank.

CIMC Comments

- CIMC alleges that in the *Preliminary Determination*, the Department incorrectly divided the total POI loan benefit amount by a denominator comprised only of the POI export sales values of the five CIMC subsidiary companies directly involved in the production of the subject domestic containers and related inputs. CIMC alleges this approach is inconsistent with the Department's intention to divide the total loan benefit amount by CIMC Group's total consolidated export sales during the POI and asks the Department to change the denominator used to calculate the rate for Export Sellers Credits.[159]

No other parties commented on this issue.

Department's Position: We verified an export sales figure that represents CIMC Group's Container Business Sector's export sales for the POI.[160] We believe that this verified export sales figure is appropriate to use as the denominator for the benefit calculation for the Export Seller's Credit program. For this final determination, the calculated rate for the Export Sellers Credits Program utilizing this verified export sales figure as the denominator is 1.13 percent.

[159] *See* CIMC Case Brief at 2-3.
[160] *See* CIMC Verification Report at page 5.

Comment 2: Whether CIMC is a state owned enterprise (SOE) such that it could benefit from the loans to SOEs program

CIMC Comments

- CIMC argues there is no record evidence to support that it is an SOE, and instead ample record evidence demonstrates that CIMC is not an SOE, based on three main points:
  - (i) CIMC is not majority-owned directly, or indirectly, by the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) or the GOC;
  - (ii) CIMC is controlled only by individual, public shareholders, not SASAC or the GOC; and
  - (iii) CIMC is not classified as an SOE under Chinese law.[161]

- CIMC states that the Department's *Preliminary Determination* that CIMC is an SOE was based on an erroneous finding as to Hony Capital, which was contrary to record evidence demonstrating that CIMC is an independent enterprise.[162]

- CIMC disputes the Department's determination that Hony Capital's indirect majority ownership stake in CIMC is the basis for the Department's decision to treat CIMC as an SOE and thus make CIMC eligible for the alleged SOE loan program.[163]

- Specifically, and citing to the preliminary determination in the companion antidumping investigation, CIMC argues that Hony Capital should be omitted from the calculation of SASAC's indirect ownership in CIMC. CIMC argues that in the companion case, the Department found that indirect SASAC ownership in CIMC equaled only 48.26 percent, not the 53.45 percent majority ownership stake cited in the *Preliminary Determination*.[164]

- CIMC alleges that in its *Preliminary Determination*, the Department cited no record evidence in concluding that Hony Capital is related in any way to China Merchants Group Limited (China Merchants) or COSCO Container Industries Ltd. (COSCO), and no such record evidence exists.[165]

- CIMC argues that SASAC only has a 36.82 percent indirect ownership stake in CIMC, and that ownership is divided between China Merchants Group Limited ("China Merchants") or COSCO Container Industries Ltd. ("COSCO"). CIMC claims these two entities are unrelated to each other.[166] CIMC cites to record evidence to argue that an attenuated, minority GOC ownership in a publicly traded company such as CIMC cannot

[161] *See* CIMC Case Brief at 4.
[162] *Id.*
[163] *Id.*
[164] *Id.* at 5.
[165] *Id.*
[166] *Id.* at 6.

be a basis for finding that CIMC is an SOE or benefited from any subsidy program limited to SOEs.[167]

- CIMC further claims that there is no evidence that COSCO and China Merchants operate as one under SASAC's direction or that they otherwise coordinate with each other.[168] CIMC argues that "{e}ven if the ownership shares of COSCO and China Merchants are combined, this 36.82 percent total indirect ownership interest (or the 48.26 indirect ownership interest the Department calculated in the concurrent antidumping duty investigation) does not give SASAC, COSCO, or China Merchants a majority stake in CIMC." [169]

- CIMC states that CIMC is majority-owned by public shareholders. Citing to record evidence, CIMC claims that 51.71 percent of shares are owned by public shareholders through the publically traded stock exchanges in Shenzhen and Hong Kong.[170] By contrast, CIMC claims that SASAC indirectly holds only approximately 14 percent of CIMC's shares through China Merchants and its subsidiaries, and 22.75 percent of CIMC's shares through COSCO and its subsidiaries. Therefore, contends CIMC, the only majority interest in CIMC is held collectively by individual shareholders.[171]

- CIMC believes that CIMC's formal legal status under Chinese law as an FIE means the Department should not determine that CIMC benefited from an alleged program involving preferential loans for SOEs.[172] Citing to record evidence, CIMC argues that CIMC and the respondent exporters are not SOEs. CIMC argues that is it governed by FIE laws, not China's SOE law. [173]

- Consistent with the Department's prior practice regarding the alleged provision of preferential loans to SOEs, CIMC's formal legal status as a "Sino-Foreign Equity Joint Venture," not an SOE, dictates that no CIMC companies were eligible for the loans to SOEs program. The cases where the Department has countervailed this alleged program are inapposite.[174] In other cases, where this program was found not used, respondent companies were not legally designated as SOEs, as is the case with CIMC.[175] In no prior

[167] *Id.* at 6-7.
[168] *Id.* at 7.
[169] *Id.*
[170] *Id.* at 7-8.
[171] *Id.* at 8-9.
[172] *Id.* at 9.
[173] *Id.* at 9-10.
[174] *Id.* at 10-11 (citing, *e.g.*, *Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 FR 38490 (July 8, 2014), and accompanying Preliminary Decision Memorandum at Section XI; *Countervailing Duty Investigation of Grain-Oriented Electrical Steel From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 79 FR 13617 (March 11, 2014), and accompanying Preliminary Decision Memorandum at n.102; *High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012)).
[175] *Id.* at 11 (citing, *e.g.*, *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the*

investigation has the Department found a cooperative respondent not legally designated as an SOE to have used the alleged program.

Petitioner Rebuttal Comments

- Petitioner counters that CIMC is an SOE and has received countervailable subsidies under the GOC's program of preferential loans to SOEs. [176]

- Petitioner claims that the facts of CIMC's history, ownership, and current relation with SOEs show that CIMC is affiliated with and cross-owned with SOEs and that CIMC has been under the ownership and control of SOEs since its commencement of operations, including by China Merchants and its subsidiaries and COSCO and its subsidiaries. [177]

- Citing to record evidence, Petitioner claims COSCO and China Merchants Group, which are themselves SOEs, own 48.26 percent of the shares of CIMC and have had a dominant ownership position in CIMC since the commencement of operations at CIMC.[178] Petitioner adds that the data on share ownership in CIMC's 2013 Annual Report show that the so-called foreign investment represented by "H shares" trading on the Hong Kong Stock Exchange is actually predominantly owned by Chinese SOEs wholly owned and controlled by the GOC through SASAC, which "hardly qualifies as foreign investment."[179] Petitioner also cites to instances of shared executive officers to confirm the close affiliation between COSCO and China Merchants, which supports its contention that they must be considered together in evaluating the cross-ownership of CIMC with these two SOEs.[180]

Department's Position:

Based on the record of this investigation and consistent with our *Preliminary Determination*,[181] we continue to find for this final determination that CIMC Group is an SOE based on the GOC's 53.45 percent aggregate share of ownership through entities ultimately owned by SASAC, namely COSCO Container Industries Limited (COSCO) and China Merchants (CIMC) Investment Ltd., inclusive of the stake held by Hony Capital, which is in turn owned primarily by these two entities, as further detailed below.

We disagree with CIMC's argument that no record evidence exists to support the inclusion of Hony Capital's ownership in CIMC in our SOE analysis. First, the record details Hony Capital's

---

People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, (*Seamless Pip from the PRC*) 75 FR 57444 (September 21, 2010), and accompanying Issues and Decision Memorandum.

[176] *See* Petitioner's Rebuttal Brief at 6.

[177] *Id.* at 7.

[178] *Id.* at 5-10.

[179] *Id.* at 9.

[180] *Id.* at 10-11.

[181] *See* Memorandum to Angelica Mendoza, Program Manager, AD/CVD Operations Office VI, Enforcement and Compliance, entitled "Countervailing Duty Investigation of 53-Foot Domestic Dry Containers (Domestic Dry Containers) from the People's Republic of China: Preliminary Determination Calculations for CIMC," September 22, 2014 (CIMC Preliminary Calculations Memorandum).

ownership in CIMC.[182] Furthermore, page 100 of CIMC's 2013 Annual Report states that "Hony Capital Management Limited, through various subsidiaries, had an interest in the H shares of the Company, all of which 137,255,434 H shares (long position) were held in its capacity as interest of corporation controlled by the substantial shareholder."[183] We issued a supplemental questionnaire to CIMC asking for further clarification of the above-noted footnote regarding Hony Capital. In its response to the Department, CIMC stated that "{t}he phrase 'Interest of Corporation Controlled by the Substantial Shareholder' derives from the standard provisions of Divisions 2 and 3 of Part XV of the Securities and Futures Ordinance of Hong Kong, which requires identification of major shareholders with relatively substantial share ratios."[184] Our interpretation of the footnote and CIMC's clarification of said footnote is that Hony Capital is controlled by the "Substantial Shareholders" of CIMC which, as noted in the CIMC Preliminary Calculations Memorandum, are COSCO and China Merchants (CIMC) Investment Ltd.[185] As noted in the CIMC Preliminary Calculations Memorandum, both COSCO and China Merchants (CIMC) Investment Ltd. are Chinese SOEs with ultimate ownership by SASAC.[186] Thus, we continue to find for this final determination that Hony Capital is under the control of both or either COSCO and China Merchants (CIMC) Investment Ltd., the two Chinese SOEs with major direct and indirect shareholding in CIMC. Due to SASAC's ultimate ownership in both major shareholders,[187] and due to the apparent control by these shareholders over Hony Capital, we find that Hony Capital is also ultimately controlled by SASAC, and its ownership shares should continue to be included in our state ownership analysis for this final determination.

CIMC's comparison of the inclusion of Hony Capital in the SOE analysis in this investigation with the exclusion of Hony Capital in the separate rate analysis in the companion AD investigation is misplaced, given that the AD and CVD investigations are separate proceedings and the analysis of the company in each, based on a separate record, is directed to a different purpose. The factual information pertaining to Hony Capital on the record of the present investigation is different than what is on the record in the concurrent AD investigation. In any event, we note that CIMC is considered part of the non-market economy entity in the concurrent AD investigation.

We also disagree with CIMC's characterization of the relationship between COSCO and China Merchants (CIMC) Investment Ltd. and the effect it purportedly has on the Department's state ownership analysis of CIMC. In determining whether a respondent is state-owned, our practice is to aggregate the equity shares in the company held by the GOC, whether directly or indirectly through other state-owned or controlled entities. The argument that we must additionally show coordination between the various governmental stakeholders has no basis in either U.S. law or the Department's regulations. Thus, for our final determination, we continue to find that CIMC is an SOE, based on the total direct and indirect equity shares in CIMC owned by COSCO, China

[182] *See* CIMC's July 28, 2014 initial questionnaire response (CIMC 7/28/2014 IQR) at Exhibit E-3, CIMC's 2013 Annual Report at page 100, and Exhibit Supp. E-5 of CIMC 9/2/2014 SQR.
[183] *Id.*
[184] *See* CIMC's September 2, 2014 supplemental questionnaire response (CIMC 9/2/2014 SQR) at page Supp E-7.
[185] *See* CIMC 7/28/2014 IQR at Exhibit E-3, CIMC's 2013 Annual Report, at page 100
[186] *See* CIMC Preliminary Calculation Memorandum at page 2.
[187] *See* CIMC 7/28/2014 IQR at Exhibit E-3, CIMC's 2013 Annual Report, at page 103.

Merchants (CIMC) Investment Ltd., and Hony Capital, all of which are ultimately owned or controlled by SASAC, as discussed above.

We further disagree with CIMC's arguments that the Department should not find it to be an SOE because it is majority owned by public shareholders and is an FIE. First, as stated above, we are finding CIMC to be an SOE based on the aggregate total of equity shares in the company held by entities ultimately owned or controlled by SASAC. Second, CIMC fails to explain why a company cannot be both an SOE and an FIE, or how being subject to the laws pertaining to FIEs should necessarily preclude the company from having SOE status for certain purposes.

