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International Trade Administration
Washington, D.C. 20230

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Investigation
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**Public Document**
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August 14, 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 Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Issues and Decision Memorandum for the Final Determination

## I. BACKGROUND

The Department of Commerce (the "Department") determines that countervailable subsidies have been provided to producers and exporters of boltless steel shelving units prepackaged for sale ("boltless steel shelves") from the People's Republic of China ("PRC"), as provided in section 705 of the Tariff Act of 1930, as amended (the "Act").

On January 30, 2015, the Department published its *Preliminary Determination* in the countervailing duty ("CVD") investigation of boltless steel shelves from the PRC.[1] Between May 6 and June 6, 2015, we conducted verifications of the questionnaire responses of Nanjing ETDZ Huixing Trade Co., Ltd. ("ETDZ") and Nanjing Topsun Racking Manufacturing Co., Ltd. ("Topsun").[2] The Department placed the public version of the antidumping duty ("AD")

[1] *See Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Preliminary Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 80 FR 5089 (January 30, 2015) ("*Preliminary Determination*") and accompanying Preliminary Decision Memorandum ("PDM").

[2] *See* Memorandum to Scot T. Fullerton, Program Manager, from Susan S. Pulongbarit, Senior International Trade Analyst, "Countervailing Duty Investigation: Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Verification Report: Nanjing Topsun Racking Manufacturing Co., Ltd. ("Topsun") and Nanjing Great Wall Co., Ltd. ("Great Wall")," dated June 16, 2015; Memorandum to Scot T. Fullerton, Program Manager, from Paul Walker, Case Analyst, "Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Verification Report for Ningbo ETDZ Huixing Trade Co., Ltd.," dated June 16, 2015.

investigation verification report of Topsun on the record of this investigation.[3] On May 21, 2015, the Department issued the Post-preliminary Determination.[4] Between June 24 and June 29, 2015, Topsun, ETDZ, Whirlpool Corporation ("Whirlpool"), and Petitioner[5] submitted case and rebuttal briefs.[6] On August 3, 2015 the Department re-released the Topsun AD verification report on the record of this proceeding, which had undergone several bracketing changes.[7] No party provided comments on this verification report.

List of Comments

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| Comment I: | Whether State Ownership Makes an Entity a Government Authority |
| Comment II: | Whether Chinese Communist Party ("CCP") Affiliations/Activities by Company Officials Make the Company a Government Authority |
| Comment III: | Whether the Government of China ("GOC") Responded to the Best of its Ability Regarding Ownership and CCP Affiliation for HRCS Suppliers and Provided Sufficient Evidence to Find that Some Producers Were not Government Authorities |
| Comment IV: | Whether the Provision of HRCS Is Specific |
| Comment V: | Use of a Tier-One Price for the Provision of HRCS |

[3] *See* Memorandum to the File, through Catherine Bertrand, Program Manager, from Irene Gorelik and Kabir Archuletta, Senior Analysts, "Verification of the Sales and Factors Response of Topsun Racking Manufacturing Co., Ltd. ("Topsun") in the Antidumping Duty Less Than Fair Value Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China ("PRC")," dated June 3, 2015.

[4] *See* Memorandum to Paul Piquado, Assistant Secretary, Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations, "Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Post-Preliminary Determination Decision Memorandum," dated May 29, 2015 ("Post-preliminary Determination").

[5] Petitioner in this investigation is Edsal Manufacturing Company, Inc.

[6] *See* Letter from Petitioner, to the Department, regarding Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China, dated June 24, 2015 ("Petitioner's Case Brief"); Letter from GOC, to the Department, regarding Boltless Steel Shelving Units Pre-Packaged for Sale from China; CVD Investigation GOC Case Brief, dated June 24, 2015 ("GOC's Case Brief"); Letter from ETDZ, to the Department, regarding Boltless Steel Shelving Units Prepackaged For Sale from the PRC Case Brief, dated June 24, 2015 ("ETDZ's Case Brief"); Letter from Topsun, to the Department, regarding Boltless Steel Shelving from the People's Republic of China (A-570-018); Case Brief of Nanjing Topsun Racking Manufacturing Co., Ltd, dated June 24, 2015 ("Topsun's Case Brief"); Letter from Petitioner, to the Department, regarding Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China, dated June 29, 2015 ("Petitioner's Rebuttal Brief"); Letter from GOC, to the Department, regarding Boltless Steel Shelving Units Pre-Packaged for Sale from China; CVD Investigation GOC Rebuttal Brief, dated June 29, 2015 ("GOC's Rebuttal Brief"); Letter from ETDZ, to the Department, regarding Boltless Steel Shelving Units Prepackaged For Sale from the PRC Rebuttal Brief, dated June 29, 2015 ("ETDZ's Rebuttal Brief"); Letter from Topsun, to the Department, regarding Boltless Steel Shelving from the People's Republic of China (C-570-019); Rebuttal Brief of Nanjing Topsun Racking Manufacturing Co., Ltd., dated June 29, 2015 ("Topsun's Rebuttal Brief"); and Letter from Whirlpool, to the Department, regarding Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Rebuttal Brief, date June 29, 2015. In addition, Topsun submitted comments on August 5, 2015, regarding the public version of the August 3, 2015, antidumping duty verification report.

[7] *See* Memorandum to the File, through Catherine Bertrand, Program Manager, from Irene Gorelik and Kabir Archuletta, Senior Analysts, "Verification of the Sales and Factors Response of Topsun Racking Manufacturing Co., Ltd. ("Topsun") in the Antidumping Duty Less Than Fair Value Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China ("PRC")," dated August 3, 2015.

## II. SCOPE OF THE INVESTIGATION

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

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

Specifically excluded from the scope are:

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

Subject boltless steel shelving enters the United States through Harmonized Tariff Schedule of the United States ("HTSUS") statistical subheadings 9403.20.0018, 9403.20.0020, 9403.20.0025, and 9403.20.0026, but may also enter through HTSUS 9403.10.0040. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

## III. SUBSIDIES VALUATION INFORMATION

### A. *Period of Investigation*

The period of investigation, ("POI") for which we are measuring subsidies is January 1, 2013, through December 31, 2013.

### B. *Allocation Period*

The Department normally allocates the benefits from non-recurring subsidies over the average useful life ("AUL") of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[9] The Department notified the respondents of the AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

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

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

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

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 is normally met when there is a majority voting interest between two corporations, or through common ownership of two (or more) corporations.[10] In certain circumstances, a large minority voting interest (for example, 40 percent) may also result in cross-ownership.[11] The Court of International Trade upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.[12]

*ETDZ*

ETDZ responded to the Department's original and supplemental questionnaires on behalf of itself and its three suppliers of boltless steel shelving units.[13] ETDZ does not produce boltless steel shelving units, but is a trading company engaged in the sale of various types of products including metal products, chemical products and mineral products.[14] Because ETDZ is a trading company, we have cumulated benefits from subsidies to ETDZ with benefits from subsidies provided to ETDZ's producers/suppliers, in accordance with 19 CFR 351.525(c).

*Topsun*

Topsun reported that cross-ownership exists between Topsun and Nanjing Ruihai Helical Weld Pipe Co., Ltd ("Ruihai"). Based on information on the record, we determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), between Topsun and Ruihai, through Topsun's ultimate ownership of Ruihai.[15] Because Topsun can use Ruihai's assets in

[10] *See, e.g., Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998).
[11] *Id.*
[12] *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[13] *See, e.g.*, ETDZ's December 18, 2014 submission at 6.
[14] *Id.*
[15] The Department's regulations at 19 CFR 351.525(b)(6)(vi) state that cross-ownership exists when one corporation can use or direct the assets of another corporation in essentially the same way it can use its own. Normally, however, "this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations."

the same way it uses its own,[16] in accordance with 19 CFR 351.525(b)(6)(vi), we are attributing subsidies received by Topsun to Ruihai.

In the *Preliminary Determination*, we stated the Department's intent to request additional information regarding Topsun's affiliate for which it did not claim cross ownership.[17] Based on information placed on the record since the *Preliminary Determination*, we determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), between Topsun and Nanjing Great Wall ("Great Wall") in which Topsun can use Great Wall's assets in the same way it uses its own.[18] In accordance with 19 CFR 351.525(b)(6)(vi), we are attributing subsidies received by Topsun to Great Wall.

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. As discussed in further detail below in the "Analysis of Programs – Programs Determined to Be Countervailable" section below, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). For a further discussion of the denominators used, *see* final calculation memoranda. [19]

## IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is

[16] *See* Topsun's November 14, 2014, submission at 5.
[17] *See* PDM at 7.
[18] *See* Topsun's April 17, 2015 submission at 4.
[19] *See* Memorandum to Scot T. Fullerton, Program Manager, Office V, Enforcement & Compliance, from Paul Walker, Case Analyst, "Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Ningbo ETDZ Huixing Trade Co., Ltd. Final Calculation Memo,' dated concurrently with this Memorandum ("ETDZ Calculation Memo"); and Memorandum to Scot T. Fullerton, Program Manager, Office V, Enforcement & Compliance, from Susan Pulongbarit, Senior International Trade Analyst, "Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Nanjing Topsun Racking Manufacturing Co., Ltd. Final Calculation Memo,' dated concurrently with this Memorandum ("Topsun Calculation Memo").

sufficiently adverse as to effectuate the statutory purposes of the adverse facts available ("AFA") rule to induce respondents to provide the Department with complete and accurate information in a timely manner.[20] 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."[21] For purposes of this final determination, we find it necessary to apply AFA with respect to the GOC's responses to questions on the alleged provision of electricity for less than adequate remuneration ("LTAR"), on the alleged provision of hot-rolled coil steel ("HRCS") for LTAR, and on certain other programs reported by ETDZ and with respect to those companies that did not respond to the Department's quantity and value questionnaire.

A. *GOC*

In the *Preliminary Determination*, we found that the GOC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific with the meaning of section 771(5A) of the Act. In both the Department's original questionnaire, and the December 30, 2014, supplemental questionnaire, for each province in which a respondent is located, the Department asked the GOC to provide a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. The GOC provided no provincial-specific information in response to these questions in its initial questionnaire response.[22] The Department reiterated these questions in a supplemental questionnaire and the GOC did not provide the requested information in its supplemental questionnaire response.[23]

Consequently, in the *Preliminary Determination* we determined that the GOC withheld necessary information that was requested of it, and thus, that the Department must rely on facts otherwise available in making our final determination pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of electricity constitutes a financial

[20] *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909 (February 23, 1998).
[21] *See* Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1, at 870 (1994).
[22] *See* the GOC's December 18, 2014 submission at 33-38.
[23] *See* the GOC's January 15, 2015 submission at 1-7.

contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates selected are derived from information from the record of this investigation and are the highest electricity rates on this record for the applicable rate and user categories.[24]

Moreover, in the *Preliminary Determination*, we found that the GOC did not provide complete responses to the Department's questions regarding the alleged provision of HRCS for LTAR.[25] As discussed below under the section "Analysis of Programs – Programs Determined to Be Countervailable," the Department is investigating whether the GOC provided HRCS for LTAR. We asked the GOC to provide information regarding the specific companies that produced the HRCS that the mandatory respondents purchased during the POI. Specifically, we sought information from the GOC that would allow us to analyze whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.

For each producer that the GOC claimed was privately owned by individuals during the POI, we requested identification of the owners, members of the board of directors, or managers of the producers who were also government or CCP officials or representatives during the POI. The GOC did not provide this requested information for any producer. Instead, the GOC argued that "even if an owner, a director or a manager of the input producers is a Government or CCP official, this individual can never have any additional responsibility, authority and/or capacity regarding the operation of the company as a consequence of his/her official or representative identity."[26] Because the GOC did not provide information we need for our analysis, we asked for this information a second time, in a supplemental questionnaire issued on January 13, 2015. The GOC referred back to its December 18, 2014 initial questionnaire response and stated that it could not provide additional information.[27] The GOC did not identify the individual owners, members of the board of directors, or senior managers of the producers who were CCP officials during the POI for any producer. The Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in the PRC, such that the CCP is part of the governing structure of the PRC.[28] We have explained our understanding

[24] *See* Memorandum to the File, from Susan Pulongbarit, Senior International Trade Analyst, Office V, Enforcement & Compliance, regarding Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Preliminary Benchmark Memorandum, dated January 23, 2015 ("Preliminary Benchmark Memo").

[25] *See* PDM at 9-11.

[26] *See* the GOC's December 18, 2014 submission at 22-23.

[27] *See* the GOC's January 21, 2015 submission at 3.

[28] *See* Memo to the File, "Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Additional Information," dated January 15, 2015 which contains the following two documents:
(a) 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

of the CCP's involvement in the PRC's economic and political structures in past proceedings.[29] With regard to the GOC's claim that PRC law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.[30]

The information we requested regarding the role of CCP officials in the management and operations of these producers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. The GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The GOC's responses in prior CVD proceedings involving the PRC demonstrate that it is, in fact, able to access information similar to what we requested.[31] Additionally, pursuant to section 782(c) of the Act, if the GOC could not provide any information, it should have promptly explained to the Department what attempts it undertook to obtain this information and proposed alternative forms of providing the information.[32]

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

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Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS379," dated May 18, 2012 ("Public Bodies Memo"); and,
(b) 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 Memo").

[29] *Id*.

[30] *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010) and accompanying Issues and Decision Memorandum at 6 and 65.

[31] *See, e.g.*, *High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) ("*Steel Cylinders*") and accompanying Issues and Decision Memorandum at 13.

[32] Section 782(c)(1) of the Act states "If an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority of the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party." Furthermore, the Department's questionnaire explicitly informs respondents that if they are unable to respond completely to every question in the attached questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, the respondents must notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response.

directors, owners and/or senior managers of certain producers are CCP officials, and therefore that these producers are "authorities" within the meaning of section 771(5)(B) of the Act.

In addition, as AFA, we find the provision of HRCS to be specific. The Department asked the GOC to provide a list of industries in the PRC that purchase HRCS directly and to provide the amounts (volume and value) purchased by each of the industries, including the boltless steel shelving industry.[33] The Department requests such information for purposes of its *de facto* specificity analysis. The GOC provided a list of industries that used ferroalloy metal in 2011, an excerpt of the national standard on "Industries Classification in National Economy," which reflect all the economic activities in the PRC and includes steel producer sectors, and an excerpt of the general categorization of all economic activities under the United Nation's "International Standard Industrial Classification for All Economic Activities."[34] This information submitted by the GOC, however, is insufficient because it does not report the actual PRC industries that purchased HRCS, the volume and value of each industry's respective purchase for the POI, and the prior two years, as we requested. The GOC stated that it does not collect official data regarding the industries in the PRC that purchase HRCS directly.[35]

Consistent with past proceedings, we continue to determine that this claim is contradicted by the GOC's submission of a list of industries that used ferroalloy metal in 2007.[36] Therefore, consistent with past proceedings,[37] we determine that necessary information is not available on the record and that the GOC has withheld information that was requested of it, and, thus, that the Department must rely on "facts available" in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of HRCS is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. We note that that the Department has previously found the provision of hot-rolled steel in the PRC 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.[38]

In the *Preliminary Determination* we also found that the GOC did not provide complete responses to the Department's questions regarding the specificity of following programs: Exhibition Subsidy, Foreign Trade Bureau Award, Export Credit Insurance and Export Subsidy

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

for High-tech Merchandise. Accordingly, we found that the GOC withheld necessary information that was requested of it, and thus, the Department relied on facts otherwise available in making our *Preliminary Determination* with respect to these programs pursuant to sections 776(a)(1) and (a)(2)(A) of the Act.[39]

After the *Preliminary Determination*, we provided the GOC with another opportunity to provide the requested information for these programs.[40] In its response, the GOC did not provide key information that the Department requested.[41] This key information, for example, program approval packages, is relied upon by the Department to determine the *de jure* and *de facto* specificity of this program.[42] In past cases the Department determined that for each program for which the GOC did not provide the relevant laws or regulations, as AFA, that the programs are *de jure* specific.[43] As a result, for this final determination, because the GOC did not provide us with necessary information required to conduct our specificity analysis under section 771(5A)(D) of the Act, we are required to make specificity determinations for the above-named programs on the basis of the facts available under sections 776(a)(1) and (a)(2)(A) of the Act. Additionally, because the GOC did not act to the best of its ability in complying with our requests for information concerning those programs, we conclude that an adverse inference is warranted under section 776(b) of the Act to find those programs specific within the meaning of section 771(5A) of the Act. For more information on each program, *see* the "Analysis of Programs" section, below.

In the Post-preliminary Determination, the Department found that the GOC did not provide complete responses to the Department's questions, asked twice, about the Innovative Growth Subsidy.[44] Accordingly, we found that the GOC withheld necessary information that was requested of it and relied on facts otherwise available in making our Post-preliminary Determination with respect to these programs pursuant to sections 776(a)(1) and (a)(2)(A) of the Act.[45] Moreover, we found that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information concerning this program and applied an adverse inference pursuant to section 776(b) of the Act.[46] As no party has challenged this finding, and as no new information concerning this program has been placed on the record since the Post-preliminary Determination, we continue to find that the application of AFA to the GOC is warranted for this program.

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[39] *See* PDM at 21 - 24.
[40] *See* the Department's March 19, 2015 letter to the GOC.
[41] *See, e.g.*, the GOC's April 7, 2015 submission at 1 - 3.
[42] For example, the GOC did not respond to six questions regarding the Exhibition Subsidy, and did not provide "a least one completed and approved application package." *Id*. at 1.
[43] *See 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 "Grant Programs for Which the GOC Did Not Provide the Requested Laws, Regulations, and Specificity Information"("*Aluminum Extrusions*") (where the Department found that because the GOC failed to provide necessary information pursuant to section 776(a) of the Act and failed to cooperate by not acting to the best of its ability to comply with the request for information, pursuant to section 776(b) of the Act, for each program for which the GOC did not provide the relevant laws or regulations that the program is *de jure* specific).
[44] *See* Post-preliminary Determination at 4 - 5.
[45] *Id.*
[46] *Id.*

B. *Application of Total Adverse Facts Available to Non-responsive Companies to the Q&V Questionnaire*

The Department is making no changes to its reliance on adverse inferences pursuant to section 776(b) of the Act in applying the facts otherwise available to the 16 companies that did not respond to the Department's quantity and value ("Q&V") questionnaires. However, for this final determination we are making certain changes to the AFA rate we applied to those companies that received the Department's Quantity and Value questionnaire, but did not respond.[47] Specifically, we are revising the AFA rate for "Export Seller's Credits from the Export-Import Bank of China" to reflect the highest calculated CVD rate for that program.[48] In addition, we are using an AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in a prior PRC proceeding for the "Export Buyer's Credits from the Export-Import Bank of China" program. Finally, we are also changing the AFA rate for "Provision of Electricity for LTAR" to reflect the highest rate calculated for this program in this investigation.

| Summary | AFA Rate (percent) |
|---|---|
| Income Tax Reductions for Export Oriented FIEs[49] | 25.00 |
| Income Tax Benefits for FIEs Based on Geographic Location | |
| Local Income Tax Exemption and Reduction Programs for Productive FIEs | |
| Income Tax Reduction for High or New Technology Enterprises | |
| Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law | |
| Two Free, Three Half | |
| Export Seller's Credits from the Export Import Bank of China[50] | 4.25 |
| Export Buyer's Credits from the Export Import Bank of China[51] | 10.54 |
| Import Tariff and VAT Reductions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries[52] | 9.71 |

[47] *See* Memorandum to James C. Doyle, Office Director, through Paul Walker, Acting Program Manager, from Susan Pulongbarit, International Trade Analyst, "Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Application of Adverse Facts Available for Non-Cooperative Companies," dated concurrently with this memorandum.

[48] *Id.*

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

[50] *See Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015) and accompanying Issues and Decision Memorandum at

[51] *Id.* at 16.

[52] *Id.* at 18.

| | |
|---|---|
| Tax Rebates Based on Location in Shiqiao Town Industrial Cluster Zone[53] | 1.68 |
| Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies[54] | 1.68 |
| VAT Refunds for FIEs Purchasing Domestically Produced Equipment[55] | 9.71 |
| Provision of Hot Rolled Coil Steel[56] | 14.28 |
| Provision of Electricity for LTAR[57] | 0.77 |
| GOC and Sub-Central Government Subsidies for the Development of Famous Brands and World Top Brands[58] | 0.58 |
| Special Fund for Energy Savings Technology Reform[59] | 0.58 |
| International Market Exploration (SME) Fund[60] | 0.58 |
| Export Assistance/Outward Expansion Grants in Guangdong Province[61] | 0.08 |
| Guangdong Province Funds to Support the Adoption of E-Commerce by Foreign Trade Enterprises[62] | 0.58 |
| Technology to Improve Trade Research and Development Fund[63] | 0.58 |
| Rental/Purchase Assistance in Ningbo Municipality Yinzhou District Southern Commercial Zone[64] | 0.58 |
| Exhibition Subsidy[65] | 0.58 |
| Foreign Trade Bureau Award[66] | 0.01 |
| Export Credit Insurance Subsidy[67] | 0.01 |

[53] *See Certain Steel Grating from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32362 (June 8, 2010) and accompanying Issues and Decision Memorandum at "Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment."
[54] *Id.*
[55] *See New Pneumatic Off-the-Rad Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 18, 2010) at "C. VAT and Import Duty Exemptions on Imported Material," unchanged in *New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011).
[56] *See* "Analysis of Programs" section, below.
[57] *Id.*
[58] *See Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) ("*Isos*") and accompanying Issues and Decision Memorandum at "Analysis of Programs; Special Fund for Energy Saving Technology."
[59] *Id.*
[60] *Id.*
[61] *See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) and accompanying Issues and Decision Memorandum at "Funds for Outward Expansion of Industries in Guangdong Province."
[62] *See Isos* at "Analysis of Programs; Special Fund for Energy Saving Technology."
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *See* "Analysis of Programs" section, below.
[67] *Id.*

| | |
|---|---|
| Export Subsidy for High-tech Merchandise | 0.02 |
| Clean Energy Measure Subsidy[68] | 0.05 |
| Innovative Growth Grant[69] | 0.07 |
| Total *Ad Valorem* Rate | 80.39 |

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

ETDZ's suppliers did not report inland freight for purchases of HRCS. Section 351.511(a)(2)(iv) of the Department's regulations directs the Department to use delivered prices "to reflect the price a firm actually paid or would pay if it imported the product" in measuring the adequacy of remuneration. Thus, this section of the regulations directs us to include inland freight in the PRC in the benchmark. Therefore, for the final determination, we have continued to rely on the facts available to determine the inland freight rate for ETDZ's suppliers. As facts available, we valued ETDZ's suppliers' inland freight using an average of Topsun's monthly freight expenses, as we did in the *Preliminary Results*.[70]

## V. ANALYSIS OF PROGRAMS

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

A. *Programs Determined to Be Countervailable*

1. *Electricity for LTAR*

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

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

[68] *Id.*
[69] *Id.*
[70] *See* PDM at 15.

provided data on the electricity the companies consumed and the electricity rates paid during the POI.[71]

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

To calculate the benchmark, we selected the highest rates in the PRC for the type of user (*e.g.*, "General Industry," "Lighting," "Base Charge/Maximum Demand") for the general, high peak, peak, normal, and valley ranges, as provided by the GOC.[72] The electricity rate benchmarks are included in the Preliminary Benchmark Memo. This benchmark reflects an adverse inference, which we made because of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.

To measure whether a benefit was received under this program, we first calculated the electricity prices Topsun and ETDZ's suppliers paid by multiplying the monthly kilowatt hours, or kilovolt amperes, consumed for each price category by the corresponding electricity rates charged for each price category. Next, we calculated the benchmark electricity cost by multiplying the monthly consumption reported by the respondents for each price category by the highest electricity rate charged for each price category, as reflected in the electricity rate benchmark chart. To calculate the benefit for each month, we subtracted the amount paid for electricity during each month of the POI from the monthly benchmark electricity price. We then calculated the total benefit for each supplier during the POI by summing the monthly benefits.[73]

Efficiency adjustments were reported in the electricity rate charts.[74] Consistent with *Plywood*, we did not include these charges in calculating the benefit for this program.[75]

To calculate the subsidy rate pertaining to the GOC's provision of electricity for LTAR, we divided the benefit amount calculated for Topsun and each of ETDZ's suppliers by the appropriate total sales denominator, as discussed in the "Subsidy Valuation Information" section

[71] *See, e.g.*, ETDZ's December 18, 2014 submission at Exhibit 9.
[72] *See* the GOC's December 18, 2014 submission at Exhibit 35.
[73] *See* ETDZ Calculation Memo; Topsun Calculation Memo.
[74] *See, e.g.*, ETDZ's December 18, 2014 submission at Exhibit 8.
[75] *See Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013) ("*Plywood*") and accompanying Issues and Decision Memorandum at Comment 3 (where the Department did not include efficiency adjustments in the electricity benefit calculation).

above, and in the Preliminary Calculation Memoranda. On this basis, we determine a countervailable subsidy of 0.07 percent *ad valorem* for ETDZ.[76] In addition, on this basis, we determine a countervailable subsidy of 0.77 percent *ad valorem* for Topsun.[77]

2. *HRCS for LTAR*

The Department is investigating whether GOC authorities provided HRCS to producers of boltless steel shelving for LTAR. Topsun and ETDZ's suppliers identified the HRCS suppliers and producers that produced the HRCS consumed in the production of the merchandise under consideration during the POI. In addition, they reported the volume, unit of measurement, total value, and VAT paid during the POI.

The GOC reported that Topsun and ETDZ's suppliers purchased HRCS from companies that the GOC has classified as state owned enterprises ("SOEs"), as well as from companies that the GOC considered to be "privately-held."[78] 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 Bodies Memo, majority SOEs in the PRC possess, exercise, or are vested with governmental authority.[79] The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we determine that these entities 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.[80] Further, we find that the respondents received a benefit to the extent that the price they paid for the HRCS produced by these suppliers was for LTAR.[81] As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are treating the domestic producers of HRCS that the GOC has classified as non-"SOEs" to be "authorities" under the Act. Therefore, we determine that the HRCS supplied by all domestic producers is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act, and Topsun and ETDZ's suppliers received a benefit to the extent that the prices they paid for the HRCS produced by these suppliers was for LTAR, pursuant to section 771(5)(E)(iv) of the Act.[82]

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

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[76] *See* ETDZ Calculation Memo.
[77] *See* Topsun Calculation Memo.
[78] *See* the GOC's December 18, 2014 submission at 16-18.
[79] *See* Public Bodies Memo.
[80] *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.
[81] *See* section 771(5)(E)(iv) of the Act.
[82] *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

Finally, regarding the benefit, the Department identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services pursuant to 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in 19 CFR 351.511(a)(2)(i), the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.[83] This is because such prices, generally, are expected to reflect most closely the prevailing market conditions of the purchaser under investigation.[84]

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving PRC buyers and sellers that can be used to determine whether the GOC authorities sold HRCS to the respondents for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country may be considered significantly distorted and may not be an appropriate basis of comparison for determining whether there is a benefit.[85]

In its initial questionnaire response, the GOC stated that it does not maintain volume and value information on domestic production of HRCS that is accounted for companies with government ownership.[86] Instead, the GOC only provided volume data for production of HRCS accounted for by State Holding Companies.[87] In other cases, the GOC was able to provide this information for other types of hot rolled steel products; therefore, we requested the GOC to provide this information for hot rolled steel since it stated that it does not maintain this data for HRCS. In response, the GOC referred back to its December 18, 2014 initial questionnaire response and stated that it could not provide additional information.[88] This claim is contradicted by the GOC's submission of information in past proceedings, which showed that state-owned producers of hot-rolled sheet and strip account for at least 67 percent of PRC production in 2013.[89] As a result, we have relied upon the distortion findings from prior determinations in which the GOC provided production data for other hot rolled steel products.

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[83] *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."

[84] *Id*.

[85] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998).

[86] *See* the GOC's December 18, 2014 submission at 27.

[87] *Id*.

[88] *See* the GOC's January 21, 2015 submission at 5.

[89] *See Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Preliminary Determination and Alignment of Final Determination with Final Antidumping Duty Determination***,** 79 FR 58320 (September 29, 2014) ("*Containers*") and accompanying Decision Memorandum at "Analysis of Programs; Provision of Hot-Rolled Sheet and Plate for LTAR," unchanged at *53-Foot Domestic Dry Containers from the People's Republic of China Final Affirmative Countervailing Duty Determination*, 80 FR 21209 (April 17, 2015).

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

> 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.[90]

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, does not meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration.

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. ETDZ and Topsun both submitted prices that they suggest are appropriate.[91] ETDZ and Topsun sourced their benchmark prices from American Metal Market ("AMM"), MEPS (International) Ltd. ("MEPS"), Metal Bulletin, Steel Orbis and SBB-Platts. The Department's regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Accordingly, we calculated a simple average of the prices submitted by ETDZ and Topsun. However, we have not relied on certain Steel Orbis prices or certain SBB-Platts prices because record information does not delineate the basis for the prices (*e.g.*, Ex Works, FOB, *etc*.); therefore, we are uncertain whether these prices include delivery charges such as inland and ocean freight. Under 19 CFR 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).[92]

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[90] *See Lumber* at "There Are No First Tier Benchmarks Available."