Because we continue to find that CIMC is an SOE for these final results, we also continue to find that CIMC was able to receive a benefit under the preferential loans to SOEs program. See Comment 4 for further discussion on our findings with regard to this program.

Comment 3: Whether the Preferential Lending to SOEs program is specific

CIMC Comments

- If the Department continues to find CIMC to be an SOE, the Department should not find specificity for the preferential lending to SOEs program because there is no evidence that the GOC limited the alleged benefits to a category of enterprises that includes CIMC.[188] US law and the facts of this case preclude a determination of *de jure* or *de facto* specificity for the alleged preferential lending to SOEs program.[189]

- CIMC opines that section 771(5A)(D)(ii) of the Act and the WTO Appellate Body Report in *U.S.—Countervailing Duty Measures on Certain Products from China*, WT/DS437/AB/R, para. 4.129 (adopted January 16, 2015) ("*U.S.—Countervailing Measures (China) (AB)*"), establish that for the Department to find *de jure* specificity, the finding must be based on "some act (usually a written document) by the *Chinese government*, not the Department. . ."[190] CIMC argues that the program cannot be *de jure* specific because there is no written document or statement by the GOC establishing the existence of an SOE loan program, and because the GOC does not legally classify CIMC Group as an SOE.[191]

- CIMC argues that the program cannot be *de facto* specific because CIMC does not meet the four factors the Department may consider to determine *de facto* specificity: (1) the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number; (2) an enterprise or industry is a predominant user of the subsidy; (3) an enterprise or industry receives a disproportionately large amount of the subsidy; or (4) the manner in which the authority providing the subsidy has exercise discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over

[188] CIMC Case Brief at 12.
[189] *Id.*
[190] *Id.* at 13 (emphasis in original).
[191] *Id.* at 13-14.

others.[192] CIMC alleges that the Department cited to no statements, law or cases that an SOE loan program exists in China and that the WTO Appellate Body has explained that such a subsidy program is required to find a subsidy is *de facto* specific.[193]

No other parties commented on this issue.

Department's Position:

Relying on AFA, we continue to find this program to be specific, as noted in the Adverse Facts Available section above. As reflected in our *Preliminary Determination*, we twice requested information from the GOC pertaining to this program.[194] In its responses, the GOC first stated that "the questions are not applicable," then stated that the requested information does not exist.[195] The GOC did not provide us with the total amount of loans outstanding for the "Big Four" state-owned commercial or policy banks ("SOCBs"), and failed to provide the amount of loans provided by the "Big Four" SOCBs to SOEs. The GOC also failed to provide the same information for SOCBs as a group. In its response, the GOC explained that it was unable to provide the total amount of loans issued to SOEs because it did not maintain such information.[196] However, as we noted in our *Preliminary Determination*, in *Oil Country Tubular Goods ("OCTG") from the PRC*, the GOC was able to provide information regarding the total loans made by each of the "Big Four" SOCBs between 2002 and 2008 and how many of those loans were made to SOEs.[197] Thus, the GOC's claim in this proceeding that SOCBs do not maintain loan information specific to SOEs contradicts its responses in earlier proceedings.

Furthermore, regarding CIMC's allegation that our finding in the *Preliminary Determination* is inconsistent with recent WTO Appellate Body findings we note that, as an initial matter, the Department has the statutory authority to apply facts available with adverse inferences where an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority."[198] The Department notes that it has applied AFA in making findings of specificity in past proceedings.[199] CIMC's reliance on the WTO Appellate Body findings to argue that we failed to find a "program" prior to finding *de facto* specificity is misplaced, because the GOC's lack of cooperation regarding our specificity questions prevented us from doing the type of analysis CIMC urges.

---

[192] *Id.* at 14.
[193] *Id.* at 14-15.
[194] *See* Preliminary IDM at 16-17.
[195] *Id*. at 17.
[196] *Id*.
[197] *Id*. and Memorandum from Ilissa Kabak Shefferman, International Trade Compliance Analyst to the File, "Placement of information onto the record" at Attachment 2 – GOC QR from OCTG from the PRC. (September 22, 2014).
[198] Section 776(b) of the Act.
[199] *See, e.g., Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid from the PRC 2012*), and accompanying Issues and Decision Memorandum at Comment 5.A.

Comment 4: Whether the Department should apply adverse facts available in calculating the benefit CIMC received under the preferential lending to SOEs program

Petitioner Comments

- Petitioner claims that CIMC is an SOE and has received significant loans from state-owned commercial or policy banks under the GOC's program of preferential loans to SOEs.[200] Citing to the *Preliminary Determination*, Petitioner notes that the Department determined that CIMC received a countervailable subsidy pursuant to this program.[201]

- Petitioner notes that at the outset of verification, CIMC presented the Department with previously unreported loans that were outstanding during the POI to Xinhui Container, Nantong CIMC, and CIMC Group, which the Department determined not to accept because of the magnitude of changes posed by the newly reported loans as minor corrections.[202] Therefore, contends Petitioner, the new loan information was excluded from verification and was not verified. Petitioner believes that the failure of CIMC to provide this information means the Department has no basis to determine the benefit conferred to CIMC by these loans, and must apply AFA to determine the appropriate subsidy margin.[203] Therefore, Petitioner calls for an AFA rate of 10.54 percent to be applied, which is Departmental practice.[204]

CIMC Rebuttal Comments

- CIMC argues the application of AFA to certain previously unreported loans that CIMC disclosed during the first day of the Department's on-site verification is unwarranted. [205]

- CIMC reiterates the record evidence that it claims shows that CIMC is not an SOE and would not qualify for any alleged SOE loan program.[206] Furthermore, CIMC reiterates that there is no evidence that the alleged loan program is *de jure* or *de facto* specific.

- CIMC claims the Department should have accepted the unreported loans information at verification because they were minor corrections to information regarding loans which were already on the record and the information clarified information regarding loans, which was already on the record.[207]

- CIMC claims that the impact of the previously unreported loans is small. CIMC argues that these previously unreported loans would increase the subsidy rate from 0.01 percent

[200] *See* Petitioners Case Brief at 10.
[201] *Id*. at 11.
[202] *Id*. at 11-12.
[203] *Id*. at 12.
[204] *Id*. at 12-13.
[205] *See* CIMC Rebuttal Brief at 10.
[206] *Id*.
[207] *Id*.at 10-11.

to 0.07 percent and there is no evidence indicating that these loans were not reported due to any lack of cooperation by CIMC.[208]

- CIMC believes that Petitioner's call for the AFA rate of 10.54 percent would be punitive and inconsistent with the Federal Circuit's holding that the purpose of AFA "is to provide respondents with an incentive to cooperate, not to impose punitive, aberrational, or uncorroborated margins."[209]

- CIMC argues that applying AFA could be construed as a deterrent for cooperation since it would effectively punish CIMC for its disclosure and cooperation efforts. Moreover, CIMC argues that an increase in the *ad valorem* rate from 0.01 percent to 10.54 percent for an inadvertent human error, which was disclosed by CIMC at the beginning of the verification, "would result in a high aberrational margin calculation and would serve no purpose except to act as a punitive measure." CIMC adds that applying such an AFA rate would contravene the Department's overarching obligation to calculate margins "as accurately as possible."[210] Accordingly, if the Department finds that there is an SOE loan program, CIMC believes the Department should continue to apply the 0.01 percent *ad valorem* rate from the *Preliminary Determination*, or alternatively apply the 0.07 percent ad valorem rate to account for the previously unreported loans.[211]

Department's Position

As discussed above in Comment 2, for this final determination we continue to find that CIMC is an SOE. Furthermore, for the reasons discussed above in Comment 3, we continue to find this program specific on the basis of AFA. Therefore, we find it appropriate to consider whether CIMC benefitted from the Preferential Lending to SOEs program during the POI.

Regarding the rate to apply to this program for CIMC for the final determination, we agree with Petitioner. The Department finds that resort to the facts available is necessary in calculating CIMC's total benefit under this program pursuant to section 776(a) of the Act, because necessary information is not available on the record, and because CIMC: (1) withheld information that was requested by the Department, (2) failed to provide such information by the Department's deadline for the submission of that information, and (3) the information cannot be verified. The Department requested the reporting of all loans outstanding during the POI in the *Initial Questionnaire*, the response to which CIMC submitted on July 28, 2014.[212] CIMC neglected to report certain loans to Xinhui Container, Nantong CIMC, and CIMC Group with its questionnaire response, and only alerted the Department to this omission at the outset of verification when CIMC attempted to submit these unreported loans as "minor corrections." As noted in the CIMC verification report, the Department rejected this attempted submission of

[208] *Id.* at 11.
[209] *Id.*at 11-12 (quoting *F. Lli de Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000); *see also Gallant Ocean (Thail.) Co. v. United States*, 602 F.3d 1319, 1323 (Fed. Cir. 2010)).
[210] *Id.* at 12 (quoting *SKF USA Inc. v. United States*, 675 F. Supp. 2d 1264, 1276 (Ct. Int'l Trade 2009); *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990)).
[211] *Id.* at 11-12.
[212] *See* Initial Questionnaire and CIMC 7/28/2014 IQR.

previously unreported loans due to the magnitude of change in reported lending.[213] Consequently, the Department could not reconcile total beginning and ending loan balances for the POI for all cross-owned companies with outstanding lending. Therefore, we agree with Petitioner that the record does not include adequate information for the Department to calculate a benefit conferred to CIMC by these loans with any sense of accuracy.

Furthermore, we agree with Petitioner that the application of AFA to this program is appropriate due to CIMC's failure to cooperate to the best of its ability. There is no "intentional conduct" requirement to the decision to resort to AFA, as "inadequate inquiries" may suffice.[214] By failing to disclose such a significant volume of lending, we find that CIMC failed to cooperate to the best of its ability. CIMC's arguments that the impact or volume of unreported loans is small are misplaced. In fact, CIMC's lack of cooperation in reporting all of its affiliates' loans calls into question that entire portion of the loan database, which could not be verified. Put more simply, CIMC's claim that the unreported portion was small finds no support on the record.

With regard to the applicable AFA rate for this program, we agree with Petitioners. The Department has an established practice for selecting AFA rates for programs for which no verified usage information was provided.[215] According to that practice,[216] 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*.[217] 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.[218]

There is no above *de minimis* calculated rate for this loan program in this investigation or in any other CVD investigation involving Chinese products consistent with *Solar Cells from the PRC*, we determine that a policy lending program is similar to the lending program at issue.[219] We,

---

[213] *See* CIMC Verification Report at page 3 and Exhibit 2.

[214] "While intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate, the statute does not contain an intent element. 'Inadequate inquiries' may suffice. The statutory trigger for [the Department's] consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent." *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003).

[215] 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.

[216] *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."

[217] *Id*.

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

[219] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (Solar Cells from the PRC) and accompanying Issues and Decision Memorandum at Comment 19.

therefore, determine that the highest calculated rate for a comparable lending program is the 10.54 percent rate calculated for preferential policy lending in *Coated Paper from the PRC.*[220]

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.[221] 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 final CVD determination involving the PRC for a similar program based on the treatment of the benefit.[222] In the absence of information from the responding party, the rate calculated in another proceeding for such a similar program provides the most reliable and relevant information about the GOC's practices regarding these types 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 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.

Singamas Issue

Comment 5: The sales value to be used as denominators to calculate subsidy rates with respect to Singamas

Singamas Comment

- Singamas calls for the Department to use the revised sales values, presented as part of the minor corrections at verification, to calculate any benefits under relevant subsidy programs received by Singamas.[223]

No other parties commented on this issue.

Department's Position

The Department agrees with Singamas and is using the revised sales values as denominators in this final determination.[224]

---

[220] *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, 70202 (November 17, 2010) *(Coated Paper Investigation Amended Final).*
[221] *See SAA* at 869-870.
[222] *See Coated Paper Investigation Amended Final*, 75 FR at 70202.
[223] *See* Singamas Case Brief at *5*.
[224] *See* Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from China: Final Determination Calculations for Singamas.