[91] *See* ETDZ's December 24, 2014 submission at Exhibits 3-7; Topsun's December 24, 2014 submission at Exhibit BM-3. Topsun also submitted hot-rolled plate benchmarks, but we have not considered these because the subsidy program at issue involves HRCS, and parties have placed HRCS benchmark information on the record.

[92] *See Steel Cylinders* at 18.

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 PRC port to the companies' facilities. Although ETDZ submitted suggested benchmarks for ocean freight, these were not contemporaneous, and thus, we did not use them.[93] To calculate ocean freight that more accurately reflects the regional FOB export prices used to compile HRCS benchmark prices, we used the ocean freight rates submitted and used in the PRC investigations *SWR* and *Containers*, which we have placed on the record of this investigation.[94] The POI for *Containers*, *SWR* and this investigation is 2013. The freight rates in *Containers* and *SWR* cover a wide range of freight rates that reflect exports of steel from various countries in the benchmark data submitted by ETDZ and Topsun. We calculated a simple average of the ocean freight rates from these investigations.

We utilized the inland freight rates reported by respondents. For both companies' calculations, we also added the applicable VAT and import duties, at the rates reported by the GOC.

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

3. *Foreign Trade Bureau Award*

ETDZ self-reported receiving a foreign trade bureau award in 2013.[95] The criteria for ETDZ to receive this grant are that it must have increased its general exports and be one of the top 30 exporting companies in Ningbo.[96] The Ningbo Foreign Trade & Economic Cooperation Bureau approved ETDZ's subsidy.[97]

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

[93] *See* ETDZ's December 24, 2014 submission at Exhibit 11.
[94] *See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 FR 38490 (July 8, 2014) ("*SWR*") and accompanying Decision Memorandum at 30, unchanged at *Carbon and Certain Steel Alloy Steel Wire Rod From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 68858 (November 19, 2014). *See also* the Benchmark Memo for the specific ocean freight data from the *Containers* and *SWR* investigations.
[95] *See* ETDZ's December 18, 2014 submission at 20-22.
[96] *Id.* at Appendix 3.
[97] *Id.* at Exhibit 15.

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

In order to conduct the analysis of whether a program is specific under section 771(5A), it is essential that the GOC provide a complete response to the questions of specificity that are contained in the questionnaire, because it is only the government that has access to the information required in the analysis of both *de jure* and *de facto* specificity.[98] In the *Preliminary Determination,* we noted that the GOC had not yet provided a complete response to the specificity questions related to this program, and that the Department intended to provide the GOC a second opportunity to provide this information.[99] On March 19, 2015, the Department issued the GOC a supplemental questionnaire, requesting that it provide a complete response to the specificity questions related to this program.[100] In its response, the GOC did not provide any information requested of it regarding specificity.[101] As a result, for this final determination, because the GOC did not provide us with necessary information required to conduct our specificity analysis under section 771(5A)(D) of the Act and failed to cooperate by not acting to the best of its ability. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, we are required to make our specificity determination on the basis of the facts available and to make an adverse inference under sections 776(a) and (b) of the Act. Information provided by ETDZ indicates that these grants were provided only to exporters. On this basis, we are finding this program to be specific under section 771(5A)(A) and (B) of the Act.

To calculate the benefit for the grant that ETDZ received during the POI, we divided the amount received by ETDZ by its total POI export sales, as described above under the "Attribution of Subsidies" section. On this basis, we determine that ETDZ received a countervailable subsidy of 0.01 percent *ad valorem*.[102]

4. *Export Credit Insurance*

ETDZ self-reported receiving an export credit insurance subsidy.[103] The criterion for ETDZ to receive this grant is that it must purchase export credit insurance.[104]

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

[98] *See, e.g., Fine Furniture,* 748 F.3d 1370 (Fed. Cir. 2014).
[99] *See* the GOC's January 20, 2015 submission at 28; PDM at 22.
[100] *See* the Department's March 15, 2015 letter to the GOC.
[101] *See* the GOC's April 7, 2015 submission at 3. The GOC stated that it was unable to obtain any of the requested information. *Id*. at 3.
[102] *See* ETDZ Calculation Memo.
[103] *See* ETDZ's December 18, 2014 submission at 20-22.
[104] *Id.* at Appendix 2.

In order to conduct the analysis of whether a program is specific under section 771(5A), it is essential that the GOC provide a complete response to the questions of specificity that are contained in the questionnaire, because it is only the government that has access to the information required in the analysis of both *de jure* and *de facto* specificity.[105] In the *Preliminary Determination*, we noted that the GOC had not yet provided a complete response to the specificity questions related to this program, and that the Department intended to provide the GOC a second opportunity to provide this information.[106] On March 19, 2015, the Department issued the GOC a supplemental questionnaire, requesting that it provide a complete response to the specificity questions related to this program.[107] In its response, the GOC did not provide key information requested of it regarding specificity.[108] As a result, for this final determination, because the GOC did not provide us with necessary information required to conduct our specificity analysis under section 771(5A)(D) of the Act and failed to cooperate by not acting to the best of its ability. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, we are required to make our specificity determination on the basis of the facts available and to make an adverse inference under sections 776(a) and (b) of the Act. Information provided by ETDZ indicates that assistance under this program was contingent upon export performance. On this basis, we are finding this program to be *de jure* specific under section 771(5A)(A) and (B) of the Act.

To calculate the benefit for the grant that ETDZ received during the POI, we divided the amount received by ETDZ by its total POI export sales, as described above under the "Attribution of Subsidies" section. On this basis, we determine that ETDZ received a countervailable subsidy of 0.01 percent *ad valorem*.[109]

5. *Export Subsidy for High-tech Merchandise*

ETDZ self-reported receiving an export subsidy for high-tech merchandise.[110] ETDZ did not provide any information on this subsidy, however, based on its description, the receipt of benefits under this program is contingent upon export performance.

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

In order to conduct the analysis of whether a program is specific under section 771(5A), it is essential that the GOC provide a complete response to the questions of specificity that are contained in the questionnaire, because it is only the government that has access to the

[105] *See, e.g.*, *Fine Furniture*, 748 F.3d 1370 (Fed. Cir. 2014).
[106] *See* the GOC's January 20, 2015 submission at 19 - 27; PDM at 22 - 23.
[107] *See* the Department's March 15, 2015 letter to the GOC.
[108] *See* the GOC's April 7, 2015 submission at 3 - 5. The GOC, for example, did not provide "a least one completed and approved application package." *Id*. at 4.
[109] *See* ETDZ Calculation Memo.
[110] *See* ETDZ's December 18, 2014 submission at 20-22.

information required in the analysis of both *de jure* and *de facto* specificity.[111] In the *Preliminary Determination*, we noted that the GOC had not yet provided a complete response to the specificity questions related to this program, and that the Department intended to provide the GOC a second opportunity to provide this information.[112] On March 19, 2015, the Department issued the GOC a supplemental questionnaire, requesting that it provide a complete response to the specificity questions related to this program.[113] In its response, the GOC did not provide key information requested of it regarding specificity.[114] As a result, for this final determination, because the GOC did not provide us with necessary information required to conduct our specificity analysis under section 771(5A)(D) of the Act and failed to cooperate by not acting to the best of its ability. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, we are required to make our specificity determination on the basis of the facts available and to make an adverse inference under sections 776(a) and (b) of the Act. Information provided by ETDZ indicates that assistance under this program was contingent upon export performance. On this basis, we are finding this program to be *de jure* specific under section 771(5A)(A) and (B) of the Act.

To calculate the benefit for the grant that ETDZ received during the POI, we divided the amount received by ETDZ by its total POI export sales, as described above under the "Attribution of Subsidies" section. On this basis, we determine that ETDZ received a countervailable subsidy of 0.02 percent *ad valorem*.[115]

6. *Clean Energy Measures Subsidy*

One of ETDZ's suppliers ("Supplier A") reported that it received a clean energy subsidy.[116] The criteria for Supplier A to receive this grant are that it must be registered in Ningbo in an area designated as a "no-burning area," and that it converted its coal burning boiler to a gas burning boiler.[117] The Ningbo Bureau of Finance and the Ningbo Bureau of Environmental Protection approved Supplier A's subsidy.[118] According to the *Notice of Issuing the Administrative Measures on Using the Special Subsidies for Elimination of Coal-burning Boilers in Ningbo*, the purpose of this program is to encourage those companies using high-polluting fuel to participate in the elimination of high-polluting fuel and start to use clean energy, with special subsidies focused on the elimination of coal-burning boilers.[119]

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

[111] *See, e.g.*, *Fine Furniture*, 748 F.3d 1370 (Fed. Cir. 2014).
[112] *See* the GOC's January 20, 2015 submission at 28; PDM at 23 - 24.
[113] *See* the Department's March 15, 2015 letter to the GOC.
[114] *See* the GOC's April 7, 2015 submission at 5. The GOC stated that it is unable to obtain the requested information. *Id*. at 5.
[115] *See* ETDZ Calculation Memo.
[116] *See* ETDZ's January 21, 2015 submission at Exhibits S-V and S-14.
[117] *Id.* at Exhibit S-V.
[118] *Id.* at Exhibit S-14.
[119] *Id.*

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

In order to conduct the analysis of whether a program is specific under section 771(5A)(D) of the Act, it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire, because it is only the government that has access to the information required for a complete analysis of specificity. In its April 7, 2015, submission, the GOC stated that "the subsidy is limited to certain locations within the designated geographical regions within the jurisdiction that authorized the program."[120] As such, this program is specific under 771(5A)(D)(iv) because the granting authority expressly limits access to the subsidy to those companies in a specific location.

To calculate the benefit for the grant that Supplier A received during the POI, we divided the amount received by its total POI sales. On this basis, we determine that Supplier A received a countervailable subsidy of 0.05 percent *ad valorem*, which we have attributed to ETDZ in accordance with 19 CFR 351.525(c).[121]

7. *Innovative Growth Subsidy*

Supplier A self-reported receiving an innovative growth subsidy, which is a grant to offset interest expenses.[122] According to Supplier A, in order to receive this grant, it must: 1) be registered and independently accounted in the Zhenhai district; 2) have yearly sales of more than 20,000,000 yuan and desirable innovation and capacity; 3) have an estimated average increase of more than 20 percent in annual sales within the following three years; and, 4) must have self-owned brands or trademarks, and use exclusive technology, patents, or intellectual property.[123] According to the *Notice Upon the Initiation of the Application of 2013 Newly-established and Innovation Growth Enterprise*, the purpose of this program is to promote self-innovation, quick development, and develop a group of companies with innovative capacity.[124] The Zhenhai Bureau of Economy and Information approved Supplier A's innovative growth subsidy.[125]

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

In order to conduct the analysis of whether a program is specific under section 771(5A)(D), it is essential that the GOC provide a complete response to the questions of specificity that are

[120] *See* the GOC's Post-Prelim Response at 19.
[121] *See* Memorandum to Scot T. Fullerton, Program Manager, Office V, Enforcement & Compliance, from Paul Walker, Case Analyst, regarding Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Ningbo ETDZ Huixing Trade Co., Ltd. Post Preliminary Results Calculation Memo, dated May 29, 2015 ("ETDZ Calculation Memo").
[122] *See* Supplier A's December 18, 2014 submission at 16, Exhibit 12 and Appendix 1.
[123] *Id.* at Appendix 1.
[124] *Id.* at Exhibit 12.
[125] *Id.* at Exhibit 12 and Appendix 1.

contained in the questionnaire, because it is only the government that has access to the information required in the analysis of both *de jure* and *de facto* specificity.[126] In the *Preliminary Determination*, we noted that the GOC had not yet provided a complete response to the specificity questions related to this program, and that the Department intended to provide the GOC a second opportunity to provide this information.[127] On March 19, 2015, the Department issued the GOC a supplemental questionnaire, requesting that it provide a complete response to the specificity questions related to this program.[128] In its response, the GOC did not provide key information requested of it regarding specificity.[129] As a result, for this final determination, because the GOC did not provide us with necessary information required to conduct our specificity analysis under section 771(5A)(D) of the Act and failed to cooperate by not acting to the best of its ability, we are required to make our specificity determination on the basis of the facts available and to make an adverse inference under sections 776(a) and (b) of the Act. On this basis, we are finding this program to be *de jure* specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit for the grant received during the POI, we divided the amount received by Supplier A by its total POI sales. On this basis, we determine that Supplier A received a countervailable subsidy of 0.07 percent *ad valorem*, which we have attributed to ETDZ in accordance with 19 CFR 351.525(c).[130]

8. *Two Free, Three Half Tax Program*

Supplier A reported receiving benefits under the Two Free, Three Half Tax Program.[131] The criteria for Supplier A to receive this tax benefit is that it must be a foreign invested enterprise of a productive nature scheduled to operate not less than ten years, and when it begins to make a profit, will be exempted from income tax in the first and second years and allowed a fifty percent reduction in the third to fifth years, in accordance with Article 8 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.[132] Although this law has been terminated by the *PRC Corporate Income Tax Law*, effective in 2008, the PRC State Council issued a notice stipulating a transitional period for the tax programs, which is the *Notice of the State Council on Implementation of Transitional Corporate Income Tax Incentives*.[133] According to this notice, beginning January 1, 2008, those enterprises receiving the Two Free, Three Half Tax Program will continue to receive the tax program until the expiration of tax benefits; however, for enterprises that did not receive the Two Free, Three Half Tax Program before 2008, the period of tax benefits would begin in 2008.[134] Because

[126] *See, e.g.*, *Fine Furniture*, 748 F.3d 1370 (Fed. Cir. 2014).
[127] *See* the GOC's January 20, 2015 submission at 39; PDM at 25.
[128] *See* the Department's March 15, 2015 letter to the GOC.
[129] *See* the GOC's April 7, 2015 submission at 14. The GOC stated that it is unable to obtain the requested information. *Id*. at 5.
[130] *See* ETDZ Calculation Memo.
[131] *See* ETDZ's January 21, 2015 submission at 10-11.
[132] *Id*., at Exhibit 9.
[133] *Id*., at Exhibit 10.
[134] *Id*.

Supplier A did not receive the tax benefit before 2008, its transitional period was from 2008 to 2012, and benefits for this program were claimed on by Supplier A in its 2013 tax return.[135]

The Department has previously found the "Two Free, Three Half" program to confer a countervailable subsidy.[136] Consistent with the earlier cases, we continue to determine that the program confers a countervailable subsidy for this final determination. The tax exemption and reduction provided under this program is a financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOC and it provides a benefit to the recipient within the meaning of 19 CFR 351.509(a)(1) in the amount of the tax savings. We also determine that this program is limited as a matter of law to certain enterprises, *i.e.*, productive FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the tax savings enjoyed by Supplier A as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We then took the amount of the tax savings for the POI and divided that amount by the FOB value of Supplier A's total sales, to calculate a countervailable subsidy of 0.18 percent *ad valorem* which we attributed to ETDZ in accordance with 19 CFR 351.525(c).[137]

Consistent with Comment XI below, we are making a program-wide change determination based on our finding that the "Two Free, Three Half" program has been terminated as of January 1, 2014 with no recurring benefits. Pursuant to 19 CFR 351.526(d), we are adjusting the cash deposit rate for ETDZ, and the AFA rate, specifically by excluding from the required cash deposit the rates calculated in the POI under this program.

B. *Programs Determined Not to Confer a Benefit or Not Used During the POI*

*Exhibition Subsidy*

ETDZ self-reported that it received an exhibition subsidy.[138] The criteria for ETDZ to receive this grant are that it must be registered in Ningbo, and have participated in city-supported foreign exhibitions.[139] The Ningbo Bureau of Foreign Trade and Ningbo Bureau of Finance approved ETDZ's subsidy.[140] According to the *Notice on the 2013 Application of Subsidies for Foreign Exhibition*, the purpose of this program is to help recipients promote their foreign trade and enter new foreign markets.[141]

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

[135] *See* Supplier A's December 18, 2014 submission at Exhibit 4.
[136] *See, e.g., Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007 and accompanying Issues and Decision Memorandum at 11-12.
[137] *See* ETDZ Calculation Memo.
[138] *See* ETDZ's December 18, 2014 submission at 20-22.
[139] *Id.* at Appendix 1.
[140] *Id.* at Exhibit 14.
[141] *Id.*

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

In order to conduct the analysis of whether a program is specific under section 771(5A), it is essential that the GOC provide a complete response to the questions of specificity that are contained in the questionnaire, because it is only the government that has access to the information required in the analysis of both *de jure* and *de facto* specificity.[142] In the *Preliminary Determination,* we noted that the GOC had not yet provided a complete response to the specificity questions related to this program, and that the Department intended to provide the GOC a second opportunity to provide this information.[143] On March 19, 2015, the Department issued the GOC a supplemental questionnaire, requesting that it provide a complete response to the specificity questions related to this program.[144] In its response, the GOC did not provide key information requested of it regarding specificity.[145] As a result, for this final determination, the GOC did not provide us with necessary information required to conduct our specificity analysis under section 771(5A)(D) of the Act and failed to cooperate by not acting to the best of its ability. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, we are required to make our specificity determination on the basis of the facts available and to make an adverse inference under sections 776(a) and (b) of the Act. Information provided by ETDZ indicates that assistance under this program was to promote the company's foreign trade and exports into new foreign markets. On this basis, we are finding this program to be specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit for the grant that ETDZ received during the POI, we divided the amount received by ETDZ by its total POI export sales, as described above under the "Attribution of Subsidies" section. On this basis, we determine that ETDZ received a benefit of less than 0.005 percent *ad valorem,* and thus received no measureable benefit under this program.[146]

In addition, the Department finds that the following programs were not used by ETDZ or Topsun during the POI:

1. *Export Sellers' Credits from the Export-Import Bank of China*
2. *Income Tax Reductions for Export Oriented FIEs*
3. *Income Tax Benefits for FIEs Based on Geographic Location*
4. *Local Income Tax Exemption and Reduction Programs for Productive FIEs*
5. *Income Tax Reduction for High or New Technology Enterprises*
6. *Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law*

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[142] *See, e.g., Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1370 (Fed. Cir. 2014) ("*Fine Furniture*").
[143] *See* the GOC's January 20, 2015 submission at 29 - 39; PDM at 21.
[144] *See* the Department's March 15, 2015 letter to the GOC.
[145] *See* the GOC's April 7, 2015 submission at 1 - 3. The GOC did not respond to six questions regarding this subsidy. For example, the GOC did not provide "a least one completed and approved application package." *Id*. at 1.
[146] *See* ETDZ Calculation Memo.

7. *Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies*
8. *Import Tariff and VAT Reductions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encourage Industries*
9. *VAT Refunds for FIEs Purchasing Domestically Produced Equipment*
10. *GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands*
11. *Special Fund for Energy Savings Technology Reform*
12. *International Market Exploration Fund (SME Fund)*
13. *Export Assistance/Outward Expansion Grants in Guangdong Province*
14. *Guangdong Supporting Fund*
15. *Guangdong Province Funds to Support the Adoption of E-Commerce by Foreign Trade Enterprises*
16. *Technology to Improve Trade Research and Development Fund*

## VI. ANALYSIS OF COMMENTS

### Comment I: Whether State Ownership Makes an Entity a Government Authority

*GOC:*

- The Chinese majority SOEs of HRCS are not government authorities within meaning of section 771(5)(B) of the Act.
- The Department's assumption that ownership indicates that an entity "possesses, exercises, or is vested with government authority" does not comply with U.S. WTO obligations.[147]
- The record does not contain information indicated that the SOE HRCS suppliers act as "government authorities."

*Topsun:*

- Record evidence does not indicate that Topsun's suppliers of steel are state authorities.[148]

**Department's Position:** We continue to find that certain HRCS producers, which are majority-owned by the GOC, are "authorities." We disagree with the GOC because our finding on this point is not based solely on state ownership. Rather, as explained in the Public Bodies Memo, we found that majority SOEs in the PRC possess, exercise, or are vested with governmental authority.[149] Our finding is based on the GOC exercising 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.[150]

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[147] The GOC cites, *inter alia*, to Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011) ("*US-CVD I WTO AB Decision*"), paras. 318-319, and Appellate Body Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R (Dec. 8, 2014), para. 4.10.

[148] *See* Topsun Case Brief at 3.

[149] *See* Public Bodies Memo at 35 – 36.

[150] *Id.*

Therefore, we determine that these entities are "authorities" within the meaning of section 771(5)(B) of the Act, and that the respondent companies received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act. Further, in the initial questionnaire, we informed the GOC that if it wanted to argue that any majority government-owned companies that produced the HRCS purchased by the respondents are not "authorities," then the GOC needed to submit for each company the information requested in the "Information Regarding Input Producers in the PRC Appendix" section of the original CVD questionnaire.[151] However, the GOC did not provide a complete response to the appendix for the suppliers of HRCS.

The Department's determination here is consistent with U.S. law, which in turn is consistent with U.S. WTO obligations. In addition, the WTO reports relied upon by China all involved "as applied" challenges to the CVD determinations at issue in those disputes and thus were limited to those determinations.[152]

**Comment II: Whether CCP Affiliations/Activities by Company Officials Make the Company a Government Authority**

*GOC:*

- The CCP is a political party and not a government authority, or part of the government. Members of the CCP do not legally, or factually, have authority to direct business operations.[153] The CCP, CCP Congress, CCP Committees, CCP Standing Committees, People's Congresses, Standing Committees of People's Congresses, and Chinese People's Political Consultative Conferences are not part of the GOC.[154] Similarly, village committees are not government authorities because there is no government at the village level.[155]
- The *Civil Servant Law* prohibits the owners, members of the board of directors and managers of HRCS from being GOC or CCP officials.[156]
- The Department has previously stated that CCP officials "can, in fact, serve as owners, members or the board or directors, or senior managers of companies," with reference to *PC Strand*. However, the GOC states that the finding in *PC Strand* concerned membership in the CCP and National Party Conference ("NPC"). Specifically, the Department found that membership in the CCP or NPC was "insufficient … to include that {sic} the relationships between individual owners and the GOC or CCP evince government control."[157] As such, *PC Strand* does not support the proposition that CCP officials are permitted to serve as owners, members of the board, or senior managers of companies.[158]
- The *Chinese Company Law* establishes that shareholders exercise ultimate power over the company and that the board of directors and managers of companies are ultimately

[151] *See* the Department's original CVD questionnaire at Section II.
[152] *See, e.g., US-CVD I WTO AB Decision*.
[153] *See* the GOC's Case Brief at 5.
[154] *Id*. at 5-6.
[155] *Id*. at 6.
[156] *Id.*
[157] *Id.* at 6-7.
[158] *Id.*at 7.

responsible to shareholders.[159] Additionally, CCP officials and committees have no decision-making authority in enterprises.[160]

- The Department provides no evidence to support its assertion that CCP affiliations or activities are relevant to the "government authorities" analysis.[161] The Public Bodies Memo provides little analysis as to the basis of the Department's conclusion that CCP or committees influence non-SOEs. Further, the Public Bodies Memo misstates *Chinese Company Law*. The 2006 *Chinese Company Law* only allows that companies establish a branch if the enterprise employs three CCP members or more.[162] As such, it is incorrect to state that all enterprises are required to set up CCP committees.
- In the Public Bodies Memo, the Department concluded that it did not know the role of CCP committees in the affairs of non-SOEs.[163]

*ETDZ:*

- The record information indicates that privately held Chinese companies operate independently from the GOC under the law. The GOC listed all of ETDZ's suppliers of HRCS among the names of non-state-owned input producers and provided these companies' registration and shareholding information.[164] The GOC explained that ETDZ's HRCS suppliers are owned by individuals, and the GOC cannot force these individuals, or the CCP, to provide political party affiliation of individuals.[165] The GOC also noted that each HRCS producer must follow the *Chinese Company Law*, which specifies the organization structure and conduct of companies, including limited liability companies like all three producer companies.[166] The GOC demonstrated that, according to the *Civil Servant Law*, any civil servant should not undertake or participate in any profit-making activity or hold a concurrent post in an enterprise.[167] Moreover, the CCP's functions do not include regulating the operations and management of companies.[168]
- However, having acknowledged GOC's claim that these companies were owned by individuals, the Department applied AFA, treating the suppliers as authorities based on the mere possibility that the owners or officers of the companies could have had GOC party affiliations.[169]
- The presumptions that the Department applied with respect to HRCS for LTAR are unreasonable, and privately held companies should not be considered authorities unless a party can rebut this presumption with affirmative evidence.
- In the *Preliminary Determination*, the Department stated that it "considers information regarding the CCP's involvement in the PRC's economic and political structure to be relevant because public information suggests that the CCP exerts significant control over

[159] *Id.*
[160] *Id.* at 8.
[161] *Id.* at 10-11
[162] *Id.* at 11.
[163] *Id.*
[164] *See* the GOC's December 18, 2014 submission at Exhibit 9 & 10.
[165] *Id.* at 22.
[166] *Id.* 23 & Exhibit 12 (*Chinese Company Law*).
[167] *Id.* at 23; *see also* Exhibit 16 (*Civil Servant Law* at Article 53).
[168] *Id.* at 23; *see also* Exhibit 17 (Constitution of the PRC discussing the role of the National People's Congress).
[169] *See* PDM at 9.

activities in the PRC, such that the CCP is part of the governing structure of the PRC."[170] In other words, the Department has applied a presumption of state control that must be rebutted with an extreme amount of detail about political affiliations of the shareholders and managers and directors of LTAR input suppliers. However, the Department came to an opposite conclusion about the allowable presumptions in justifying its change in practice to apply U.S. CVD law to China.[171]

- In *OTR Tires,* the Department reasoned that "a firm in the PRC may have the discretion to change its export and or production decisions in response to the incentive provided by, for example, a subsidized input price, it is possible to measure the benefit provided by this subsidy. If the price is set in an environment distorted by significant government interference, however, this price cannot form the basis of {normal value} in an {antidumping duty} proceeding."[172] In other words, the non-market economy antidumping duty methodology of using a surrogate value for the input offsets the GOC's interference with input prices. The "interference" cited in AD cases is the same "subsidized input price" that the Department effectively remedies without the imposition of countervailing duties, and to remedy the exact same alleged unfair trade circumstance (subsidized input price) by countervailing duties is double counting.
- The Department justifies applying U.S. CVD law to the PRC by arguing that the current nature of the PRC's economy does not give rise to the same issues that were litigated in *Georgetown Steel,* many of which were "Soviet-style economies" that were essentially comprised of a single central authority, or central control, that would result in presumption of state ownership. The primary justification for the Department's conclusions, and change in its practice, was the finding "that market forces now determine the prices of more than 90 percent of products traded in China."[173] This result reverses any *de facto* presumption that the GOC controls pricing, *i.e.*, the GOC does not interfere with the business activities of Chinese privately held companies unless affirmatively proven otherwise.

**Department's Position:** As explained in the *Preliminary Determination*, in order to do a complete analysis of whether the HRCS producers are "authorities" within the meaning of section 771(5)(B) of the Act, we sought information related to whether senior company officials were government or CCP officials, and as to the role of any CCP committee within the

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[170] *Id.* at 10.

[171] The Department's primary statement justifying its decision to apply U.S. CVD law to PRC proceedings is found in a memorandum issued during the countervailing duty investigation of coated free sheet paper from the People's Republic of China entitled "Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy" ("Georgetown Steel Memorandum"). *See* Memorandum for David M. Spooner, Assistant Secretary for Import Administration; through Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Policy and Negotiations, Stephen J. Claeys, Deputy Assistant Secretary for AD/CVD Operations, John D. McInerney, Chief Counsel for Import Administration, Ronald K. Lorentzen Director, Office of Policy, Albert Hsu, Senior Economist, Susan Kuhbach, Director, Office 1; from Shauna Lee-Alaia and Lawrence Norton Office of Policy, Import Administration, "Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China- Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy," dated March 29, 2007.

[172] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) ("*OTR Tires*") and accompanying Issues and Decision Memorandum at Comment 1.

[173] *See* Georgetown Steel Memorandum at 5.

companies.[174] Specifically, to determine the extent to which senior company officials of a producer are CCP officials or otherwise influenced by certain entities, the Department inquired into the means by which the GOC may exercise control over company operations and other CCP-related information.[175] We explained our understanding of the CCP's involvement in the PRC's economic and political structure in other PRC CVD proceedings,[176] and explained why we consider the information regarding the CCP's involvement in the PRC's economic and political structure to be relevant.[177] In this investigation, as discussed in the "Use of Facts Otherwise Available and Adverse Inferences - GOC" section above, the GOC provided none of the requested information that we find relevant to our analysis.