Overlapping Issues

Comment 6: Hot-Rolled Steel Sheet and Plate for Less than Adequate Remuneration (LTAR) and whether the Department should reverse its findings regarding the hot-rolled LTAR benchmark

A) Whether the Department should use domestic Chinese steel prices on the record to determine whether the GOC provided hot-rolled steel for LTAR.

CIMC

- CIMC argues that the WTO Appellate Body has, since the *Preliminary Determination*, ruled that rejecting Chinese domestic input prices as the benchmark is inconsistent with the Agreement on Subsidies and Countervailing Measures (SCM Agreement).[225]

- CIMC argues that it reported steel purchases from non-SOE suppliers. CIMC alleges that the Department has not met its WTO obligation to provide a reasoned and adequate explanation of why Chinese steel prices are distorted, before deviating from using Chinese prices.[226] CIMC further claims that the WTO Appellate Body has reconfirmed that "government predominance" cannot be equated with "price distortion," and that the Department used the predominant role of the Chinese government in the steel industry to justify its non-use of domestic input prices for the benchmark in this case.[227]

- CIMC believes that the Department should, "on a prospective basis, amend its practice and not rely on the presumption used in the preliminary determination to justify its examination and use of hot-rolled steel benchmark prices from markets other than China."[228] CIMC argues that the Department should conduct a "market analysis" and to otherwise rely on the presumptions made in the *Preliminary Determination* would conflict with the United States' WTO obligations.[229] CIMC underlines that the Federal Circuit has held that the WTO Agreements were approved by Congress as part of the Uruguay Round Agreements Act, and "{a}bsent express language to the contrary, a statute should not be interpreted to conflict with international obligations."[230]

- CIMC concludes by arguing there is no record evidence that the domestic market for hot-rolled steel is distorted, or that CIMC's purchase prices are not market-determined.[231] CIMC argues it is the Department's burden to show the domestic market for hot-rolled steel is distorted and as the Department has not done so, in-country steel prices should be used. [232] CIMC also cites to evidence that steel prices in China are

[225] *See* CIMC Case Brief at 15-16 (citing Appellate Body Report, *U.S.—Countervailing Duty Measures on Certain Products from China*, WT/DS437/AB/R, (DS437) at para. 4.143).
[226] *Id.* at 16-17.
[227] *Id.* at 17-18 (citing DS437, at paras. 4.52, 4.62.
[228] *Id.*at 20.
[229] *Id.* at and 19- 20 (citing DS437, at para. 4.61).
[230] *Id.* at 20 (quoting *MacLean-Fogg Co. v. United States*, 753 F.3d 1237, 1251 (Fed. Cir. 2014)).
[231] *Id.*
[232] *Id.* at 21.

market-determined.[233] CIMC concludes that in-country prices on the record should be used because the lack of evidence of price distortion mandates their use as tier one benchmarks.[234]

GOC Comments

- The GOC believes that the Department should have applied a tier one benchmark with respect to this LTAR program. The GOC argues that finding that a market is distorted must be based on an analysis of that specific market and cannot be based solely on a finding that the government is the predominant supplier in the market.[235] The GOC believes that contrary to WTO Appellate Body decisions, the Department has only relied on the predominance of the GOC in the market to make its determination, and should use transactions involving private entities in the PRC as a tier one benchmark.[236]

Petitioner Rebuttal Comments

- With respect to the use of tier one benchmarks, Petitioner argues that the GOC and CIMC's claim that DS437 should apply is not applicable because: (1) this investigation is not one of the proceedings that was before the WTO in that dispute; (2) the United States has noted that it will require a "reasonable period of time" to implement the recommendations of that report; and (3) in any event, the Department conducted its investigation properly and fully.[237]

- Petitioner claims that the Department went as far as it could, and needed to, in its analysis of HRS for LTAR. Petitioner points out that the GOC failed to respond to the Department's questions with respect to the information needed to make a determination on hot-rolled steel sheet and plate production by government-owned SOEs.[238] Therefore, the Department was unable, by virtue of the GOC's unresponsiveness, to establish with verifiable information the WTO Appellate Body's minimum threshold of required information for finding price distortion – the extent of government ownership of the relevant SOEs and their market shares.[239]

- Petitioner also claims the Petition contained information regarding price distortion in the Chinese hot-rolled coal and plate market at levels that were 24 to 30 percent below world prices.[240] These large price differentials constitute evidence directly on point to, and dispositive of, price distortion in the PRC domestic market. Petitioner also claims that the extensive government ownership and control of the large steel sector in China is the central factor in the price distortion in the Chinese market.[241]

---

[233] *Id.*
[234] *Id.* at 22.
[235] *See* GOC Case Brief at 14 to 15.
[236] *Id.* at 15-16 (citing DS437, at paras. 4.51, 4.95).
[237] *See* Petitioner Rebuttal Brief at 13-14.
[238] *Id.* at 15-16.
[239] *Id.* at 16.
[240] *Id.* at 17.
[241] *Id.* at 17 and 18.

Department's Position:

We disagree with CIMC and the GOC. Regarding recent WTO decisions, the CAFC has held that WTO reports are without effect under U.S. law "unless and until such ruling has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA).[242] Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute. We note the Department has issued no new determination and the United States has adopted no change to its methodology pursuant to the URAA's statutory procedure.[243] *MacLean Fogg* is irrelevant because, first, the language quoted by CIMC is part of the dissent in that case, and thus, is not legally binding on the Department.[244] Second, in that case, the dissenting Judge was explaining, favorably, that the Department had looked to the WTO Anti-Dumping Agreement for guidance in interpreting what that Judge considered to be an ambiguous statutory provision regarding whether voluntary respondent rates should be included in calculating the all-others rate.[245] That the Department looked to the Anti-Dumping Agreement in that case in discerning the meaning of section 705(c)(5)(A)(i) of the Act, however, is an entirely different question than that presented here, namely, whether the Department should comply with an adverse WTO decision that has not been implemented pursuant to the statutory scheme for doing so, and that did not even involve this investigation.

Furthermore, we agree with Petitioner and continue to find that sufficient evidence exists on the record to support a conclusion that price distortion exists in the PRC domestic steel market due to GOC involvement in the Chinese steel sector. As noted in our Preliminary IDM,[246]

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

[242] *See Corus Staal*, 395 F.3d at 1347-49; accord *Corus Staal*, 502 F.3d at 1375.
[243] *1,1,1,2-Tetrafluroethane From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014), (*1,1,1,2-Tetrafluroethane From the PRC)*and accompanying Issues and Decision Memorandum at Comment 1.
[244] *See MacLean Fogg*, 753 F.3d at 1251.
[245] *Id.* at 1250-51.
[246] *See* Preliminary IDM at 24 (citations omitted).

As further noted in the Preliminary IDM, "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."[247] 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.[248]

Therefore, for the final determination, the Department continues to find that price distortion within the Chinese domestic steel market exists, thus rendering the use of tier one benchmark prices unreliable for our benefit calculation for this program, and we continue to rely on a tier two world market price calculated from information on the record of this proceeding. *See* Comment 6D for a detailed description of the tier two world market price calculation.

B) Whether the Department properly found that "authorities" provided a financial contribution in the form of the provision of a good for LTAR

GOC Comments

- The GOC believes that the Department improperly found that "authorities" provided a financial contribution in the form of hot rolled sheet and plate.[249] The GOC disputes the Department's *Preliminary Determination* that SOEs are by default authorities and argues that such a determination violates the United States' international obligations and is not in accordance with law.[250] Citing to Departmental memoranda placed on the record of this proceeding, the GOC argues that the Department is applying a simple majority-ownership analysis in determining whether a body is a public body. The GOC argues that the Department should have conducted an entity-specific analysis of a full range of factors rather than referencing only majority- government ownership. The GOC therefore argues that the Department's analysis is in conflict with WTO Appellate Body decisions.[251] The GOC believes that the Department should conclude that SOE suppliers of hot-rolled sheet and plate do not constitute authorities.[252] The GOC contends that the Department's analysis only references majority-government ownership and lacks an analysis of the specific entity or "other factors" that demonstrate that the entity actually possesses or has exercised governmental authority, which is in direct conflict with the Appellate Body's holdings regarding "public bodies." Besides majority-government ownership, no record evidence supports that SOEs act as public bodies.[253]

[247] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998).
[248] *See* Preliminary IDM at 25.
[249] *See* GOC Case Brief at 1-2.
[250] *Id.* at 2-4.
[251] *Id.* at 4-6 (citing, *e.g.*, Appellate Body Report, *U.S.—Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011) (DS379), at para. 317; Appellate Body Report, *U.S.- Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R (December 8, 2014)) .
[252] *Id.* at 7.
[253] *Id.*

- The GOC believes that the Department should not have applied AFA to its government authority conclusion for non-SOEs. Referencing the statute and court decisions, the GOC argues that the only information identified as missing from the record is the identity of the individual owners, members of the board of directors or senior managers for the producers who were Chinese Communist Party ("CCP") officials during the POR.[254] The GOC disputes that even if CCP officials serve on the board, this does not mean they are authorities and Commerce cannot rely on a lack of evidence to find they are authorities. [255] The GOC also cites to PRC law on the record that shows that government officials are prohibited from participating in or holding positions in a Chinese company and that shareholders, directors and managers have a fiduciary duty to the company. [256] In the context of a separate rate analysis, the GOC claims that the Department has decided that the Company Law shows an absence of *de jure* control over privately owned companies in the PRC.[257] The GOC believes that the Department's determination that non-SOEs are "authorities" within the meaning of section 771(5) of the Act is unlawful and unsubstantiated by the evidence on the record. [258]

Petitioner Rebuttal Comments

- Petitioner claims that the Department was correct in its *Preliminary Determination* when it determined that the SOEs from which respondents purchased HRS were majority state-owned enterprises and that the GOC exercised meaningful control over these SOEs.[259]

- Petitioner argues the decision is in line with Departmental practice in its section 129 Determination regarding DS379, which is on the record of this investigation, and that the GOC was non-cooperative when it failed to identify the individual owners, members of the board of directors, or senior managers of the non-SOEs. Petitioner argues the Department should continue to find that the self-identified SOEs and the claimed non-SOEs constitute authorities under section 771(5) of the Act.[260]

Department's Position:

We continue to find that entities that are majority-owned by the Chinese government possess, exercise or are vested with governmental authority and therefore are "authorities" within the meaning of section 771(5)(B) of the Act. Contrary to the GOC's arguments, our finding on this point is not based on majority government ownership alone. The Public Body Memorandum[261]

[254] *Id.* at 7 and 8.
[255] *Id.* at 8 and 9.
[256] *Id.* at 9.
[257] *Id.* (citing *Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301 (February 24, 2010), and accompanying Issues and Decision Memorandum at Comment 2).
[258] *Id.* at 10.
[259] *See* Petitioner's Rebuttal Brief at 11 to 12.
[260] *Id.*
[261] *See* Memorandum to the File from Ilissa Kabak Shefferman, International Trade Compliance Analyst, dated September 22, 2014 at Attachment 2 (Public Body Memorandum).

details the various factors – going well beyond ownership alone – that have led us to conclude that majority government-owned entities are authorities. In fact, 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. The GOC has not challenged any of these findings from the Public Body Memorandum, which were made in response to the adverse WTO findings in DS379, but rather has simply mischaracterized our findings in that Memorandum and in this investigation. Therefore, we continue to determine that these entities are "authorities" within the meaning of section 771(5)(B) of the Act.

Regarding the GOC's objections to our analysis regarding the role of CCP officials in the management and operations of the input producer, we observe that it is the prerogative of the Department, not the GOC, to determine what information is relevant to our proceeding.[262] Specifically, the Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be relevant because public information on the record of this investigation shows that the CCP exerts significant control over activities in the PRC.[263] Because the GOC did not provide the information we requested regarding CCP involvement, the factual record in this investigation is similar to the factual record in prior CVD proceedings. Based on this information, and consistent with our prior determinations, the Department finds 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."[264] Additionally, publicly available information on the record of this investigation 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.[265] With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, consistent with prior determinations, we find that this particular law does not pertain to CCP officials.[266] We note that the GOC's responses in prior proceedings demonstrate that it is able to access the information requested by the Department.[267]

---

[262] *See, e.g., 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'") (quoting *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986)).
[263] *See* Memorandum to the File from Ilissa Kabak Shefferman, International Trade Compliance Analyst, dated September 22, 2014 at Attachment 1 (CCP Memorandum).
[264] *Id*.
[265] *Id*.
[266] *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, 65.
[267] *See High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying Issues and Decision Memorandum at 12-13 (HPSCs Final Decision Memorandum); *see also Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum at Comment 8 ("{i}n the instant investigation, the information on the record indicates that certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies").