As noted above, the Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be essential because information on the record suggests that the CCP exerts significant control over activities in the PRC.[178] Specifically, the Department determined 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."[179] Further, publicly available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in the company's affairs.[180] The GOC argues that the Department mischaracterized Chinese law as requiring such CCP organizations in *all* enterprises, rather than only those with three party members or more. While the Department notes that the qualifications to this requirement were not spelled out in the summary of the Public Bodies Memo, or the CCP Memo, the section addressing this topic begins with the sentence: "In accordance with the *CCP Constitution*, all organizations, including private commercial enterprises, are required to establish "primary organizations of the party" (or "Party committees") if the firm employs at least three party members."[181]

Further, this section of the report cites to expert, third-party sources, noting that:

> The party has cells in most big companies – in the private as well as the state-owned sector – complete with their own offices and files on employees. It controls the appointment of captains of industry and, in the SOEs, even corporate bodies. It holds meetings that shadow formal board meetings and often trump their decisions, particularly

[174] *See Preliminary Determination* and accompanying PDM at "HRCS for LTAR."
[175] *See* the Department's original CVD questionnaire at "Provision of Hot-Rolled Coiled Steel for LTAR" and referenced "Input Producer Appendix."
[176] *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*") and accompanying Issues and Decision Memorandum at Comment 6.
[177] *Id. See also* Public Bodies Memo; CCP Memo.
[178] *See* Public Bodies Memo; CCP Memo. *See also, e.g., Solar Cells* at Comment 6.
[179] *See* CCP Memo at 33.
[180] *See* Public Bodies Memo at 35-36, and sources cited therein.
[181] *Id.*

> on staff appointments. It often gets involved in business planning and works with management to control pay.[182]

Further, the Public Bodies Memo notes that according to the Xinhua News Agency, there were a total of "178,000 party organs in private firms in 2006, a rise of 79.8 percent over 2002."[183] While focusing on the instances in which the Department did not note that these CCP organizations are only required by the CCP Constitution in enterprises with three or more party members, the GOC did not acknowledge or address record evidence that demonstrates that Primary Party Organizations are present in private enterprises in growing numbers and may be imbued with significant power according to expert, third-party sources. Even if the Department had failed to understand this qualification – which it did not – it was reasonable for the Department to inquire about the presence of such committees in the input producers at issue, regardless of whether there is such a committee in every single enterprise in the PRC.

Notably, the GOC simply failed to respond to the Department's questions and explain the purpose of these committees, which might shed light on the purpose, meaning and role of these committees in private enterprises as well as state-invested enterprises. Importantly, the GOC failed to address the substantive concerns raised by third-party experts cited in the Public Bodies Memo and the CCP Memo with anything other than unsupported assertions.

Because the GOC did not provide the information we requested regarding this issue, we are not reevaluating the Department's prior factual findings on the role of the CCP. We continue to find that the CCP, like the formal state apparatus, constitutes the "government" in the PRC for the limited purposes of applying U.S. CVD law to the PRC.

Taking into account the information that the CCP in the PRC meets the definition of government for U.S. CVD law, the observation that certain company officials were members and not officials of the CCP and NPC in *PC Strand* does not diminish the Department's position that complete information related to whether any senior company officials were government or CCP officials and to the role of any CCP committee within the companies is essential to determine whether HRCS producers are "authorities" within the meaning of section 771(5)(B) of the Act.

The GOC and ETDZ argue that the Department previously found that the *Company Law* of the PRC demonstrates the absence of legal state control over privately-owned Chinese companies. However, this argument relies on the Department's findings with respect to separate rate applications in AD proceedings,[184] which involve a different test, standard, and focus with regard to "control." In the context of a separate rate analysis, the Department's focus is on the government's control over export activities. By contrast, the Department is concerned here with, among other things, whether the key positions within a company are filled by personnel who are also CCP or GOC officials, and may exert meaningful control over the company's activities

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[182] *Id.* at 35-36, citing to "A Choice of Models," *The Economist* (January 2012).

[183] *Id.* at 36, citing to Brief Introduction of the Communist Party of China," ChinaToday.com, current as of April 2012 at http://www.chinatoday.com/org/cpc/.

[184] *See Certain Cut-to-Length 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) ("*Steel Plate from the PRC AD Review*") and accompanying Issues and Decision Memorandum at 11 and Comment 2.

more broadly. Thus, the claims of the GOC and ETDZ are misplaced, as is ETDZ's reliance on the Georgetown Steel Memorandum, which is not relevant to the LTAR analysis here, because, by necessity and as described above, our LTAR analysis examines factual and circumstantial evidence regarding the adequacy of remuneration for the good in question. By contrast, the Georgetown Steel Memorandum reflected a broad, systemic analysis of the overall Chinese economy.[185]

Rather than relying on unreasonable presumptions as suggested by ETDZ, our findings in this proceeding rely on adverse inferences precisely because the GOC failed to cooperate to the best of its ability by not providing complete responses as to the nature and extent of government ownership and control of the suppliers, necessitating our resort to a facts available remedy that is provided for under U.S. law. As such, ETDZ has no factual basis for its claim that these suppliers do not meet the definition of public entity under U.S. law.

**Comment III: Whether the GOC Responded to the Best of its Ability Regarding Ownership and CCP Affiliation for HRCS Suppliers and Provided Sufficient Evidence to Find that Some Producers Were not Government Authorities**

*GOC:*

- The Department's request for ownership and CCP information is intrusive and burdensome. The large number of suppliers made it impossible for the GOC to provide full responses to all questions asked by the Department. As such, the GOC responded to the Department's questionnaires to the best of its ability.[186]
- The GOC states that not only did it report that owners, members of the board of directors, and managers of HRCS suppliers were not eligible to be GOC or CCP officials, but it also provided additional information including: (1) certain business registration documents; and (2) shareholding registration of the non-SOE HRCS producers.[187] The GOC asserts that the Department has stated that such documents, which were submitted on the record of this review, can demonstrate whether there is state control of an entity.[188]
- The Department previously found an absence of *de jure control* when certain documents, such as business registration documents and shareholding registration, are provided.[189]
- As such, the application of AFA is not warranted because (1) all the information the Department requested is not necessary and there is enough information on the record to determine whether HRCS suppliers are government authorities, and (2) the GOC did not withhold information or impede the investigation as there is no information missing and no gap in the record.[190]

[185] *See* Georgetown Steel Memorandum.
[186] *See* the GOC's Case Brief at 8.
[187] *Id.* at 9.
[188] *Id.* at 12.
[189] *Id.* at 9-10.
[190] *Id.* at 13.

- However, if the Department continues to find that necessary information is missing, then it should only apply facts available to determine the proportion of HRCS suppliers that are government authorities.
- Additionally, the GOC asserts that entities with ownership by private enterprises/individuals should not be found to be government authorities.

*Petitioner:*
- The GOC refused to submit the requested information required in this investigation regarding whether the owners, members of the board of directors, or managers of "privately-held" HRCS producers were also CCP officials or representatives.[191]
- The Department should continue to apply AFA in determining whether certain HRCS suppliers acted as government authorities.[192]

**Department's Position:** It is the prerogative of the Department, not the government or company respondents, to determine what information is considered relevant and necessary to our analysis, and therefore, must be submitted on the record.[193] Thus, regardless of whether the GOC finds our requests for information intrusive or burdensome, by substantially failing to respond to our questions, the GOC withheld information requested of it. By stating that the requested information is not relevant and that there is enough information on the record to determine whether HRCS suppliers are government authorities, the GOC is trying to place itself in the position of the Department, and only the Department can determine what is relevant to this investigation. Further, by claiming that it is too burdensome to obtain the information requested, the GOC is effectively telling the Department that it must reach a conclusion based on the statements of the GOC and the limited information that it placed on the record, without complete information that the Department considers necessary and relevant for a complete analysis.

Concerning CCP affiliations, it is important to note that the Department did not request information regarding all possible CCP affiliations, but rather only whether owners, members of the board of directors, and managers are also CCP or government officials. Assuming the GOC is not misconstruing the Department's request for information, the Department fails to see how the GOC can assert that it is burdensome to provide this information, and yet also assert that, regardless, CCP officials are prohibited from simultaneous involvement in the commercial sphere.

If the GOC was not able to submit the required ownership and CCP affiliation information in the requested form and manner, it should have promptly notified the Department, in accordance with

[191] *See* Petitioner's Rebuttal Brief at 3-4.
[192] *Id.* at 4.
[193] *See NSK Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996), quoting *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) ("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.'")

section 782(c) of the Act.[194] Instead, as discussed above in "Use of Facts Otherwise Available and Adverse Inferences," the GOC did not provide the requested information regarding CCP officials. Therefore, we do not consider the GOC to have cooperated to the best of its ability.

Further, in its brief, the GOC did not present any persuasive argument to warrant a reconsideration of the application of AFA. While the GOC may have provided some information, *i.e.*, a table that lists the name and address for producers of HRCS along with the business registration forms and shareholding registration forms for the non-state owned input producers of HRCS, the fact is that the GOC failed to provide the requested information on the HRCS producers, which the Department deems is necessary to conduct a complete, thorough analysis to determine if an entity is a government authority. As explained earlier, the Department, not a government or respondent, determines what information is relevant and necessary to the analysis and must be submitted. We therefore continue to determine that the GOC withheld necessary information that was requested of it and the Department must rely on facts otherwise available in issuing our final results for the mandatory respondents' HRCS input producers.

Moreover, we continue to determine that the GOC failed to cooperate by not acting to the best of its ability to fully comply with our requests for information. Consequently, we find that an adverse inference is warranted in the application of facts available.[195] As AFA, because the GOC failed to provide ownership information, failed to identify whether the members of the board of directors, owners or senior managers were government/CCP officials, and failed to report if there were CCP committees, we are finding the input producers to be "authorities" within the meaning of section 771(5)(B) of the Act. Since we determine that the application of AFA is warranted based on the GOC's actions, the suggestion that we only apply facts available to determine the proportion of HRCS producers that are authorities (*i.e.*, assume that the percentage of HRCS purchased by domestic trading companies during the POI was equal to the ratio of HRCS produced by SOEs and collectives during the POI) is baseless. Moreover, in this investigation, despite two requests for the GOC to respond to questions regarding the HRCS industry and market, the GOC failed to provide the requested information, as discussed in "Use of Facts Otherwise Available and Adverse Inferences," above. As AFA, we find that the market for HRCS in the PRC is significantly distorted through the GOC's predominant role in the market by means of government-owned or managed producers of HRCS and market controls.

Finally, to support its claim that the Department has found that business registration documents and shareholding registration documents sufficient to demonstrate whether there is state control

[194] Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party." *See also* the Department's original CVD questionnaire at cover letter.

[195] *See* section 776(a) and (b) of the Act.

of an entity, we disagree. The GOC cites to *Steel Plate from the PRC AD Review*,[196] which states: "{T}he Department has consistently found an absence of *de jure* control when a company has supplied business licenses and export licenses, each of which have been found to demonstrate an absence of restrictive stipulations and decentralization of control of the company."[197] As explained in *Aluminum Extrusions from the PRC*, AD PRC proceedings are separate and distinct from CVD PRC proceedings with the application of different analyses and methodologies.[198] As such, the Department's finding in *Steel Plate from the PRC AD Review* is not germane to this review.

**Comment IV: Whether the Provision of HRCS Is Specific**

*GOC:*

- The recipients of HRCS are not limited within the meaning of section 771(5A)(D)(iii)(I) of the Act because HRCS is used too broadly in a wide variety of industries.[199]
- In *Chlorinated Isocyanurates from the PRC*, the Department determined that even if the agricultural sector is the predominant user of an input, urea, this does not render the program to be specific because the Department also found that the input is consumed by at least nine different industries in the PRC.[200]
- The GOC placed on the record data from the World Steel Association showing the various applications for HRCS among different sectors.[201]
- The wide use of HRCS is also confirmed by the National Economy Industry Classification, and International Standard Industrial Classification for All Economic Activities.[202]
- Since the Department did not verify the GOC's response with respect to this program, the information on the record must be accurate and supports a finding of no specificity.

**Department's Position:** The Department has addressed the GOC's arguments on this issue in prior CVD investigations involving the PRC. For example, in *Racks from the PRC*, the Department explained that it examined information supplied by the GOC regarding the end uses for wire rod. The Department concluded that while numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis.[203] In *Racks from the PRC*, the Department concluded that the industries named by the GOC were limited in number and, hence, the subsidy was specific.[204] We have conducted the same analysis in the instant investigation based on

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[196] *See* GOC Case Brief at 9-10.
[197] *See Steel Plate from the PRC AD Review* and accompanying Issues and Decision Memorandum at Comment 11.
[198] *See Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12*, 79 FR 96 (January 2, 2014) ("*Aluminum Extrusions from the PRC*") and accompanying IDM at Comment 4.
[199] *See* the GOC's Case Brief at 15.
[200] *Id* at 16.
[201] *Id.* at 15.
[202] *Id.*
[203] *See Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Duty Determination*, 74 FR 37012 (July 27, 2009) ("*Racks from the PRC*") and accompanying Issues and Decision Memorandum at "Provision of Wire Rod for LTAR."
[204] *Id.*

information supplied by the GOC, and have determined that the industries named by the GOC are limited in number.[205] Therefore, as in *Racks from the PRC*, we have determined that the provision of HRCS for LTAR program is specific under section 771(5A)(D)(iii)(I) of the Act. Contrary to the GOC's arguments, the information on the record supports this finding.

The SAA states that the specificity test should be applied "in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those subsidies which truly are broadly available and widely used throughout an economy."[206] The information on the record demonstrates that, not only has the GOC failed to adequately respond to the Department's request for information to analyze specificity, the GOC has not provided any support that HRCS is broadly available and widely used throughout the Chinese economy.[207]

With respect to the GOC's argument regarding *Chlorinated Isocyanurates from the PRC*, we disagree. In *Chlorinated Isocyanurates from the PRC*, the Department found that provision of the input at issue, urea, was not specific because "a large number of diverse industrial sectors in the PRC use urea." This is in opposition to the current investigation in which the Department finds that the industries named are limited in number.

**Comment V: Use of a Tier-One Price for the Provision of HRCS**

*GOC:*

- The Department should apply a tier-one PRC benchmark because evidence on the record shows that: (1) government-owned produces of HRCS do not account for the majority of total volume of domestic HRCS production; (2) the GOC does not interfere or influence pricing in the HRCS market; and (3) there were no export price controls on HRCS or any price floor or ceilings or any licensing requirements established during the POI or in the previous two years.[208] The DOC must base its findings as to distortion on an analysis of the specifics of the HRCS market.
- The WTO previously determined that the Department cannot base its determination that the HRCS market is distorted based on previous findings.[209]

**Department's Position:** In the Department's initial questionnaire, we asked the GOC to respond to specific questions regarding the HRCS industry and market for the POI. Specifically, we asked the GOC to:

- Provide the following information concerning the hot-rolled coiled steel industry in the PRC for the POI and the prior two years, including an explanation of the sources used to compile the information:

[205] *See* PDM at 11.
[206] *See* SAA at 929.
[207] *See* the section "Use of Facts Otherwise Available and Adverse Inferences" for a discussion of the GOC's failure to adequately respond to the Department's request for specificity information for this program.
[208] *See* the GOC's Case Brief at 18.
[209] *See* the GOC's Case Brief at 17, citing Appellate Body Report, *United States - Countervailing Duty Measures On Certain Products From China*, WT/DS437/AB/R (Dec. 18, 2014) ("*US-CVD II WTO AB Decision*"), para. 4.62.

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

- If there is a hot-rolled coiled steel association, hot-rolled steel association, or steel association in the PRC, please provide the rules or guidelines under which it operates and a list of its members.

- Are there or have there been in the POI or in the previous two years any export or price controls on hot-rolled coiled steel or any price floors or ceilings established?

- Please state the VAT and import tariff rates in effect for hot-rolled coiled steel in 1/1/13 – 12/31/13, and the prior two years.

- Was there was an export tariff or quota on hot-rolled coiled steel during the POI? If so, please report the tariff rate or quota amount in effect and provide a translated copy of the regulation/law in which the export tariff rate or quota is reported.

- Indicate whether export licensing requirements were in place during the POI with regard to hot-rolled coiled steel. If so, please provide a translated copy of the regulation/law in which the export licensing requirements are explained.[210]

The Department requests such information, to inform its analysis of the degree of the GOC's presence in the market and whether such presence results in the distortion of prices. In its initial response, the GOC did not provide responses to all of the above-listed questions, and provided only partial answers to some questions.[211] In the January 13, 2015, supplemental questionnaire, we again instructed the GOC to respond to questions regarding this program.[212] In its

[210] *See* Letter from the Department to the GOC, "Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Countervailing Duty Questionnaire," dated October 31, 2014, the "Questionnaire for the Government of the People's Republic of China" section, at 7-8.
[211] *See* the GOC's December 18, 2014 submission at 26 - 29.
[212] *See* Letter from the Department to the GOC, "Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Supplemental Questionnaire," dated January 13, 2015.

supplemental response, the GOC again did not submit a complete response to the Department's questions regarding this program.[213]

We determine that the GOC withheld necessary information with regard to the PRC's HRCS industry and market for the POR that was requested of it twice, and thus, the Department must rely on "facts otherwise available" in issuing the final determination.[214] Further, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information necessary for our analysis of the HRCS industry and market during the POR. Consequently, we find that an adverse inference is warranted in the application of facts available.[215] Because the GOC failed to provide the requested information, we find, as AFA, that the market for HRCS in the PRC is distorted through the GOC's predominant role in the market by means of government-owned or managed producers of HRCS. Further, we find that the GOC's involvement in the market in the PRC for this input results in significant distortion of the prices such that they cannot be used as a tier one benchmark and, hence, the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for this program.

While the GOC submitted comments on the use of in-country HRCS prices as a tier-one benchmark, no party submitted in-country HRCS prices to use as a benchmark.[216]

Accordingly, we find the GOC's arguments for use of an in-country price as the benchmark to be misplaced, because no such prices exist on the record. Moreover, the use of prices in the PRC would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government presence).[217] As we explained in *Lumber*:

> 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.[218]

Further, our decision to use tier-two prices is consistent with the *Preamble*, which states that, "where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative…"[219]

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[213] *See* the GOC's January 21, 2015 submission.
[214] *See* section 776(a)(2)(A) of the Act.
[215] *See* section 776(b) of the Act.
[216] *See* Topsun's December 24, 2014 submission; ETDZ's December 24, 2014 submission.
[217] *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*") and accompanying Issues and Decision Memorandum at "Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark Analysis."
[218] *Id*. at 38-39.
[219] *See Preamble*, 63 FR at 65377.

With respect to the GOC's argument that the Department cannot base its finding that a market is distorted based on a previous investigation, we find that in light of the evidence that is on this investigation's record, it is appropriate to find the HRCS market distorted. As stated above, the GOC withheld necessary information with regard to the PRC's HRCS industry and market for the POR that was requested of it twice, and thus, the Department must rely on "facts otherwise available" in issuing the final determination.[220] Further, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information necessary for our analysis of the HRCS industry and market during the POR. Consequently, we find that an adverse inference is warranted in the application of facts available.[221] Because the GOC failed to provide the requested information, we find, as AFA, that the market for HRCS in the PRC is distorted through the GOC's predominant role in the market by means of government-owned or managed producers of HRCS. Further, we find that the GOC's involvement in the market in the PRC for this input results in significant distortion of the prices such that they cannot be used as a tier one benchmark and, hence, the use of a world market benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for this program.

With respect to the GOC's reliance on a WTO report, the Department's determination here is consistent with U.S. law, which in turn is consistent with U.S. WTO obligations. In addition, the WTO report relied upon by China involved "as applied" challenges to the CVD determinations at issue in that dispute and thus was limited to those determinations.[222]

**Comment VI: Cold-Rolled Steel for LTAR**

*Petitioner:*

- The Department should apply AFA for the provision of HRCS to Topsun because the company withheld information regarding inputs used in the production of subject merchandise as noted in the companion antidumping investigation.[223]
- Topsun did not report its consumption of cold-rolled steel in the production of subject merchandise. Topsun's failure to do so impedes the Department's ability to accurately determine the countervailable benefit attributable to the production of subject merchandise.[224]
- The Department should assign an AFA benefit margin of 44.84 percent to Topsun for this countervailable subsidy.
- At verification, ETDZ's supplier provided the Department with an itemized accounting of the company's coiled steel purchases and whether they were of hot-rolled or cold-rolled steel.[225] In order to accurately reflect its purchases, company officials had to manually examine delivery notes on certain invoices to determine the type of steel coil purchased.[226]

[220] *See* section 776(a)(2)(A) of the Act.
[221] *See* section 776(b) of the Act.
[222] *See US-CVD II WTO AB Decision*.
[223] *See* Topsun's AD Verification Report.
[224] *Id.* at 4.
[225] *See* ETDZ Verification Report at 7, Supplier Exhibit 5.
[226] *Id.*

- The Department should place Global Trade Information Services ("GTIS") data on the record for cold-rolled steel, to be used as a benchmark in the final determination to determine whether ETDZ received a benefit for cold-rolled steel for LTAR.
- Cold-rolled steel prices, however, are higher than hot-rolled prices due to the additional processing involved. Use of the preliminary benchmark for all purchases, therefore, understates the benefit to the company. In another recent investigation, the Department placed on the record steel pricing data from GTIS as "reliable and representative" for the cold-rolled steel benchmark calculation.

*GOC:*

- Petitioner's claims regarding Topsun's reporting in the companion AD investigation has no bearing with respect to whether Topsun provided complete and accurate responses in the CVD investigation.[227] Moreover, the Department verified the accuracy of Topsun's Finished Goods and reported COM in the AD investigation.
- The GOC provided a significant amount of information demonstrating that HRCS suppliers are either privately owned or operate on market principles, and, therefore, are not government authorities. As such, the Department should find that respondents did not purchase HRCS for LTAR during the POI.[228]
- The Department should not apply an AFA rate of 44.84 percent, because such a rate cannot be corroborated.[229]

*Topsun:*

- The Department should not apply AFA for not reporting cold-rolled steel because the CVD questionnaire only inquired about HRCS.
- There is no legitimate issue with respect to the value and quantity of HRCS. Further, the steel inputs properly tied to financial accounts and documents in the AD verification.
- Regarding the Topsun AD Verification Report, that concurrent investigation covers a different time period, and the specific information for which the bracketing changed is irrelevant to the issues in the CVD investigation.

*ETDZ:*

- The Department did not initiate an investigation of cold-rolled steel for LTAR; rather, the Department is only investigating HRCS for LTAR. ETDZ reported purchases of HRCS, as instructed.
- The benchmark data deadline is long past for the purposes of briefing this investigation, i.e., 30 days prior to the preliminary determination, December 24, 2014.[230] Interested parties clearly had the opportunity to submit benchmark data by this deadline, though only ETDZ chose to do so. Petitioner has not attempted to seek an extension of time or explain good cause for an extension of time to submit benchmark data. Although Petitioner cites Sinks, this reference is unavailing because that case involved an actual investigation of cold-rolled

[227] *See* the GOC's Rebuttal Brief at 3.
[228] *Id.* at 2.
[229] *Id.* at 6.
[230] *See* 19 CFR 351.301(c)(3)(i).

steel at LTAR and the benchmark information was placed on the record of that investigation at the preliminary determination.

**Department's Position:** 19 CFR 351.301(d)(4)(i)(A) provides that a petitioner must file new subsidy allegations no later than 40 days before the preliminary determination. In this investigation, Petitioner timely filed two new subsidy allegations, Tax Rebates Based on Location in Shiqiao Town Industrial Cluster Zone, and Rental/Purchase Assistance in Ningbo Municipality Yinzhou District Southern Commercial Zone, but did not file a cold-rolled steel for LTAR allegation.[231] Indeed, Petitioner made no mention of this alleged subsidy until its June 24, 2015 case brief, less than two months before the fully-extended final determination.[232] As a result, we find this new subsidy allegation to be untimely, and have not investigated this program for the final determination.

Moreover, section 775 of the Act provides that if, during the course of a CVD proceeding, the Department "discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition," then the Department shall include the subsidy program in the proceeding if it "appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding." With respect to cold-rolled steel, we note that ETDZ stated that only HRCS is used in the production of subject merchandise, thus, cold-rolled steel for LTAR would not be a subsidy with respect to the subject merchandise.[233]

**Comment VII: Whether to Adjust the HRCS Benchmark Values**

*Topsun:*

- Because Topsun exported its production from the PRC and input VAT is refunded upon exportation of goods using such inputs, VAT should not be applied as an adjustment to the HRCS benchmark.[234]
- Any import duties paid at the time of importation on raw materials are refunded upon exportation of goods made from such imported goods. As such, import duties should not be included in the HRCS benchmark.[235]
- The HRCS benchmark value reflects a broader range of steel than used by Topsun. Accordingly, the HRCS benchmark should be adjusted to reflect the type of steel consumed by Topsun.[236]

**Department's Position:** We disagree with Topsun. The Department's regulations, at 19 CFR 351.511(a)(2)(iv), direct the Department to adjust the benchmark price "to reflect the price a firm actually paid or would pay if it imported the product," including VAT. As long as VAT is

[231] *See* Petitioner's November 24, 2014 submission (new subsidy allegations).
[232] The fully extended final determination is August 14, 2015. *See Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 21207 (April 17, 2015).
[233] *See* ETDZ's January 21, 2015 submission at 7.
[234] *See* Topsun's Case Brief at 2.
[235] *Id.*
[236] *Id.*

reflective of what an importer - and not necessarily the respondent specifically - would have paid, then VAT is appropriate to include in the benchmark. In performing the benefit calculations, we compare the monthly benchmark prices to Topsun's and ETDZ's suppliers' actual purchase prices for HRCS, including taxes and delivery charges, pursuant to our regulations. The calculation accounts for VAT in both the benchmark and the respondents' purchase prices and, therefore, the calculation is not distortive.[237] We then compared any benefit that results from this calculation to the respondents' FOB sales.

As for Topsun's assertion that the benchmark should exclude VAT because VAT is refunded upon export, *i.e.*, it is not a part of the sales that constitute the denominator of the benefit calculations, the Department has previously considered this argument and has repeatedly rejected it. As stated in past cases, the Department does not include taxes such as VAT in the FOB sales value, which is the denominator of the subsidy calculation, because these taxes are not part of a company's sales revenue.[238] This is consistent with 19 CFR 351.525(b)(6)(i), which states that the Department normally will attribute a subsidy to the products produced by the corporation that received the subsidy.

Moreover, 19 CFR 351.511(a)(2)(iv) directs the Department to use "delivered prices" as the comparison price. The delivered price under 19 CFR 351.511(a)(2)(iv) is simply the nominal price at the point of delivery. Thus, whether a firm recovers VAT subsequent to delivery of the input is immaterial to the delivered price that the Department must use as the comparison price under 19 CFR 351.511(a)(2)(iv). Consistent with this section of the Department's regulations, we added VAT to the benchmark price at the rate reported on the record.

Regarding Topsun's argument concerning matching the HRCS benchmark to the grades of HRCS consumed by Topsun, we disagree. The Department's regulation 351.511(a)(2)(ii) is clear that the Department "will average" world market prices when multiple prices are available and they are comparable. The Department finds the pricing data from American Metal Market ("AMM"), MEPS (International) Ltd., Metal Bulletin, Steel Orbis, and SBB-Platts to be sufficiently reliable and representative.[239] As the Department has found in previous investigations and administrative reviews, the best methodology is to calculate a simple average of these prices.[240] To derive the most robust HRCS benchmark possible, we have sought to include as many data points as possible. Further, Topsun has not provided any information to indicate that these price data are somehow aberrational, and therefore, not reliable or unrepresentative. Thus, for the final determination, the Department has continued to calculate

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[237] *See* Topsun's December 18, 2014, submission at Exhibit CVD-3.

[238] *See, e.g., Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014) and accompanying Issues and Decision Memorandum at Comment 2; *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) and accompanying Issues and Decision Memorandum at Comment 3.

[239] *See, e.g., High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) and accompanying Issues and Decision Memorandum at 18.

[240] *Id.*

the HRCS benchmark using a simple monthly average from pricing data on the record.

**Comment VIII: Whether the Provision of Electricity is Countervailable**

*GOC:*

- The Department may not lawfully countervail the provision of electricity as this program constitutes general infrastructure and is therefore not a financial contribution.[241]
- The Department should follow its precedent of rejecting Petitioner's attempts to claim infrastructure subsidies.[242]
- Further, the GOC's provision of electricity in this case is general infrastructure and not specific to the boltless steel shelves industry and therefore not a countervailable benefit.[243]

*Petitioner:*

- The provision of electricity does not qualify as general infrastructure. As such, the Department previously countervailed the provision of electricity in recent countervailing duty investigations.[244]

**Department's Position:** Although the GOC argues that the provision of electricity is non-countervailable as general infrastructure, we disagree. The GOC cites to, for example, the Department's analysis in *Wire Rod from Saudi Arabia* of certain benefits such as roads and ports as potential general infrastructure benefits, and argues that the Department should apply the same analysis to the provision of electricity in this case. The GOC also cites to *Industrial Phosphoric Acid from Israel.* We note that these determinations were issued in 1986 and 1987, and the Department has since revised its approach to assessing whether a particular financial contribution constitutes general infrastructure.[245] Similarly, the GOC's cite to *Bethlehem Steel*, is inapposite, because record evidence in that case showed that the Korean producer under review did not receive a countervailable benefit from infrastructure subsidies; we do not have similar record support here. Moreover, the Department has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure.[246] Also, the Department's regulations explicitly categorize electricity within the provision of goods and services.[247]

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[241] *See* the GOC's Case Brief at 18.

[242] *See, e.g.*, *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod from Saudi Arabia*, 51 FR 4206 (February 3, 1986) ("*Wire Rod from Saudi Arabia*"); *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 64 FR 30636 (June 8, 1999); and *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid From Israel*, 52 FR 25447 (July 7, 1987).

[243] *Id.*

[244] *See* Petitioner's Rebuttal Brief at 4.

[245] *See, e.g.*, *Hot-Rolled Steel from Thailand* and accompanying Issues and Decision Memorandum at Comment 10 ("Furthermore, the electricity at issue here is not general infrastructure, but a good that is bought and sold in the marketplace. In the Department's view, the term infrastructure refers to the types of goods and services described in the Preamble to the regulations, including schools, interstate highways, health care facilities and police protection. According to our regulations, if we find that these types of infrastructure were provided for the broad societal welfare, they would be considered general infrastructure.").