Because the CCP is part of the government in China, then any CCP control over a company equates to government control over that company. As detailed in the Public Body Memorandum and CCP Memorandum, the government/CCP uses companies it controls to effectuate government policies. Therefore, the GOC's failure to provide requested information pertaining to CCP official presence in companies is no small matter. We can adversely infer, from the GOC's lack of cooperation on this point, that CCP officials are be present in these companies and furthermore are controlling these companies to use them as government instrumentalities.

Therefore, for the final determination of this investigation, we continue to find that all HRS producers are authorities and, thus, provided a government financial contribution within the meaning of 771(5)(D)(iii) of the Act.

C) Whether the Department properly found "Specificity"

GOC Comments

- The GOC argues that purchasers of hot rolled sheet and plate are not limited and therefore are not specific.[268] The GOC believes the Department's *Preliminary Determination* is unlawful because the Department is saying the only analysis that is required is that the Department has previously found the provision of hot-rolled steel in the PRC to be specific because it is only provided to steel consuming industries and is therefore only provided to a limited number of industries.[269] The GOC argues it cooperated with the requests of the Department to the best of its abilities, and evidence on the record shows the program, if it exists, to not be specific.[270] Citing to record evidence, the GOC argues that rolled steel products are used in almost all manufacturing sectors. [271] The GOC argues the Department erred in its determination that the GOC collects information on the consumption of hot rolled sheet and plate based on a GOC list of industries that used ferroalloy metal in 2007.[272] The GOC believes it complied to the best of its abilities and that it does not collect the information in the form requested by the Department and the Department should reverse its specificity finding regarding this program. [273] Furthermore, the GOC contends that the Department's conclusion that a limited number of sectors benefit from the purchase of hot-rolled steel sheet and plate is "absurd" based on record evidence.

Petitioner Rebuttal Comments

- Petitioner claims the Department found that the GOC withheld information and therefore applied an adverse inference in the *Preliminary Determination* and that, in the final determination, the Department should continue to apply an adverse inference and find that purchasers of hot-rolled sheet are limited and are thus specific under section

[268] *See* GOC Case Brief at 10.
[269] *Id.* at 11.
[270] *Id.* citing GOC's August 5,2014 response at 34 and GOC's August 8, 2014 response at 34.
[271] *Id.* at 12.
[272] *Id.*
[273] *Id.* at 13.

771(5A)(D)(ii)(1) of the Act, based on information provided in this investigation and information gleaned from earlier proceedings.[274]

Department's Position:

We disagree with the GOC. As stated in our *Preliminary Determination Memorandum*, we find the information submitted by the GOC to be insufficient, hampering our ability to conduct a full specificity analysis.[275] Consequently, for this final determination, we continue to find 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 determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. That the GOC does not collect the information requested by the Department is contradicted by the fact that the GOC was able to report this information in past proceedings.[276] Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of HRS is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. We note that that the Department has previously found the provision of hot-rolled steel in China to be specific because hot-rolled steel is only provided to steel consuming industries and thus is only provided to a limited number of industries.[277]

D) Benchmarks and calculation of benefit

Petitioner Comments

- Petitioner claims the Department used worldwide export prices submitted by Petitioner and multiple price series submitted by Respondents in constructing the benchmark price for hot-rolled alloy steel in coils (HRASC).[278]

- As argued in its September 18, 2014, submission, Petitioner believes that its worldwide export prices are the only prices on the record of the investigation that are specific to HRASC used by the respondents in the production of subject merchandise. [279]

- Petitioner argues that the record evidence shows that the hot-rolled steel in coils used by Singamas to produce subject merchandise was alloy steel.[280]

---

[274] *See* Petitioner Rebuttal Brief at 12; *Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) and accompanying Issues and Decision Memorandum at Comment 13; and *Drawn Stainless Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013).
[275] *See Preliminary Determination Memorandum* at 19.
[276] *See Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012), and accompanying Issues and Decision memorandum at Comment 13.
[277] *See*, *e.g.*, HPSCs Final Decision Memorandum at 17.
[278] *See* Petitioner's Case Brief at 5-6.
[279] *Id*. at 6.
[280] *Id*. at 6 to 7.

- Petitioner asserts that in antidumping proceedings regarding hot-rolled carbon steel flat products, the Department has long recognized the importance of distinguishing alloy hot-rolled steel from non-alloyed steel in its price comparisons and that record evidence demonstrates that there is a significant difference between the prices for hot-rolled alloyed steel and hot-rolled non-alloyed steel.[281]

- Petitioner reiterates that only its worldwide export prices are specific to hot-rolled alloy steel in coils and that the Department in its *Preliminary Determination* chose to include the more specific alloy steel used by respondents.[282] In contrast, the prices submitted by respondents were not for alloy steel but for the non-alloy steel that is lower priced.[283] As a result, Petitioner argues the Department should only use Petitioner's worldwide export prices as these are the only ones on the record that are specific to the type of steel used by respondents in their production of the subject merchandise.[284]

- Petitioner argues that if the Department continues to use any of respondents' submitted benchmark prices it should remove certain prices that Petitioner believes are duplicative.[285]

Singamas Comments

- Singamas argues that with respect to the calculation of this benefit, the Department should use the revised purchase quantities that were reported as part of minor corrections at verification.[286]

- Singamas argues that with respect to thinner-gauged steel in sheet, the Department should use the benchmark price for hot-rolled steel in coil and that this benchmark should be applied to all purchases of steel with a thickness of 15 mm or less. [287]

- Singamas argues that the Petitioner's steel benchmark value was artificially inflated as it relied on a straight-average of FOB export prices rather than on a weighted-average, and that the Department should revise Petitioner's benchmark accordingly. [288]

- Singamas asks the Department to revise its ocean freight rate used in the benchmark by appropriately weighting Petitioner's surrogate values with the benchmarks used from *Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China (Steel Wire Rod from China).*[289] Singamas also calls for the Department to exclude ocean freight values from North America (*i.e.*, Long Beach and Vancouver) as these values are aberrant and the Department did not rely on any steel benchmarks specifically from

[281] *Id*. at 7 to 8.
[282] *Id*. at 8 to 9.
[283] *Id*. at 9.
[284] *Id*. at 10.
[285] *Id*.
[286] *See* Singamas Brief at 2.
[287] *Id.* at 2 to 3.
[288] *Id.* at 4 citing Singamas' October 7, 2014 submission.
[289] *See* Preliminary Benchmark Memorandum.

North America in calculating the steel benchmark used in the *Preliminary Determination*.[290]

CIMC Rebuttal Comments

- CIMC claims it purchased both hot-rolled alloy steel coils and hot-rolled carbon steel coils during the POI and reported all of these purchases to the Department. [291]

- CIMC argues Petitioner has misunderstood the hot-rolled information provided by CIMC and, citing to case precedent, argues the Department has a preference for more broadly-defined benchmark prices to measure the LTAR subsidy benefit amount for all purchases of varying types of material input in question. [292]

- Referencing the Department's questionnaire which asked CIMC to report all hot-rolled steel purchases during the POI, and not just hot-rolled alloy steel coils used in production of containers, CIMC argues its benchmark information was properly used by the Department in its *Preliminary Determination*.[293]

- CIMC argues that the application of a narrowly defined set of hot-rolled alloy steel coil benchmark prices to CIMC's purchases of both hot-rolled alloy steel coils and hot-rolled carbon steel coils would result in an inaccurate LTAR calculation.[294]

- CIMC cites to the Department's retraction of all of the detailed hot-rolled steel related questions in its August 4, 2014 supplemental questionnaire as apparent recognition that CIMC had reported hot-rolled steel purchases for all products.[295]

- CIMC reiterates that in order to ensure CIMC's hot-rolled steel for LTAR subsidy rate calculation is accurate, the Department must continue to rely on CIMC's broadly defined hot-rolled steel coil benchmark price information because these prices properly reflect the types and varieties of hot-rolled steel coils that CIMC purchased during the POI.[296]

- CIMC argues the Department in the final determination should continue to follow its *Preliminary Determination* methodology for calculating the hot-rolled steel plate benchmark prices used to measure CIMC's LTAR subsidy benefit for hot-rolled steel plate purchases during the POI.[297]

[290] *Id.* at 4 to 5 citing Singamas' October 7, 2014 submission at 2 and 3.
[291] *See* CIMC's Rebuttal Brief at 2.
[292] *Id.* at 4 citing *Seamless Pipe*, and accompanying Issues and Decision Memorandum at Comment 9.
[293] *Id.* at 4 and 5.
[294] *Id.* at 6.
[295] *Id.* at 7, citing a Memorandum to the File, dated August 6, 2014.
[296] *Id.* at 8.
[297] *Id.* at 9 to 10.

Petitioner Rebuttal Comments

- With respect to Singamas' claims, Petitioner agrees with Singamas that the tier 2 benchmark price for HRASC is the most appropriate benchmark price for respondents' purchases of hot-rolled alloy steel whether in the form of coils or thin-gauge plate, although Petitioner reiterates that the benchmark should only be based on the worldwide export prices of HRASC submitted by Petitioner.[298]

- With respect to the ocean freight rate to be used, Petitioner agrees with Singamas' argument that the individual ocean freight rates from the case in question should be used. However, Petitioner calls for the ocean freight rates for Long Beach and Vancouver to be used and not disregarded, as advocated by Singamas.[299]

Singamas Rebuttal Comments

- Singamas argues that in the *Preliminary Determination*, the Department calculated a broad-based benchmark that satisfied the requirements of 19 CFR 351.511(a)(2)(ii), which requires the calculation of a "world market price" for the input being provided at LTAR. Singamas argues the benchmark was based on a wide range of hot-rolled steel values submitted by CIMC and by Petitioner. [300]

- Singamas believes that the Department should reject Petitioner's position that the benchmark should only be based on the hot-rolled alloy prices as "it is based on a misunderstanding of the factual record in this investigation, and if adopted, would result in an unfair mismatch between the alloy steel benchmark Petitioner advocates and the purchases reported by Singamas." [301]

- Singamas notes the Department specifically asked Singamas to report all of its purchases of hot-rolled sheet and plate during the POI, and did not define or limit this to specific steel used in the production of the subject merchandise. Singamas notes this information was verified and that having established that Singamas' purchases included both alloy and non-alloy steel, it would be unfair and distortive for the Department to use Petitioner's suggested alloy-only benchmark, as the Department has an established practice of ensuring that the benchmark for determining LTAR matches the reported purchases as closely as possible.[302]

[298] *Id.* at 18.
[299] *Id.* at 19.
[300] *See* Singamas Rebuttal Brief at 2.
[301] *Id.* at 2 and 3.
[302] *Id.* at 3 and 4 (citing *Seamless Pipe*, and accompanying Issues and Decision Memorandum at Comment 9).

- Singamas argues that the Department should continue to use the same benchmarks as in the *Preliminary Determination*, which reflect a blend of both alloy and non-alloy steel prices, with only one adjustment as identified in Singamas' case brief, *i.e.* to use a weighted-average, not straight average, value for Petitioner's submitted steel benchmark, because failure to do so would result in a distorted and unreasonable benchmark.[303]

Department's Position:

The Department disagrees with Petitioner that only its HRASC benchmarks should be used when calculating a benchmark for this program for Singamas and CIMC. As both CIMC and Singamas point out, the Department analyzes LTAR programs by comparing a respondent's prices paid for all purchases of the material input during a set period of time to benchmark prices for the same general category of material inputs.[304] The Department thereby achieves an accurate comparison in which the material inputs purchased match the corresponding material inputs that the benchmark prices represent. Consistent with this approach, the Department's questionnaire required, and CIMC and Singamas reported, all POI purchases of hot-rolled steel coils, including both hot-rolled alloy steel coils consumed in the production of domestic containers and other hot-rolled steel coil types, including hot-rolled carbon steel coils consumed in the production of other containers. [305] The Department therefore is continuing to use an average of the benchmark data submitted by both CIMC and Petitioner. As noted in other cases, "{w}hen the Department resorts to using a world market price in calculating its benchmark to measure adequate remuneration and there are multiple commercially available market prices, the Department's regulations at 19 CFR 351.511(a)(2)(ii) instruct the Department to 'average such prices to the extent practicable.'"[306] In this case, we have several sets of market prices from which to choose, and find it appropriate to average the various prices together to determine a broad-based market price for hot-rolled sheet and plate. The Department also notes that it initiated this program based on Petitioner's allegation of the provision of hot-rolled sheet and plate and asked respondents to report all purchases of hot-rolled sheet and plate and not just HRASC.[307] Benchmarks used should reflect the steel products the respondents were asked to report.[308]

The Department agrees with Singamas that the Petitioner's benchmarks should be a weighted-average unit value rather than a simple average unit value. However, here, the Global Trade Information Services (GTIS) prices in the Petitioner's benchmark submission are all individual export transactions on a uniform basis (*i.e.*, U.S. dollars per metric ton).[309] Using weighted-average prices where possible reduces the potential distortive effect of any specific transactions

[303] *Id.* at 5.
[304] *See Seamless Pipe*, and accompanying Issues and Decision Memorandum at Comment 9.A.
[305] *See* Department's Initial Questionnaire at 4 and 5 and Questionnaire for Producers/Exporters of dry containers at 9 and 10.
[306] *See, e.g., Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination,* 74 FR 64045 (December 7, 2009), and accompanying Issues and Decision Memorandum at 76.
[307] *See* CVD Initiation Checklist at 9 and 10.
[308] *See Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 14 ("Where possible, it is the Department's practice to compute benefit calculations for input for LTAR programs using benchmark pricing data for the particular input under examination").
[309] *See* Petitioner's benchmark submission dated September 8, 2014 at Exhibit 2.

(*e.g.*, extremely small transactions) in the data. Therefore, we have decided for HRS in coils, to first weight-average Petitioner's benchmark price. Then, utilizing Petitioner's weighted-average benchmark price and certain benchmark prices submitted by CIMC, we calculated simple averaged, monthly benchmark prices for HRS. *See* Final Results Calculation Memorandum for CIMC and Singamas. Regarding benchmark prices for HRS in sheet and plate, Petitioner did not submit GTIS data; therefore, the benchmark price calculation for HRS in sheet and plate remains unchanged from the preliminary determination.

With respect to ocean freight, the Department agrees with Singamas that the benchmark should be modified by appropriately weighting Petitioner's surrogate values with the benchmarks used from *Steel Wire Rod from China*, which are on the record of this investigation. We disagree with Singamas that the Department should exclude ocean freight values from North America (*i.e.*, Long Beach and Vancouver) because the Department did not rely on any steel benchmarks specifically from North America in calculating the steel benchmarks used in the *Preliminary Determination*. We would disregard freight quotes from North America only if there was evidence that North American HRS is not available for purchase/import by Chinese companies or if we used data sources which would allow the Department to match the freight sources with the sources for the steel benchmarks. We do not have that evidence on the record, so we are retaining all the *Steel Wire Rod from China* ocean freight benchmarks in our calculation of the ocean freight benchmark. This is consistent with other cases where we determined that "so long as the ocean freight costs are reflective of market rates for ocean freight, and representative of the rates an importer – and not necessarily the respondent specifically – would have paid, then the prices are appropriate to include in our benchmark." [310] Similar to the record in other cases, the world market prices for HRS include data points from 34 different countries; however, the data points for international freight are from only 12 countries. Therefore, pursuant to 19 CFR 351.511(a)(2)(ii), the Department continues to include all international freight data in the calculation to create a more robust world market price.[311]

The Department agrees with Singamas that with respect to the calculation of the benefit, the Department should use the revised purchase quantities that were reported as part of Singamas' minor corrections presented at its verification. With respect to its reported thinner-gauged steel in sheet, the Department is using the benchmark price for hot-rolled steel in coil for all purchases of steel with a thickness of less than 15 mm. *See* Singamas Final Calculation Memorandum for more details.

Finally, to be consistent with the decision to weight-average GTIS data in terms of the hot-rolled benchmark, we have also weight- averaged the GTIS data used in calculating the I-beam benchmark. We also modified the ocean freight benchmark by appropriately weighting Petitioner's surrogate values with the benchmarks used from *Steel Wire Rod from China*, which are on the record of this investigation.

[310] *See Seamless Pipe*, and accompanying Issues and Decision Memorandum at Comment 9.
[311] *See Citric Acid from the PRC 2011*, and accompanying Issues and Decision Memorandum at Comment 13H .

Comment 7: Export Buyer's Credits Program

Petitioner Comments

- Petitioner claims that while the Department found the program was not used in the *Preliminary Determination*, the Department was not able to verify at the GOC the pivotal claim that payments under this program are made to the Chinese exporter, rather than the purchaser.[312]

- Citing to excerpts from the GOC verification report, Petitioner argues there is no record evidence to establish that payments under the Buyer Export Program were or would have been, made to U.S. customers rather than CIMC or Singamas. [313]

- Citing to *Photovoltaic Products from the PRC*, Petitioner argues that there is no factual distinction between that case and the present case.[314] Petitioner claims in both cases the Department was prevented by the GOC from examining the only source documentation that would be probative *i.e.* the Ex-Im Bank's books and records. [315] Therefore, Petitioner believes the Department should apply, as AFA, a 10.54 percent rate for this program.[316]

CIMC Rebuttal Comments

- CIMC argues it has fully cooperated with the Department and reported that its customers did not use this program.[317] CIMC clarifies that both it and two of its largest customers met with Department officials to further confirm non-use of this program. CIMC claims its customers offered to be verified and the Department properly concluded in its *Preliminary Determination*, that CIMC and its customers did not use this program.[318]

- CIMC argues that the Department confirmed CIMC's nonuse, and its largest customers' non-use, of this program during and preceding the POI, by a detailed review of CIMC's records at verification.[319] CIMC argues that the Department cannot now ignore the substantial evidence of non-use in defaulting to an AFA finding.

- CIMC argues that section 782(e) of the Act requires that the Department shall not decline to consider the information that has been submitted to it even if it does not meet all the applicable requirements, and that this provision applies in this case. CIMC claims it has submitted substantial record evidence confirming non-use of the program and that this

[312] *See* Petitioner's Brief at 13.
[313] *Id.* at 14 to 15.
[314] *Id*. at 15 to 16 (citing *Photovoltaic Products From the PRC*, and accompanying Issues and Decision Memorandum at Comment 16).
[315] *Id.* at 16.
[316] *Id.*
[317] *See* CIMC Rebuttal Brief at 12.
[318] *Id.* at 13.
[319] *Id.*

information can be used. CIMC claims that despite the GOC's shortcomings, the record evidence shows that CIMC did not use this program.[320]

GOC Rebuttal Comments

- The GOC argues that both the GOC and the mandatory respondents provided ample evidence that neither mandatory respondent used this program during the POI. [321]

- The GOC claims that in its questionnaire responses, the GOC established that sellers are involved in the application and approval process for Export Buyer's Credits and payments under this program would be made directly to the Chinese exporter, rather than the purchaser. Further, the GOC claims these assertions were verified during the GOC verification, as well as corroborated by the responses and verifications of the mandatory respondents.[322]

- Citing to documents on the record, and to verification at the GOC, the GOC claims that the Department was able to verify that the customers did not apply to the Ex-Im Bank for payments under this program and that the GOC provided print-outs of its search of its databases at verification.[323] Similarly, the GOC explains that it confirmed with the Ex-Im Bank that the Bank had no record of applications for the program from any of the respondents' customers during the POI.[324]

- Citing to the respondent verification reports, the GOC claims the Department was able to verify non-use by the respondents and that there is sufficient record evidence to show non-use of the program by the respondents and their customers. The GOC claims that *Photovoltaic Products from the PRC* was different in that there was inconclusive evidence from the initial questionnaire whether the company respondents knew whether their buyers had received these credits.[325]

- The GOC claims the record evidence shows that neither Singamas nor CIMC received any payments under this program. Consistent with *Chlorinated Isocyanurates*, CIMC believes the Department should continue to find that this program was not used during the POI. [326]

- The GOC also cites to the January 16, 2015, submission in which Hub City and JB Hunt, both customers of Singamas and CIMC, reiterated an offer made to Department officials on October 9, 2014, that they were willing to participate in verification to confirm that

[320] *Id.* at 14 and 15.
[321] *See* GOC Rebuttal Brief at 1.
[322] *Id.* at 1 and 2.
[323] *Id.* at 2 and 3.
[324] *Id.* at 2.
[325] *Id.* at 3 and 4.
[326] *Id.* at 5 (citing *Chlorinated Isocyanurates From the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014), and accompanying Issues and Decision Memorandum at "3. Export Seller's and Buyer's Credits from Export-Import Bank of China ("China ExIm")") ("*Chlorinated Isocyanurates*").

they received no benefits under the export buyer's credit program during the POI as proof that the U.S. customers did not receive a benefit from the Ex-Im Bank under this program.[327] The GOC additionally cites to letters from Singamas and CIMC dated January 30, 2015 and February 3, 2015, respectively, which discuss that there is "ample verifiable factual evidence on the record" that the respondents' U.S. customers did not receive a benefit under this program.

- The GOC concludes by arguing the Department verified factual information on the record sufficient to prove that neither of the mandatory respondents received a benefit under this program. The GOC notes the Department declined to verify information it has previously found, and the GOC therefore argues the Department was not "disabled from verifying this pivotal fact at its verification of the Government of China" as claimed by Petitioner. The GOC argues the Department should not, as Petitioner requests, apply an AFA rate for this program. [328]

J.B. Hunt Rebuttal Comments

- J.B Hunt argues that the Department found no evidence at verification that Singamas or CIMC, or their customers, used the program.[329] J.B. Hunt points out that in the Singamas and CIMC verification reports, the program was described as being set up such that any payments under the program would be made to the respondent and that the customer would repay the Ex-Im Bank. J.B. Hunt argues that although Ex-Im Bank officials were not at liberty to provide all of the documents requested, the Department successfully verified that neither Singamas nor CIMC received any funds under the program.[330]

- J.B. Hunt claims that both it and Hub City Terminals, Inc. (Hub) have repeatedly expressed their willingness to allow the Department to verify that they did not receive any funds under the Export Buyer's Program.[331] J.B. Hunt notes that the Department's claim that there is no factual information to verify is inaccurate. Citing to the questionnaire responses, J.B. Hunt claims there are timely facts on the record from the GOC, Singamas, and CIMC stating no purchasers used this program that are subject to verification.[332] Regardless of the fact that any particular affidavit was "purged from the record on grounds of untimeliness," it is clear that the Department has received information from all respondents that no purchasers used the program, and the Department cannot claim now that its "hands were tied" by problems at the GOC verification. J.B. Hunt claims the Department had the basis to verify non- use and that the Department has avoided conducting an inquiry to confirm that no purchasers received benefits under the program.[333] J.B. Hunt claims that the Department cannot hold an interested party responsible for not providing information in the absence of a specific

[327] *Id.* at 5 and 6.
[328] *Id.* at 6.
[329] *See* J.B. Hunt Rebuttal Brief at 1and 2.
[330] *Id.*
[331] *Id.* at 3.
[332] *Id.* citing questionnaire responses.
[333] *Id.* at 4 and 5.

request for such information; the Department gave no indication in its questionnaire that it would expect the respondents to file purchaser affidavits evincing non-use.[334]

- J.B. Hunt cites to the *Chlorinated Isocyanurates* case as an example of where the Department accepted such affidavits and the respondents cannot have anticipated the Department would do so as the questionnaire responses were due before the *Chlorinated Isocyanurates* decision.[335] Therefore, because the respondents cannot reasonably be held to be "clairvoyant, anticipating that the Department would accept such affidavits as an alternative factual information vehicle susceptible to verification," constitutes a reason why respondents had "good cause" to raise the buyer affidavits late.