[246] *Id.*

[247] *See CVD Preamble* at 65377.

Regarding the GOC's specificity argument, there are certain types of information that can only be provided by a government, and when the government does not provide that information, the Department necessarily draws an adverse inference as to specificity and financial contribution.[248] In this case, without the information the GOC failed to provide, we cannot fully analyze whether the provision of electricity in the PRC is specific.[249]

**Comment IX: Topsun's Denominator**

*Topsun:*

- Because Great Wall was involved in the production of subject merchandise, the Department should include the value of Great Wall's sales in the denominator.

*Petitioner:*

- The Department should attribute the benefit from countervailable subsidy programs only to Topsun's sales.[250]
- Record evidence does not support Topsun's assertion that Great Wall was involved in the production of subject merchandise.[251]

**Department's Position:** When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program at issue. As stated in Topsun's original questionnaire response, Great Wall did not produce subject merchandise, nor does it provide an input to a downstream product.[252] Accordingly, for subsidies received by Topsun, pursuant to 19 CFR 351.525(b)(6)(i), the Department used only Topsun's total sales as the appropriate denominator to calculate the *ad valorem* subsidy rate. However, for subsidies received by Great Wall, we used the total sales of both Topsun and Great Wall, net of any intra-company transactions, as the appropriate denominator in calculating the *ad valorem* subsidy rate.

**Comment X: Export Seller's Credits and Export Buyer's Credits from China ExIm**

*GOC:*

- Consistent with the non-use evidence confirmed at the verifications of the respondents, and in light of the Department's decision not to verify the responses of the GOC[253] regarding this

[248] *See Multilayered Wood Flooring from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011) ("*Wood Flooring*") and accompanying Issues and Decision Memorandum 4.

[249] *See, e.g.*, *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) and accompanying Issues and Decision Memorandum at Comment 5.

[250] *See* Petitioner's Rebuttal Brief at 5.

[251] *Id.*

[252] *See* Topsun's December 18, 2015 submission at 2.

[253] In this investigation, the Department decided not to conduct verification of the GOC with respect to this program. Without verification, the Department must assume for purposes of its determination that every factual statement submitted by the GOC is accurate. The CIT has found a "deliberate refusal to subject certain factual information to a verification procedure is not the equivalent of a valid finding that … such information 'cannot be verified.'" *See China Kingdom Import & Export Co., Ltd. v. United States*, 507 F. Supp. 2d 1337,1341 (CIT 2007).

program, the Department should continue to find the non-use of the Export Seller's Credits and Buyer's Credits programs in its final determination.

**Department's Position:** We agree with the GOC. We verified non-use of these programs at both respondents.[254] As a result, we continue to find that these programs were not used during the POI.

**Comment XI: Two Free, Three Half Program**

*GOC:*

- In the preliminary determination, the Department found that one of ETDZ's cross-owned companies received a countervailable subsidy under the "Two Free, Three Half."[255] The Department also found that this program was terminated by the *PRC Corporate Income Tax Law*, that no residual benefits continued to be bestowed after the *Preliminary Determination*, and there has been no replacement substitute program.[256] Accordingly, the Department should determine that a "program wide change" has occurred and apply a zero cash deposit rate with respect to the "Two Free, Three Half" program for ETDZ and the all-others rate.
- The Department's regulations state that it may take a "program-wide change" into account in establishing the estimated countervailing duty deposit rate.[257]
- Moreover, the Department acknowledged that a program-wide change occurred with respect to the "Two Free, Three Half" program in the recent *Tires* investigation.[258] As found in the *Tires* investigation, the "Two Free, Three Half" tax program has been terminated, no residual benefits continue to be bestowed after the *Preliminary Determination*, and there has been no replacement substitute program. Therefore, in accordance with the Department's regulations and previous practice, the Department should find in its final determination that a "program-wide change" has occurred and apply a zero cash deposit rate with respect to the "Two Free, Three Half" program for ETDZ.
- In addition, the Department should recalculate the all others' rate for this program based on the revised cash deposit rate, and eliminate the "Two Free, Three Half" program from the AFA program list for the non-responsive companies.

**Department's Position:** Consistent with *Tires*, for this final determination, we are making a program-wide change determination based on our finding that the "Two Free, Three Half" program has been terminated as of January 1, 2014.[259] The Department makes a program-wide change determination when we find pursuant to 19 CFR 351.526(a)(1) that subsequent to the

[254] *See* Verification Reports.
[255] *See* Post-Preliminary Determination at 6.
[256] *Id*.
[257] *See* 19 CFR 351.526. This occurs where the Department finds that subsequent to the period of investigation, but before a preliminary determination, a "program-wide change" has occurred and the Department is able to measure the change in the amount of countervailable subsidies provided. *See* 19 CFR 351.526(a)(1) and(2).
[258] *See Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015) ("*Tires*") and accompanying Issues and Decision Memorandum at Comment 15.
[259] *See Tires* at Comment 15.

POI, but before the preliminary determination, a "program-wide" change as defined under 19 CFR 351.526(b) has occurred and the Department is able to measure the change in the amount of the subsidy provided as required under 19 CFR 351.526(a)(2).[260] The GOC submitted the *Notice of the State Council on the Implementation of the Transitional Preferential Policies in Respect of the Enterprise Income Tax* ("*Transitional Policies*"), which stipulates that the transitional period for phasing out benefits under the program, which had been provided for under the *Enterprise Income Tax Law*, would terminate completely as of December 31, 2012.[261] Based on the Department's understanding of the terms of the *Transitional Policies*, we find that no substitute program was created when this program was terminated, and, because this was a national program, the local governments did not have the authority to create a substitute program or continue using this program at the local level. Given that income tax for 2012 was payable in 2013, the last year benefits under this program could be claimed was 2013. Therefore, we find that no residual benefits remained under the program beyond December 31, 2013. Furthermore, the change in the amount of countervailable subsidies provided under this program is measurable. Accordingly, pursuant to 19 CFR 351.526(d), we are adjusting the cash deposit rate for ETDZ, and the all others rate, specifically by excluding from the required cash deposit the rates calculated in the POI under this program.

We have not adjusted the cash deposit rate for the non-responsive companies. Under our practice, we calculate one combined AFA rate for all income tax programs equal to the income tax rate of 25 percent in China. Because we are investigating more than one income tax program, the termination of the "Two Free, Three Half" program does not impact the AFA rate of 25 percent and has no impact on the cash deposit rate.

**Comment XII: Other Programs**

*GOC:*

- The Department preliminarily investigated and countervailed seven grant programs (Export Subsidy for High-tech Merchandise, Exhibition Subsidy, Foreign Trade Bureau Award, Grants for Export Credit Insurance, Clean Energy Measures Subsidy, and the Innovative Growth Subsidy).[262] None of these grants were alleged by Petitioner, or properly initiated in a petition or new subsidy allegation.
- The Department has no authority to seek information on these new, purported grant programs under either the statute or the Department's regulations. Articles 11.1 and 11.2 of the WTO SCM Agreement provide that an investigation of any alleged subsidy may be initiated only upon written application that must include sufficient evidence of a subsidy, injury, and a causal link between the subsidy and alleged injury. "Simple assertion, unsubstantiated by relevant evidence" is not sufficient to meet the requirements.[263] While the SCM Agreement provides the right to self-initiate an investigation in "special circumstances," the right can only be exercised on the basis of sufficient evidence of the existence of a subsidy, consistent with Article 11.6 of the SCM Agreement, and after an opportunity to consultation has been

[260] *See* 19 CFR 351.526(a).
[261] *See* the GOC's April 7, 2015 submission at Exhibit 3-5.
[262] *See* PDM at 21-24; *see also* Post-Preliminary Determination at 4-6.
[263] *See Agreement on Subsidies and Countervailing Measures* ("*SCM Agreement*") at Article 11.2.

properly offered to the government of exporting country under investigation, consistent with Article 13.1 and 13.2 of the SCM Agreement.

- Because the Department failed to initiate lawfully an investigation of the purported grant programs, it should withdraw its preliminary findings related to them, and remove from the record all the information obtained through improper questionnaire requests.

**Department's Position:** The Department's examination of these programs was proper. Section 775 of the Act states that if, during a proceeding, the Department discovers "a practice that appears to provide a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition," the Department "shall include the practice, subsidy, or subsidy program if the practice, subsidy or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding." U.S. law, as implemented through the Uruguay Round Agreements Act, is consistent with the WTO obligations of the United States.[264] Under 19 CFR 351.311(b), the Department will examine the practice, subsidy or subsidy program if the Department "concludes that sufficient time remains before the scheduled date for the final determination or final results of review."

In *Wood Flooring*, the Department found that the respondents' financial statements identified assistance programs from the GOC which had not been provided in the questionnaire responses. The Department found that it was able to include the practice in the proceeding pursuant to the Act and its regulations.[265]

As explained above in the "Analysis of Programs" section, ETDZ and one of its suppliers self-reported receiving countervailable grants and funding from provincial and local governments which were not part of any of the other programs included in initiation. Thus, the Department determined that it was necessary to issue supplemental questionnaires to ETDZ, one of its suppliers and the GOC regarding these self-reported programs. ETDZ and its supplier provided information concerning these programs in their supplemental responses. Thus, in light of the information contained in the questionnaire responses and based on the guidelines established under section 775 of the Act and 19 CFR 351.311(b), the Department acted within its authority to examine the programs within this proceeding and seek additional information from the GOC and ETDZ. This approach is consistent with the Department's practice.[266]

We disagree that the Department's regulations prevent the Department from investigating these programs. 19 CFR 351.311(d) provides that the Department will notify the parties to the proceeding of any subsidy discovered in any ongoing proceeding, and whether or not it will be included in the ongoing proceeding. The parties were notified of these programs by ETDZ's reporting of them, their inclusion in the proceeding based on the issuance of supplemental

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[264] *See generally* SAA at 656.

[265] *See Multilayered Wood Flooring from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011) ("*Wood Flooring*") and accompanying Issues and Decision Memorandum at Comment 3.

[266] The Department has addressed these same arguments within the context of nearly identical fact patterns before. *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 Comment 14.

questionnaires concerning the programs, and such notice is evident in the fact that interested parties commented on these programs for the final determination. Accordingly, as discussed above, the Department's determination is consistent with both the Act and the Department's regulations.

**Comment XIII: Whether Whirlpool's Products are Within the Scope**[267]

A. *Whirlpool's Incomplete Units*

*Petitioner*:

- The Department's regulations state that a party requesting a scope ruling must demonstrate that it has taken steps toward importing the merchandise subject to the scope request and, at the time of Whirlpool's request,[268] it was not yet importing units from which either the posts, or the beams, had been intentionally omitted from the box. There is no record evidence to suggest that Whirlpool has engaged in any supply chain arrangement that involved excluding either the posts, or beams, from otherwise complete prepackaged boltless steel shelving. As a purely theoretical scenario, it is not appropriate for a scope ruling under 19 CFR 351.305(d).
- The prepackaging of all but one component piece in a retail box does not meet the definition of the excluded bulk-packed parts or components. The pre-bundling in the PRC of one set of parts to add to a finished prepackaged shelving unit also produced in the PRC does not remove the product from the scope intended by Petitioner.
- Whirlpool focuses on the phrase "at a minimum" in the scope language describing "prepackaged for sale" that was added at the Department's request to contrast bulk-packed parts used in "made to order shelving systems," which are excluded from the order.[269]
- The sentence of the scope defining merchandise under consideration to have "at a minimum" all of the parts necessary to complete a shelving unit in the box must be viewed in the context of Petitioner's desire to include shelving units prepackaged for off-the-shelf retail sale and parts being used to produce shelving systems. To qualify for the exclusion of bulk-packed parts, the parts must be imported in a manner that would allow use in a made-to-order system. A retail sale box containing nearly all of the parts necessary to produce a finished unit cannot be used in a made-to-order system because the parts would have to be unboxed, wasting the retail packaging and requiring additional labor.
- To the extent that Whirlpool has identified the phrase "at a minimum," as language that may be used to circumvent the scope, Petitioner requests that the Department remove that phrase

[267] As indicated in the PDM at page 2, the Department preliminarily addressed scope comments in the companion antidumping duty investigation. *See Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 80 FR 17409 (April 1, 2015) ("*Boltless Steel Shelving AD Prelim*") and accompanying Issues and Decision Memorandum at 4-13. Whirlpool was among those interested parties submitting scope comments.

[268] *See* Letter from Whirlpool, to the Department, regarding "Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Submission of Factual Information and Request for Scope Clarification," dated March 2, 2015 ("Whirlpool Scope Clarification").

[269] The products subject to this exclusion are bulk-packed parts like those for "made to order shelving systems" and are made from bulk parts aggregated and packaged by a distributor or material-handling firm to create an entire unique shelving system rather than an individual shelving unit.

from the scope or provide other clarifying language to make clear that intentional omission from the shelving unit would not remove the pre-wrapped bundle or the rest of the prepackaged shelving unit from the scope.[270]

- If the Department determines that imports of shelving units that do not contain all of the necessary components to assemble a completed unit are not covered by the scope, the Department should still find these products subject to the scope as products completed or assembled in the United States using a process that is minor or insignificant.
- Whirlpool's "assembly" amounts to packing bundles in a box, which requires minimal investment and no research and development.
- Whirlpool has made clear that it has changed its sourcing patterns solely to avoid the AD duty investigation while still purchasing all components from its PRC supplier.
- The Department should conclude that prepackaged shelving units imported without either posts or beams for later combination with separately imported posts and beams is a circumvention of the scope of the investigation and that any incomplete units and parts imported separately for assembling completed units in the United States would be included within the scope of the order. If the Department does not undertake this analysis, it should expressly state in the final determination that it is not reaching a determination as to whether incomplete units and missing parts may still be brought within the scope of any order under the anti-circumvention provisions.

*Whirlpool*:

- The plain language of the scope excluded prepackaged shelving that does not contain all of the necessary posts and beams/braces.
- The Department has explained in that any merchandise "in production" is eligible for a scope inquiry,[271] regardless of whether any entries have been made. There is no question that the merchandise described by Whirlpool is in production and does not concern a purely hypothetical product.
- Whether posts or beams are later combined with other parts in the United States is not relevant to the issue of whether Whirlpool has taken steps towards importing the merchandise entered without one of the essential components of merchandise under consideration.
- The Department has stated that in the absence of an actual entry of merchandise covered by the scope inquiry, "the Department will work with the importer to determine if other documentary evidence exists that will be sufficient to confirm the importer's status as an interested party."[272]
- If the Department was not satisfied that Whirlpool had met the requirements of 19 CFR 351.305(d) for submitting a scope request, it would have taken steps to work with Whirlpool to determine if other documentary evidence exists to confirm its eligibility.
- The exclusions for bulk-packed parts and made-to-order shelving systems are irrelevant in construing the term "prepackaged for sale," and there is no indication that those exclusions

[270] *See AMS Assocs. v. United States*, 881F.Supp. 2d 1374, 1380 (CIT 2012), affirmed 737 F.3d 1338 (Fed. Cir. 2013) ("*AMS Associates*").
[271] *See Antidumping and Countervailing Duty Proceedings: Document Submission Procedures: APO Procedures*, 73 FR 3634, 3639 (Jan. 22, 2008) ("*APO Procedures*").
[272] *Id*.

were intended to inform the meaning of "prepackaged for sale" or the treatment of boltless steel shelving units that do not contain both posts and beams.