- Accordingly, J.B. Hunt argues the Department cannot now impute benefits to CIMC or Singamas for this program, based solely upon shortcomings at the GOC verification, when it in fact verified non-use by CIMC and Singamas, and had the opportunity to verify further non-use by J.B. Hunt and other customers. J.B. Hunt believes that to apply adverse facts available in such a situation would be contrary to the intent of the statute, which is remedial, not punitive in nature.[336]

Singamas Rebuttal Comments

- Singamas claims that Petitioner's request for AFA ignores the non-use of this program that was verified at Singamas, and further ignores Singamas' claim that its principal U.S. customers have consistently offered to participate in a verification to confirm non-use. [337] Under such circumstances, "facts available," let alone AFA, is unwarranted.

- Singamas argues that the factual record demonstrates that neither Singamas nor its U.S. customers received benefits under the Ex-Im Export Buyer's Credit program. Citing to its initial questionnaire response, Singamas claims that it "reported that it had not assisted its customers in obtaining any export buyer's credits, and that it had not received any requests from its customers to do so." Singamas then indicated that it had contacted its customers to inquire whether they had in fact obtained these credits, and would notify the Department if any of its customers had done so. Singamas argues that the record reflects that Singamas never submitted any such notification to the Department.[338]

- Citing to the GOC response, Singamas notes that it too claimed that to the best of its knowledge none of the respondents applied for, received or benefited from this program and that consultations with the Ex-Im Bank show there were no applications from any of the customers of the mandatory respondents. [339]

---

[334] *Id.* at 5 (citing, *e.g.*, *Jinan Yipin Corp. v. United States*, 526 F. Supp. 2d 1347, 1349 (Ct. Int'l Trade 2007); *Bowe-Passat v. United States*, 17 CIT 335, 339 (Ct. Int'l Trade 1993); *Jinfu Trading Co. v. United States*, 31 CIT 996, 1007-08 (Ct. Int'l Trade 2007)).
[335] *Id.* at 5 and 6.
[336] *Id.* at 6 (citing *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995)).
[337] *See* Singamas Rebuttal Brief at 6.
[338] *Id.* at 6 citing Singamas Questionnaire Response, dated July 28, 2014 at 13 to 14.
[339] *Id.* at 6 citing GOC Questionnaire Response, dated August 6, 2014 at 3.

- Singamas believes the Department was able to confirm the non-use of this program at verification. Citing to verification reports and exhibits, Singamas argues that Ex-Im Bank's officials' explanation of how payments are made under this program were supported by the explanation the Department received regarding this program during its verification of the GOC. Singamas then claims that it had demonstrated to the Department, through a thorough review of its Oracle system, that Singamas had not received any payments from Ex-Im Bank, nor did it have any accounts in its Chart of Accounts related to Ex-Im Bank. Singamas also references documentation regarding payment for three sample U.S. sales, which demonstrated that payments were received directly from its U.S. customers without the involvement of Ex-Im Bank and that Singamas' purchase orders with its U.S. customers reflected no involvement by Ex-Im Bank. Singamas believes that the only record evidence in the case shows that this program was not used by Singamas or its U.S. customers. [340]

- Singamas dismisses Petitioner's argument that Ex-Im Bank's unwillingness to provide the Department with full access to its confidential records at verification is a sufficient basis for the application of AFA for this program. Singamas claims a careful reading of the statute demonstrates that the statutory pre-requisites for the use of "facts available," let alone AFA, are not present in this case. Singamas argues that if the argument is that the information could not be verified, the Department was able to confirm non-use of this program through a review of Singamas' own books and records, which reflected that it had received no payments of any sort from Ex-Im Bank.[341]

- Singamas reiterates its claim that its two main U.S. customers have consistently volunteered to participate in on-site verification to confirm their non-use of the program and cites to *Chlorinated Isocyanurates* where such verification has taken place. Singamas argues that the Department cannot conclude that non-use of this program cannot be verified. [342]

- Singamas disputes Petitioner's reliance on *Photovoltaic Products from the PRC* and argues that it is incorrect to say that only the GOC can provide the source documentation to show non-use, because source documentation maintained by the recipient of the loan would also prove use or non-use as the case may be. [343] Singamas claims that with respect to this program, the only two possible recipients are the seller (*i.e.* Singamas) and the buyer (*i.e.*, Singamas' U.S. customers). Singamas contends that at verification, the Department confirmed that Singamas did not receive these payments, and the Department has been afforded ample opportunity to verify non-use at Singamas' U.S. customers. By contrast, in *Photovoltaic Products from the PRC*, there is no evidence that the respondent's U.S. customers were willing to subject themselves to

[340] *Id.* at 7 citing CVD Verification Reports and Exhibits.
[341] *Id.* at 8.
[342] *Id.* at 8 and 9.
[343] *Id.* at 9.

verification. Because the Department had a viable alternative to verifying non-use, Singamas claims that *Photovoltaic Products from the PRC* is not applicable here. [344]

- Singamas also notes that the standard for AFA articulated in section 776(b) of the Act is not met here because it is clear that Singamas has acted entirely to the best of its ability in this case. Singamas claims it fully responded to the Department's questionnaires in a timely manner, and fully participated in the Department's verification. Singamas also argues that it attempted to submit affidavits over and above anything that was requested by the Department's questionnaire and that any difficulties the Department may have encountered during the GOC's verification cannot be ascribed to Singamas.[345] Singamas underlines that, as found in the preliminary determination in the companion antidumping investigation, Singamas is independent of the GOC and has no ability to influence its actions in this case.[346]

Department's Position:

The Department determines that the application of AFA is warranted in finding that this program has been used by the company respondents. In prior proceedings in which we have examined this program, we have found that the Ex-Im 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, because it is the lender.[347] In notifying the GOC that we intended to verify non-use at the Ex-Im Bank, our verification outline stated that we would need to review application and approval documents, among other records, and that we would need to query relevant electronic databases if relevant records were maintained electronically. We clearly stated the purpose of such procedures was to ensure the accuracy of the GOC's response to the Department's questions that none of the respondents, or their customers, had received export buyer's credits.[348] 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.

At the verification of the GOC at Ex-Im Bank, officials stated that neither CIMC's nor Singamas' U.S. customers used the program during the POI.[349] The Ex-Im Bank officials stated that the Bank maintains records of all loans to buyers and that they searched those records and found no entry for nine of the respondents' U.S. customers.[350] The verifiers attempted to confirm the GOC official's statements by requesting to query themselves the Ex-Im Bank's databases for evidence that the company respondents and their customers did not receive export

[344] *Id.*
[345] *Id.* at 10.
[346] *Id.* (citing *53-Foot Domestic Dry Containers From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Negative Determination of Critical Circumstances; and Postponement of Final Determination and Extension of Provisional Measures*, 79 FR 70501 (November 26, 2014), and accompanying Preliminary Decision Memorandum at 21.
[347] *See, e.g.*, *Photovoltaic Products From the PRC*, and accompanying Issues and Decision Memorandum at Comment 16; *Citric Acid from the PRC 2012*, and accompanying Issues and Decision Memorandum at Comment 6.
[348] *See* Letter to the GOC Entitled Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Verification of the Government of the People's Republic of China (Government of China or GOC), dated November 3, 2014.
[349] *See* GOC Verification Report at 2.
[350] *Id.*

buyer's credits. However, the official refused the request, asserting that such information was confidential and access to the bank's files was not possible.[351]

Furthermore, during verification, the Ex-Im Bank claimed 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 Ex-Im Bank.[352] When Department officials requested to see sample contracts and documentation to assist in understanding the disbursement of funds, the Ex-Im Bank officials denied the verifiers' request.[353] Again, the GOC did not indicate prior to or at the outset of verification that it had any concerns with the clear requests of the above-noted documentation in the verification outline. It did not express any objection to these requests until the moment the Department sat down with Ex-Im Bank officials to begin this portion of the verification agenda.

Thus, and notwithstanding the non-use claims of CIMC, Singamas, and the GOC, we find that the GOC's refusal to allow the verifiers to query the Ex-Im Bank databases, coupled with the officials' refusal to provide sample contracts and other documentation in order to provide a clear, substantiated, understanding of the process for the disbursement of funds, warrants a finding by the Department that it could not verify the GOC's reported non-use claims. Consistent with other cases where the Department has examined the export buyer's credits program, we continue to find that the Department's ability to determine its non-use by the respondents (and their customers) hinges on the ability to examine usage records in the possession of the GOC.[354]

The GOC, CIMC, and Singamas assert that the Department conclusively verified non-use of the program at CIMC and Singamas. The Department disagrees. The Department requested at the GOC verification sample documentation to fully understand the application process and how the funds from the export buyer's credit program are distributed. The GOC provided an oral and email 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 Ex-Im Bank's audited financial statements. The GOC refused to provide even this most basic, aforementioned information.[355] Thus, in this investigation, the Department was not able to verify definitively at the company level as the GOC, CIMC, and Singamas assert. Consistent with our finding in *Photovoltaic Products From the PRC*, we find in this instant investigation that the lack of supporting documentation from the GOC regarding the application and disbursement of buyer's credits under this program gave the Department no basis for assessing how to verify claims that CIMC's and Singamas' U.S. customers had not used this program.[356] The GOC's short description of the application process provided no indication of how an exporter might be involved in the provision of export buyer's credits, how it might have knowledge of such export credits, or how such export credits might be reflected in a company's books and records. Accordingly, the use of the

[351] *Id*. at 3.
[352] *Id*. at 4.
[353] *Id*. at 3.
[354] *See*, *e.g.*, *Photovoltaic Products From the PRC*, and accompanying Issues and Decision Memorandum at Comment 16; *Citric Acid from the PRC 2012*, and accompanying Issues and Decision Memorandum at Comment 6.
[355] *See* GOC Verification Report at 3-4.
[356] *See Photovoltaic Products From the PRC and accompanying Issues and Decision Memorandum* at Comment 18.

facts available is warranted under sections 776(a)(1), (2)(C) and (2)(D) of the Act. We further find that by not providing the requested information at verification, the GOC failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. The GOC and the respondents cannot now insist that we should make our decision based on evidence compiled from incomplete sources, such as the company respondents' records. Absent a well-documented understanding of how an exporter would be involved in the application of its customer for an export buyer's credit and what records the exporter might retain, we would have no way of knowing whether the records we review at a company verification necessarily include any applications or compliance records that an exporter might have from its participation in the provision of export credits to its buyers.