- Petitioner's comments and the scope make clear that in-scope merchandise is packaged with all of the pieces necessary to assemble a completed shelving unit ready for ultimate purchase by the end-user.
- Although Petitioner now requests that the Department remove the phrase "at a minimum" from the scope's definition of "prepackaged for sale" the Department should not revise the scope language at this late stage of the proceeding. The Department may not expand the scope of the orders to cover products specifically excluded or render scope language inutile.[273] Petitioner seeks to have the Department change the scope language to include products that have been explicitly excluded and does so too late in the proceeding, given that the ITC's preliminary investigation was based on the existing scope, as is the final phase investigation. Petitioner cites to *AMS Associates* to support its request, but the Department did not change scope language in that case or otherwise discuss its authority to do so.
- Even if the Department has the authority to revise the scope at this stage, removal of the phrase "at a minimum" still results in a scope that makes clear that both the posts and beams are necessary to assemble a complete shelving unit in order to be considered "prepackaged for sale."
- The anti-circumvention provision cited by Petitioner is not relevant to a scope inquiry during the LTFV investigation and only covers merchandise subject to an order.
- The CAFC confirmed in *Wheatland* that the Department cannot change the scope to include merchandise that is "expressly and unambiguously excluded" from an order,[274] and the *Preliminary Determination* makes clear that the plain language of the scope expressly excludes shelving without either the horizontal or vertical supports.

**Department's Position:** The Department agrees with Whirlpool that packages of shelving units that do not contain "the steel vertical supports (*i.e.*, uprights and posts) and steel horizontal supports (*i.e*., beams, braces) necessary to assemble a completed shelving unit"[275] are not covered by the scope of the order of these investigations. As an initial matter, we note that 19 CFR 351.305(d), which requires that any party seeking a scope inquiry present evidence that it has taken steps towards importing the merchandise subject to the scope inquiry, does not apply in this instance because Whirlpool is not seeking a scope inquiry. Indeed, the Department rejected and removed from the record Whirlpool's initial filing that specifically requested a scope ruling under 19 CFR 321.225(c), noting that it is not possible for the Department to issue rulings under 19 CFR 321.225(c) because that regulation is specific to whether a product is within the scope of an order or a suspended investigation, neither of which applies at this time.[276] Accordingly, Whirlpool refiled its comments as a scope clarification request without reference to 19 CFR 321.225(c).[277] Thus, Petitioner's concern regarding Whirlpool's eligibility to request

[273] *See Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1089 (Fed. Cir. 2002); *Eckstrom Indus., Inc. v. United States*, 254 F.3d 1068, 1076 (Fed. Cir. 2001).
[274] *See Wheatland Tube Company v. United States*, 161 F.3d 1365, 1370 (Fed. Cir. 1998).
[275] *See* Scope of the Investigation section, above.
[276] *See* Letter to Whirlpool from Catherine Bertrand, Program Manager, Office V "Scope Ruling Request" (February 23, 2015).
[277] *See* Whirlpool's March 2, 2015 submission.

such clarification at this time is unfounded.

The scope of these investigations states that:

> The term "prepackaged for sale" means that, at a minimum, the steel vertical supports *(i.e.*, uprights and posts) and steel horizontal supports (*i.e.*, beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user.[278]

When asked to clarify the meaning of "packaged together for ultimate purchase by the end-user" Petitioner replied that this language means "that the boltless steel shelving has been prepackaged for purchase in 'as is' condition, ready for assembly by the end-user and is not packaged-to-order."[279] Removal of the phrase "at a minimum" from the scope language, as suggested by Petitioner,[280] would not substantially alter the meaning of the scope such that the covered products would no longer need to include all of the components necessary to assemble a completed shelving unit. Although Petitioner requested that the Department make clear in the final determination that intentional omission of one element of the unit would not result in removal of the product from the scope of the investigation,[281] Petitioner has not suggested any additional scope language that would result in an enforceable scope that precludes an incomplete shelving unit from being excluded from the scope. Absent clarifying language, the plain language of the scope is clear in the requirement that all components necessary to assemble a completed shelving unit be packaged together for purchase by the end-user.

Although Petitioner argues that importing one element of the shelving unit separately from an otherwise completed and boxed unit does not meet the definition of the excluded bulk-packed parts or components,[282] an exclusion addressed in more detail below, Petitioner has not explained how a container full of a single component (*i.e.*, post or beam) can be distinguished from the bulk-packed parts or components subject to the scope exclusion. Such a distinction would require that the Department define in the scope and U.S. Customs and Border Protection ("CBP") be cognizant at the time of entry that a container of individual component pieces are destined for units already prepackaged for sale but for the omission of a single component. Such a distinction would be unenforceable and Petitioner has not proposed revising the title of this investigation to "parts thereof," "complete or incomplete" or something along similar lines.

Accordingly, we are not reversing the companion antidumping duty preliminary determination that imports of prepackaged shelving units that do not contain "the steel vertical supports (*i.e.*, uprights and posts) and steel horizontal supports (*i.e.*, beams, braces) necessary to assemble a completed shelving unit" as required by the plain language of the scope,[283] are not covered by the scope of these investigations.[284] Further, we do not find that removal of the phrase "at a

[278] *See* Scope of the Investigations section, above.
[279] *See* Petitioner's September 4, 2014 submission at 6.
[280] *See* Petitioner's Case Brief at 17 - 18.
[281] *Id.* at 11 - 16.
[282] *Id.*
[283] *See Boltless Steel Shelving AD Prelim* and accompanying Issues and Decision Memorandum at 11.
[284] *See* Scope of the Investigations section, above.

minimum" from the scope description of "prepackaged for sale" would substantially alter the meaning of the scope and, as such, we are not revising the language of the scope of these investigations for this final determination.

The Department shares Petitioner's concern that prepackaged shelving units imported without either posts or beams for later combination with separately imported posts and beams present a circumvention concern that could warrant further examination within the context of section 781 of the Act, governing merchandise completed or assembled in the United States. However, as noted by Whirlpool, section 781 of the Act expressly applies to merchandise sold in the United States that is of the same class or kind as any other merchandise that is the subject of, *inter alia*, a countervailing duty order.[285] Accordingly, the Department cautions interested parties that shipments of partially packaged shelving units imported from the PRC that are completed in the United States from components produced in the PRC *via* a process that is minor or insignificant as described in section 781(a) of the Act, may be the subject of further investigation should an order be imposed at the conclusion of these investigations.

B. *Whirlpool's Pre-wrapped Bundles*

*Petitioner*:

- The imported products described by Whirlpool are in fact partially packaged, pre-wrapped bundles, designed for easy assembly in a package at Whirlpool's U.S. facility. Such pre-wrapped bundles are not bulk-shipped parts or components as described in the exclusion language of the scope, which must also be able to be used in made-to-order systems.
- To be bulk-packaged parts and components, no prepackaging or bundling should have occurred, and the pre-bundling in the PRC limits the use of these parts solely for the purpose of creating merchandise under consideration in the United States.
- The Department should find that these pre-bundled parts do not meet the parts and components exclusion.
- Even if the Department finds that Whirlpool's bundles of partially packaged parts would be nominally outside the scope, these products may be covered by the scope if the products are found to be completed or assembled in the United States using a process that is minor or insignificant.
- Because Whirlpool is selling shelving units of the same class or kind that is the subject of this investigation, where the components are imported from the PRC, the value of the components imported from the PRC is a significant portion of the total value of the product and the process of completion in the United States is minor, the factors set forth in Section 781 of the Act are satisfied. The record shows Whirlpool changed its sourcing patterns solely to avoid these investigations while still purchasing all components from its PRC supplier, which is a licensee of Whirlpool that produces all parts under the control of Whirlpool and imports of the parts have increased since the case was filed.
- The Department should conclude that importation of partially packaged, pre-bundled groupings of parts made to be boxed into merchandise under consideration is a circumvention of the investigation under Section 781(a) of the Act.

[285] *See* section 781(a)(1)(a)(i) of the Act.

*Whirlpool*:

- The pre-wrapped bundles of bulk-shipped beams and pre-wrapped bundles of bulk-shipped posts and wire decks are not included in the scope based on the plain language of the scope, which provides that "bulk-packed parts or components of boltless steel shelving units" are "{s}pecifically excluded from the scope."
- In the pre-initiation stage of this investigation, Petitioner confirmed that packages of bulk-shipped parts that do not include "all of the pieces necessary to build a completed shelving unit" are excluded from the scope.
- There is nothing in the scope language that states that bulk parts cannot be "prepackaged" or that bulk-packed parts must be used in other products explicitly excluded from the scope (*i.e.*, made-to-order systems) and Petitioner did not suggest as much in its pre-initiation comments.
- The key feature of such excluded merchandise is that it does not contain all of the pieces necessary to build a completed shelving unit.
- The fact that bulk-packed parts may later be incorporated in boltless steel shelving units (made-to-order or otherwise) does not remove them from the exclusion for bulk-packed parts.
- The imported pre-wrapped bundles do not contain all of the pieces necessary to build a completed shelving unit and are not in-scope units "prepackaged for sale."
- The Department should find that the plain scope language, as further described in Petitioner's comments, exclude (i) pre-wrapped bundles of bulk-shipped horizontal support beams, with no vertical supports and wire decking in the same shipping container; and (ii) pre-wrapped bundles of bulk-shipped vertical supports and wire decking, with no horizontal support beams in the same shipping container.
- The provisions concerning merchandise assembled in the United States can only be invoked after an order has issued and the anti-circumvention provisions cannot be applied to include merchandise that has already been explicitly excluded.

**Department Position:** We agree with Whirlpool that the bulk-packed parts described in the Whirlpool Scope Clarification fall under the exclusion listed in the scope for bulk-packed parts and components. The imports described by Whirlpool are not included in the scope of these investigations because the minimum requirements necessary to assemble a unit are not packaged together for ultimate purchase by the end-user, as required by the scope. For this final determination, the Department confirms that the imports described by Whirlpool fall under the express exclusion enumerated in the scope for bulk-packed parts of components.

Petitioner specifically addressed bulk-packed parts and component pieces in the pre-initiation phase of these investigations.[286] Petitioner described components of boltless steel shelving units as "the individual beams, braces, posts, decks and other pieces that make up parts of boltless steel shelving when sold individually or in bulk" and noted that such components that are not "prepackaged for sale as complete boltless steel shelving or as add-on kits are not covered by the

[286] *See Boltless Steel Shelving AD Prelim* and accompanying Preliminary Decision Memorandum at 11 – 12.

proposed scope."[287] Petitioner further noted that "the packaging of individual components or the packaging together in bulk of components (*i.e.*, posts, beams or other components packaged together in large quantities) removes the product from the scope."[288]

Petitioner now argues that its initial description of bulk-packed parts and components should be narrowed by characterizing Whirlpool's imports as "partially packaged," pre-wrapped bundles that do not fall under the scope exclusion for bulk-shipped parts or components.[289] Petitioner argues that in order to meet the bulk-packaged requirement, the parts cannot be prepackaged.[290] However, Petitioner itself described the products subject to the bulk-packed parts exclusion as being "packaged according to the distributor or customer's order for individual pieces" and claimed that the "packaging together in bulk of components . . . removes the product from the scope."[291] Thus, Petitioner acknowledges that some packaging is integral to the products described in the bulk-packed parts exclusion. Petitioner has not reconciled its current contention that Whirlpool's "partially packaged" components are not subject to the bulk-packed parts exclusion with its prior statements that components subject to this exclusion are in fact "packaged according to the distributor or customer's order for individual pieces."

Petitioner conflates the bulk-packed parts exclusion with the separate and distinct exclusion for made-to-order shelving systems in arguing that the bulk-packed parts exclusion is applicable only to parts used in made-to-order shelving systems.[292] This claim stands in stark contrast to the scope language, which expressly lists two separate exclusions for bulk-packed parts and made-to-order shelving systems, and to Petitioner's own statements. Throughout its pre-initiation comments, Petitioner discussed these two exclusions separately and did not link them in the manner it now attempts. Specifically, it stated that in addition to the fact that "{b}ulk packed parts and components and made to order commercial shelving units are not prepackaged as individual units for sale to the end users," they are "packaged according to the distributor or customer's *order for individual pieces, bulk components or for the shelving system* designed for the customer."[293]

Although Petitioner argues that "partially packaged" pre-wrapped bundles can only be used in merchandise meeting the scope of these investigations because the prepackaging would have to be removed to be used for other purposes,[294] Petitioner ignores the fact that some amount of packaging is inevitable on international shipments of goods such as the components in question. A bulk shipment of component pieces without any packaging whatsoever risks damage to steel components and blemishes to powder coated surfaces. We also note that Petitioner's attempt to link bulk-packed shipments of components with an intended use after importation raises enforceability issues Petitioner has not addressed and it is unclear how Petitioner would have CBP determine at the border whether a bulk-packed, with an inevitable amount of packaging,

[287] *See* Petitioner's September 4, 2014 submission at 12.
[288] *Id.*
[289] *See* Petitioner's Case Brief at 23 - 27.
[290] *Id.*
[291] *See* Petitioner's September 4, 2014 submission at 12.
[292] *See* Petitioner's Case Brief at 23 - 27.
[293] *See* Petitioner's September 4, 2014 submission at 12-13 (emphasis added).
[294] *See* Petitioner's Case Brief at 23 - 27.

was destined for packaging in a retail box, for a made-to-order shelving system, or for an entirely different type of product (*e.g.*, wall-mounted shelving units that are expressly excluded by the scope).

For the foregoing reasons, the Department continues to find from the antidumping duty preliminary determination[295] for this final determination that Whirlpool's imports from the PRC of 1) pre-wrapped bundles of bulk-shipped horizontal support beams, with no vertical supports and wire decking in the same shipping container; and 2) pre-wrapped bundles of bulk-shipped vertical supports and wire decking, with no horizontal support beams in the same shipping container, are not covered by the scope of these investigations.

## VII. RECOMMENDATION

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

✓

Agree Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

August 14, 2015

(Date)

[295] *See Boltless Steel Shelving AD Prelim* and accompanying Preliminary Decision Memorandum at 11 – 12.