Furthermore, we disagree with assertions made by GOC, CIMC, Singamas, and J.B. Hunt, in citing *Chlorinated Isocyanurates* for the proposition that there is record evidence compelling the Department to undertake onsite verification of non-use of the program at the respondents' U.S. customers. *Chlorinated Isocyanurates* is inapposite for two primary reasons. First, in *Chlorinated Isocyanurates*, respondents Jiheng and Kangtai "provided statements from each of their U.S. customers in which each customer certified that they did not receive any financing from China ExIm."[357] In this investigation, CIMC's and Singamas' attempts to submit affidavits from their U.S. customers were untimely, and the Department rejected the affidavits from the record pursuant to 19 CFR 351.301(c)(1), 19 CFR 351.301(c)(5), and 19 CFR 351.104(a)(2).[358] Thus, any affidavits from the respondents' U.S. customers are absent from this record. Second, in *Chlorinated Isocyanurates*, the respondents provided statements from *each* of their U.S. customers regarding non-use of this program.[359] By contrast, the Department does not have on the record of this investigation affidavits from the entire universe of CIMC's and Singamas' U.S. customers. In this regard, we further note our disagreement with CIMC's assertion that section 782(e) of the Act applies in this case. Section 782(e)(1) requires information to be submitted by the deadline established for its submission, as one of several requirements for the Department not to decline relying on information falling within the meaning of that provision. As noted, the Department rejected the affidavits due to CIMC's and Singamas' untimely submissions to the record, thus rendering CIMC's argument on this point misplaced. Therefore, for this final determination, we find that there is not sufficient evidence on the record to suggest that the Department should have verified non-use at the company respondents' U.S. customers. Although J.B. Hunt opines that the respondents cannot reasonably be held to be "clairvoyant" in light of *Chlorinated Isocyanurates*, it is the role of the respondents to provide timely information within the framework of the Department's administrative deadlines.[360] There is no indication

[357] *See Chlorinated Isocyanurates*, and accompanying Issues and Decision Memorandum at 15.
[358] *See* Letter to Hui Zhou Pacific Container Co., Ltd., Qingdao Pacific Container Co., Ltd., and Qidong Singamas Energy Equipment Co., Ltd., and their holding company, Singamas Container Holdings Limited (collectively, "Singamas"), September 24, 2014, and Letter to China International Marine Containers (Group) Co., Ltd. (CIMC Group) and its cross-owned affiliates CIMC Containers Holding Co., Ltd. (CIMC Holding); CIMC Wood Development Co., Ltd. (CIMC Wood); Guangdong Xinhui CIMC Special Transportation Equipment Co., Ltd. (Xinhui Special); Qingdao CIMC Containers Manufacture Co., Ltd. (Qingdao CIMC); Nantong CIMC-Special Transportation Equipment Manufacture Co., Ltd. (Nantong CIMC); Xinhui CIMC Container Co., Ltd. (Xinhui Container); and Xinhui CIMC Wood Co., Ltd. (Xinhui Wood) (collectively, CIMC), dated October 24, 2014.
[359] *See Chlorinated Isocyanurates*, and accompanying Issues and Decision Memorandum at 15 (emphasis added).
[360] *See QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) ("Although Commerce has authority to place documents in the administrative record that it deems relevant, the burden of creating an adequate record lies with {interested parties} and not with Commerce") (citations omitted).

that the U.S. customer non-use affidavits filed in *Chlorinated Isocyanurates* were untimely, which factually distinguishes that case from the circumstances in this investigation. Further, just like the respondent companies in this investigation, the respondent companies in *Chlorinated Isocyanurates* could not have known what the Department's final decision in *Chlorinated Isocyanurates* would have been. That did not stop them from making timely submissions.

For the same reasons discussed above, we find Singamas' and CIMC's arguments in their January 30, 2015, and February 3, 2015 letters, respectively, responding to the Department's rejection of letters filed by two U.S. importers regarding this program, to be inapt.[361] Although it is true that the GOC reported non-use by the respondents or their affiliated companies in its original questionnaire response, and that it had no records from the respondents' customers, and that Singamas had reported that it had not assisted its customers in obtaining export buyer's credits,[362] we were unable to verify this information. Because this information was not verifiable, we find that an AFA inference is warranted.

The GOC, Singamas, and J.B. Hunt argue that the Department should not apply an AFA rate for this program. We disagree. As discussed above, we find that the GOC provided information that could not be verified and significantly impeded this proceeding, within the meaning of section 776(a)(2) of the Act. Furthermore, we find that the GOC failed to act to the best of its ability in complying with the Department's requests for information, within the meaning of section 776(b) of the Act. Thus, we determine that it is reasonable for this final determination to apply an AFA rate for this program.

With regard to the applicable AFA rate for this program, the Department has an established practice for selecting AFA rates for programs for which no verified usage information was provided.[363] According to that practice,[364] 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.

---

[361] Letter from Steptoe and Johnson to The Honorable Penny Pritzker, "53-Foot Domestic Dry Containers from the People's Republic of China: Verification of Non-Use of Ex-Im Export Buyer's Credit Program," dated January 30, 2015; Letter from White & Case to The Honorable Penny Pritzker, "CVD Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Verification of Non-Use of Alleged Export-Import Bank Export Buyer's Credit Program," dated February 3, 2015.

[362] *Id*.

[363] 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.

[364] *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."

Because the Department has not calculated a rate for the Export Buyer's Credits program in this investigation, 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 the same or a similar program in another CVD PRC proceeding. Consistent with *Photovoltaic Products From the PRC*, we are applying an AFA rate of 10.54 percent.[365]

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.[366] 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 determination 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 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 8: Scope Exclusion Request

Crowley's Comments

- Crowley asserts that the Department must "exclude international 53-foot marine containers from the scope of this investigation" because, according to Crowley, the containers that it imports and uses differ physically from domestic dry containers.[367]

- Crowley argues that the Department's preliminary determination to include Crowley's containers in the scope of the investigation improperly expands the scope, stating that the law limits investigations to products identified in the scope and that products not specifically provided for in the scope cannot be treated as subject merchandise.[368]

[365] *See Photovoltaic Products From the PRC and accompanying Issues and Decision Memorandum* at Comment 16.
[366] *See* SAA at 869-870.
[367] *See* Letter to the Department from Crowley entitled "Submission of Antidumping Case Brief Regarding Scope Exclusion on Record of Countervailing Duty Investigation: Crowley Maritime Corporation, Crowley Liner Services, Inc., and Sea Star Line, LLC 53-Foot Domestic Dry Containers from the People's Republic of China," dated April 6, 2015 (Crowley's Case Brief) at 2.
[368] *Id.* at 2-3.

- Crowley cites what it claims are distinct physical differences between its containers and domestic dry containers, including:

    1. Crowley's "international marine containers" contain four stacking frames, as opposed to two that Crowley asserts define domestic dry containers;
    2. Crowley's containers "have 16 fitting handles, not 8 as required by the scope language."[369]

- Crowley asserts that, because of these physical differences, "the Department may reach only one conclusion: 53-foot international marine containers fall outside the scope of the investigation" and further asserts that by accepting these physical characteristics in the scope the Department cannot ignore them as part of its scope determination.[370]

- Crowley believes that the Department thus "must consider all relevant defining scope characteristics, including: container dimensions, number of stacking frames and number of fitting handles when determining whether a product falls under the scope of the investigation."[371]

- Crowley states that domestic dry containers are not suitable for a marine environment, while its containers are, that domestic dry containers are American Association of Railroads (AAR) certified while its containers are International Maritime Organization's International Convention for Safe Containers (CSC) certified, and that marine containers do not meet the stacking frame or fittings specifications within the scope.[372]

- Crowley claims that the scope language from the Petition is specific in limiting coverage only to domestic dry containers, and that the scope made explicit statements that international marine containers were not covered by the scope.[373]

- Crowley states that both the Petition[374] and *Notice of Initiation*[375] indicate that the merchandise covered by the scope of the investigation "is used for intermodal traffic on a container chassis for on-the-road transportation and a rail car for 'rail transportation'" while international marine containers "are designed, certified and primarily for marine use under the CSC."[376]

---

[369] *Id.* at 3.
[370] *Id.* at 3-4.
[371] *Id.*
[372] *Id.*
[373] *Id.* at 6.
[374] *See* "Antidumping Duty Petition 53-Foot Domestic Dry Containers from the People's Republic of China," dated April 30, 2014 (Petition) at 5.
[375] *See 53-Foot Domestic Dry Containers From the People's Republic of China: Initiation of Antidumping Duty Investigations*, 79 FR 28674, 28683 (May 19, 2014) (*Notice of Initiation*). On the same date we also published a notice of initiation for the CVD investigation of domestic dry containers from the PRC. *See 53-Foot Domestic Dry Containers From the People's Republic of China: Initiation of Countervailing Duty Investigations*, 79 FR 28679 (May 19, 2014).
[376] *Id.* at 8.

- Crowley further claims that Petitioner modified the requested scope of the investigation "specifically excluded marine containers at the Department's request based upon a statement in the Department's Supplemental Questionnaire indicating that the Department thought that the product was already outside the scope of the investigation based upon dimension."[377]

- Crowley states that international marine containers have other different physical characteristics, such as being sturdier and having the ability to withstand higher load weights on ships, as well as greater protection from rust.[378]

- Moreover, Crowley claims that the record of this proceeding shows that Petitioner does not manufacture 53-foot international marine containers.[379]

- Crowley states that the Petition excluded 40-foot and 20-foot marine containers, and that Petitioner removed this exclusion from the scope of the investigation on request by the Department because of the Department's "erroneous view that the scope of this proceeding is governed by dimension only and other physical characteristics should not be considered."[380]

- Crowley asserts that "Commerce's request to remove the marine container exclusion improperly expanded the scope of this investigation by failing to consider important differences between marine and domestic containers despite recognizing that differences indeed exist."[381]

- Crowley concludes by stating that there are no circumvention issues as the extra weight from their containers makes them non-optimal for rail or truck use and that such use would not make fiscal sense.[382]

- In its rebuttal brief, Crowley claims that Petitioner acknowledges differences between international marine containers and domestic dry containers, but erroneously claims that marine containers are covered by the scope of this investigation due to the dimensions of Crowley's containers.[383]

---

[377] *Id*.
[378] *Id.* at 11.
[379] *Id.* Crowley states that the Department often removes products from the scope of an investigation if the petitioner does not manufacture the product, and cites to the Decision Memorandum issued by Susan Kuhbach to Ronald K. Lorentzen, *Preliminary Determinations; Comments on the Scope of the Investigation, Aluminum Extrusions from the People's Republic of China*, dated October 27, 2010, at 10, *Notice of Final Determination of Sales at Less than Fair Value, and Affirmative Critical Circumstances, in Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006), and *Notice of Final Determination of Sales of Less than Fair Value: Certain Pasta from Italy*, 61 FR 30326 (June 14, 1996) (excluded organic pasta from the scope of the antidumping duty order).
[380] *Id.* at 12-13.
[381] *Id.* at 13.
[382] *Id.*
[383] *See* Letter to the Department from Crowley entitled "Submission of Antidumping Rebuttal Brief Regarding Scope Exclusion on Record of Countervailing Duty Investigation: Crowley Maritime Corporation, Crowley Liner

- Crowley claims that any dimensional overlap between 53-foot international marine containers and domestic dry containers was "surrendered by Petitioner's failure to provide a more specific name and technical definition of the scope when it had the opportunity to do so" in response to one of the Department's supplemental petition questionnaires, and that Petitioner "failed to provide any product specifications, schematics, structural engineering drawings, stacking criteria, load calculations and other pertinent information to validate whether marine international and domestic dry containers are comparable to any extent for purposes of the scope."[384]

- Crowley asserts international marine containers are not domestic dry containers and that the Department "overstepped its authority by removing the international marine container exclusion established in the Petition."[385]

Petitioner's Comments

- Petitioner states that it opposed Crowley's request during the *Preliminary Determination*, and that there is "no basis," or information on the record, for the Department to differ from the preliminary determination that Crowley's containers are within the scope of the investigation.[386]

- Petitioner avers that the current scope language is appropriate and accurate, and that the Department should adopt it without modification.[387]

- In its rebuttal brief, Petitioner claims that Crowley's case brief "does nothing more than reiterate the same arguments that were made in their initial scope submission" and that the Department reviewed these comments and rejected them at the *Preliminary Determination*.[388]

- Petitioner states that Crowley's central argument is that domestic dry containers are designed primarily for use by rail or road vehicle in North America, whereas Crowley's containers are primarily for marine use, and argues that Crowley "erroneously conflates the term 'primarily' with 'exclusively'" and notes that the words are not synonymous.[389]

- According to Petitioner, Crowley does not deny that its containers can be used for intermodal transport either by road vehicle or by rail.[390]

Services, Inc., and Sea Star Line, LLC 53-Foot Domestic Dry Containers from the People's Republic of China, dated April 6, 2015(Crowley's Rebuttal Brief) at 2-3.
[384] *Id.* at 7.
[385] *Id.* at 8.
[386] *Id.* at 6.
[387] *Id.*
[388] *See* Letter to the Department from Petitioner entitled "53-Foot Domestic Dry Containers from the People's Republic of China," dated February 12, 2015 (Petitioner's Rebuttal Brief) at 3.
[389] *Id.* at 4.
[390] *Id.*

- Petitioner states, with respect to containers used in marine transport, that if its "intention in drafting the scope was to specifically exclude any containers used in marine transport, the language would reflect that intended exclusion."[391]

- Petitioner denies that it requested revised scope language that would specifically exclude marine containers, as Crowley asserted, and states that the scope language does not contain any such exclusion.[392]

- Petitioner states that what is specifically excluded from the scope of this investigation are ISO 20-foot and 40-foot containers, used in international shipping.[393]

- Petitioner further states that excluding ISO 20-foot and 40-foot containers is not the same as excluding "international marine containers" or "marine containers."[394]

- Petitioner also asserts that the issue of whether or not Petitioner manufactures the containers that Crowley uses, is "irrelevant" to the issue at hand.[395]

Department's Position

We agree with Petitioner that the merchandise described by Crowley as international 53-foot marine containers are within the scope of the investigation, identified in section IV, "Scope of the Investigation," above.

In the *Preliminary Determination*, we stated that "{t}he 53-foot marine ISO containers possess the same dimensional characteristics as the subject domestic dry containers, and have the stacking frames and fittings as detailed in the scope language. Therefore, an analysis of Crowley Maritime Corporation's 53-foot marine ISO containers indicates that its products meet the plain language of the scope of this investigation. Although there are certain physical differences between the subject domestic dry containers and the 53-foot marine ISO containers, these physical differences are not characteristics that define the scope of this investigation."[396]

To review, Crowley's products contain the following physical characteristics which place them within the scope of the investigation:

- 53-foot in length;[397]
- an exterior width of between 2.438 meters and 2.60 meters (between 8 feet and 8 feet 6 3/8 inches); and an exterior height of between 2.438 meters and 2.908 meters (between 8 feet and 9 feet 6 1/2 inches);[398]

[391] *Id.*
[392] *Id.* at 4-5.
[393] *Id.* at 5.
[394] *Id.*
[395] *Id.* at 5-6.
[396] *See Preliminary Determination* and accompanying Preliminary IDM at 8.
[397] *See* Letter from Crowley to the Department, December 9, 2014 (Crowley Scope Submission) at 2.
[398] *Id.*

- two stacking frames located equidistant from each end of the container;[399]
- the stacking frames have four upper handling fittings and four bottom dual aperture handling fittings, placed at the respective corners of the stacking frames.[400]

Crowley states that merchandise covered by the scope has two stacking frames and eight handling fittings, while their 53-foot marine containers have four stacking frames and 16 fitting handlings.[401] Therefore, Crowley asserts that the language of the scope precludes coverage of containers that have more than two stacking frames and eight handling fittings. We disagree that additional stacking frames and additional upper handling fittings are determinative with respect to Crowley's containers. The second paragraph of the scope of the investigation states "{d}omestic containers generally meet the characteristic for closed van containers for domestic intermodal service as described in the American Association of Railroads (AAR) Manual of Standards and Recommended Practices Intermodal Equipment Manual Closed Van Containers for Domestic Intermodal Service Specification M 930 Adopted: 1972; Last Revised 2013 (AAR Specifications) for 53-foot and 53-foot high cube containers." This same paragraph further states that "{t}he AAR Specifications generally define design, performance and testing requirements for closed van containers, *but are not dispositive for purposes of defining subject merchandise within this scope definition*." (Emphasis added.) Specifically with respect to the stacking frames and handling fittings, the third paragraph of the scope states: "In addition to two frames (one at either end of the container), the domestic containers within the scope definition have two stacking frames located equidistant from each end of the container, *as required by the AAR Specifications*." ("Emphasis added.) The scope then describes the handling fittings that are on the stacking frames, noting that the stacking frames have four handling fittings on the top, and four on the bottom, for a total of eight per container. Accordingly, the stacking frame and handling fitting descriptions are derived from the AAR Specifications, which are explicitly stated as not dispositive of the scope.

In particular, the AAR specification, with respect to stacking frames and handling fittings, states the following:

> "4.1 Handling Fittings
>
> Refer to Figs. 13.1, 13.2, and 13.3 for positioning dimensions and manufacturing tolerances of lifting stacking aperture faces and openings. Design must provide for securement at the lower fitting locations to industry standard roadway chassis, flatbeds, COFC railcars, TOFC railcars, and double-stack railcars equipped with deck-mounted, low-profile, AAR-approved twist lock or pin locks. Handling fittings must be capable of utilizing manual, semiautomatic, and fully automatic interbox connectors when stacked in double-stack railcars as well as low-profile-type (3.375-in, maximum height cone) COFC pedestal and twist-lock devices."
>
> "4.1.2 Handling (Stacking Frame) Fittings for Containers Longer than 40 ft
> 4.1.2.1 Domestic containers will be equipped with either ISO or WTP upper

[399] *Id.*
[400] *Id.*
[401] *See* Crowley's Rebuttal Brief at 4.

> stacking frame handling fittings (see Fig. 13.6 or Fig. 13.7) and bottom dual-aperture stacking frame handling fittings (see Fig. 13.9.) Upper and lower fittings must be located at the 40-ft stacking frame (intermediate) locations."

In other words, each stacking frame must have two handling fittings on the top, and two on the bottom, for a total of four per stacking frame, and there are two stacking frames at the ends of the 40-foot center locations. [402]

Further, the AAR specifications state:

> "This specification is intended to provide minimum safe standards for the purchase and construction of containers to be used in the rail and highway modes of transport. The specification will identify the design and test parameters required for new domestic containers to ensure a minimum 15 years of useful service life based on 100 handling cycles per year. It is not the intent of this specification to place restrictions on the structural design methods or the use of any materials."[403]

The language of the AAR specification does not preclude additional stacking frames or handling fittings. Crowley's containers have the specified stacking frames and handling fittings at the specified locations.[404] Additionally, Crowley's products are designed for intermodal use and are capable of, and suitable for, double-stacking in intermodal transportation.[405] As noted above, the language of the scope states that "{c}ontainers which may not fall precisely within the AAR Specifications or any successor equivalent specifications are included within the scope definition of the subject merchandise if they have the exterior dimensions referenced below, are suitable for use in intermodal transportation, are capable of and suitable for double-stacking in intermodal transportation, and otherwise meet the scope definition for the subject merchandise." By this language alone, Crowley's products are covered by the scope of the investigation.

Notwithstanding, Crowley notes that its products contain more than two stacking frames and more than eight handling fittings, and claims that this excludes its products from the scope.[406] However, there is no language in the scope dictating that a container having more than two stacking frames and more than four handling fittings is outside of the scope of the investigation. Rather, the Department finds that language in the scope reflects current AAR specifications which are not dispositive but currently represent a minimum requirement, not a limit, for stacking frames and handling fittings for containers covered by the scope of the investigation. Similarly, the wall strength of the containers, the weight, higher/deeper door headers and sills, and the interior width, are not distinguishing factors in the scope language. Therefore, these physical differences are not material for the purposes of determining whether a container is covered by the scope of the investigation.

An examination of the language of the Petition indicates that Petitioner concentrated on the

[402] *See* Petition at page 5 of Exhibit I-2.
[403] *Id.* at page 4 of Exhibit I-2.
[404] *See* Letter from Crowley to the Department, December 9, 2014 (Crowley Scope Submission) at 2.
[405] *Id.* at 2, and Note 6 at 3.
[406] *See* Crowley's Case Brief at 2.

dimensions of the product, and its suitability in intermodal situations, in asking for merchandise to be covered by the scope. For example, Petitioner stated in the Petition:

> "{a}t one time, various sizes of domestic containers were manufactured and/or imported and some are still currently in service in North America. However, due to both evolving regulatory changes and evolving economics, including increased reliance on and efficiencies in intermodal routes, the demand for shorter length domestic containers has significantly diminished.(5) The subject of this petition is the 53-foot and 53-foot high cube(6) domestic container."[407]

Note 5 (on page 5 of Volume I of the Petition) states:

> "{t}he federal regulatory scheme allows the several states to restrict the length of semitrailers on the highway system within their states. Most states have set 53 feet as the maximum permitted length. *See e.g*, Exhibit I-1. Thus, to some extent, the regulatory scheme drives the demand for intermodal transport logistics. 53-foot containers hold more freight and fit exactly within rail well cars designed to move them by rail. The 53-foot domestic container is the imported product causing material retardation to the United States industry. To the best of Petitioner's knowledge, domestic containers of lesser lengths are not currently manufactured for use in, or imported into, the U.S. market."[408] Note 6 (also on page 5 of Volume I of the Petition) states: "'{h}igh cube' refers to a container with a greater interior height. A 53-foot container has a minimum interior height of 107 inches. A high cube 53-foot domestic container has a minimum interior height of 109 318 inches."[409]

At page 6 of the Petition, Petitioner states:

> "{t}he subject merchandise is virtually identical (with respect to defining design and physical characteristics) to the domestic like product. Both the imported product and the domestic like product are designed and constructed to be placed on a container chassis for movement to the place of intermodal transfer, (typically a rail yard) where they are top-lifted off the chassis and placed on a rail well car. Domestic containers are specially designed to be double-stacked on the rail car. At the destination point, they are unloaded, and an individual domestic container is placed on a truck chassis and moved to its final or an interim destination where the contents are unloaded. Domestic containers are widely used in intermodal transportation because for shipment over longer distances, it is much less costly to complete most of the transport via rail than entirely by surface over-the-road transportation. In addition, the 53-foot length of the container allows for more freight to be shipped by means of the more economical intermodal move."[410]

[407] *See* Petition, April 23, 2014, Volume I at pages 3-4.
[408] *Id.* at 5.
[409] *Id.*
[410] *Id.* at 6.

On page 7 of the Petition at Note 8, Petitioner further states:

> "{o}ther 53-foot domestic containers that do not strictly conform to the AAR Specification are used in substantial quantities and are included in the scope definition provided *infra*. These domestic containers in general comply with the performance criteria defined in Section 5 of the AAR specification but do not conform to the interchangeable dimensions defined in the document. They have been designed to couple only with a specifically configured chassis while providing container to railcar and container to container interface. These containers are generally part of a private fleet which has contractual agreements with the railroads to handle their equipment, even without an AAR certification."[411]

Finally, at page 21 of the Petition, Petitioner states:

> "{o}ther types of shipping containers currently in use are not domestic like products. There is currently no U.S. production of ISO 20 foot and 40 foot ISO containers. These are used almost exclusively in the maritime trade to ship goods by vessel. There is currently no U.S. production of domestic containers in other than 53-foot lengths because the ability to operate domestic containers on the roadways and their compatibility with intermodal rail and chassis equipment makes shorter length domestic containers (with less capacity) inefficient."[412]

Moreover, the scope also states that "{a}ll domestic containers as described herein are included within this scope definition, regardless of whether the merchandise enters the United States in a final, assembled condition, or as an unassembled kit or substantially complete domestic container which requires additional manipulation or processing after entry into the United States to be made ready for use as a domestic container." Thus, we believe that the Petition and scope language clearly indicates that 53-foot containers, which are suitable for intermodal use on rail and especially truck chasses, are products intended to be covered by the scope. Crowley's products, according to the physical description, fall within these parameters.

Crowley misstates the Department's removal of the language regarding 20-foot and 40-foot ISO containers as the removal of a general exclusion for marine containers, and thus an expansion of the scope. Crowley is incorrect. As Petitioner noted, since the original scope language in the Petition excluded any containers under 48-feet, it was unnecessary for the scope to contain language that specifically excluded containers which were 20-foot and 40-foot in length. By definition, since these containers are physically under 48-feet, they are not intended to be covered by the scope of this investigation. Whether these are "marine" containers or not is irrelevant to determining if a container is covered by the scope of the investigation, as this is not a determining factor in the scope.

In addition, Crowley's comments with respect to whether or not Petitioner manufactures the merchandise in question are not relevant to this decision. We note that Petitioner, in the petition,

[411] *Id.* at 7.
[412] *Id.* at 21.

alleges that that the establishment of an industry in the United States is materially retarded by reason of unfair imports.[413] It is therefore not surprising that Petitioner may currently not manufacture the merchandise in question. Petitioner's active participation in this investigation and with respect to this scope question indicates an interest in the merchandise. Thus we do not believe that Crowley's statements concerning Petitioner's current manufacturing status of the product in question affect this analysis.

In summary, we have examined Crowley's request and claims, and the totality of the language of the scope of the investigation. Based upon our analysis, we find that Crowley's products, as listed in the Crowley Scope Submission, are covered by the scope of this investigation, and we have not modified the language of the scope.

Recommendation

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the *Federal Register*.

✓ _____ Agree

_____ Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

April 10, 2015

Date

[413] *See* Petition, April 23, 2014, Volume I at page 1.