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

C-570-938
POR: 1/1/2013 – 12/31/2013
PUBLIC DOCUMENT
AD/CVD/Office II: EE

December 7, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review: Citric Acid and Certain Citrate Salts; 2013

I. SUMMARY

There is one respondent in the 2013 administrative review of the countervailing duty (CVD) order on citric acid and certain citrate salts from the People's Republic of China (PRC): Laiwu Taihe Biochemistry Co., Ltd. (Taihe). For these final results, we analyzed the case and rebuttal briefs submitted by interested parties in this administrative review. As a result of our analysis, we made changes to the Preliminary Results.[1] We recommend that you approve the positions described in the "Analysis of Comments" section of this memorandum.

II. BACKGROUND

On June 8, 2015, the Department published the Preliminary Results of this administrative review. On June 26, 2015, we completed the Post-Preliminary Results of this administrative review.[2] This review covers Taihe. The period of review (POR) is January 1, 2013, through December 31, 2013.

---

[1] See Citric Acid and Certain Citrate Salts: Preliminary Results of Countervailing Duty Administrative Review; 2013, 80 FR 32346 (June 8, 2015) and accompanying Preliminary Decision Memorandum (Preliminary Results).

[2] See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Melissa G. Skinner, Director, entitled, "Post-Preliminary Results Decision Memorandum in the 2013 Countervailing Duty Administrative Review; Citric Acid and Certain Citrate Salts from the People's Republic of China," dated June 26, 2015 (Post-Preliminary Results).

We invited parties to comment on the Preliminary Results and Post-Preliminary Results. On July 22, 2015, we received case briefs from the Government of China (GOC) and Taihe.[3] On July 27, 2015, we received a rebuttal brief from the petitioners.[4,5]

On August 13, 2015, the Department extended the final results of this administrative review until December 7, 2015.[6]

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

Below is the complete list of the issues in this administrative review for which we received comments from the interested parties and to which we responded:

Comment 1: Whether to Find the Input for Less-Than-Adequate-Remuneration (LTAR) Programs Not Specific
- A. Sulfuric Acid
- B. Steam Coal
- C. Calcium Carbonate
- D. Caustic Soda

Comment 2: Whether the Department Should Apply Adverse Facts Available (AFA) in its Market Distortion Analysis of the Sulfuric Acid, Calcium Carbonate, and Caustic Soda Industries

Comment 3: Whether to Reverse the Department's "Authorities" Determination for Certain Input Suppliers

Comment 4: Including Ocean Freight and Import Duties in the International Freight Benchmark for Input for LTAR Programs

Comment 5: The Selection of Ports in the International Freight Benchmark for Input for LTAR Programs

[3] See Letter from the GOC Re: "GOC's Administrative Case Brief in the Fifth Administrative Review of the Countervailing Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China," dated July 22, 2015 (GOC Case Brief); and Letter from Taihe Re: "Citric Acid and Citrate Salts from the People's Republic of China: Case Brief," dated July 22, 2015 (Taihe Case Brief).

[4] The petitioners are Archer Daniels Midland Company, Cargill Incorporated, and Tate & Lyle Ingredients America LLC.

[5] See Letter from the petitioners Re: "Citric Acid and Certain Citrate Salts From The People's Republic Of China/ Petitioners' Rebuttal Brief," dated July 27, 2015 (Petitioners' Rebuttal Brief).

[6] See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Shannon Morrison, International Trade Compliance Analyst, entitled, "Citric Acid and Certain Citrate Salts from the People's Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated August 13, 2015.

Comment 6: Whether to Use Freight Rates for Flat Rack Containers in the International Freight Benchmark for the Calcium Carbonate for LTAR Program
Comment 7: Whether to Use the Costs for Hazardous Shipping Charges in the International Freight Benchmark for the Sulfuric Acid and Caustic Soda for LTAR Programs

III. SCOPE OF ORDER

The scope of the order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of the order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of the order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of the order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively.

Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act), provide that the Department, subject to section 782(d) of the Act, shall apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the

deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[7] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[8]

Section 776(b) of the Act 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. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[9] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.[10]

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[11] Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[12] Further, and under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.[13]

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a

---

[7] See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice). The text of the TPEA may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.

[8] See Applicability Notice, 80 FR at 46794-95.

[9] See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

[10] See also 19 CFR 351.308(c).

[11] See also 19 CFR 351.308(d).

[12] See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 at 870 (1994).

[13] See section 776(c)(2) of the Act; TPEA, section 502(2).

countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.[14] The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[15]

A. GOC – Markets Distorted by Government Presence

There are four inputs-for-LTAR programs in this review, involving sulfuric acid, steam coal, calcium carbonate, and caustic soda. The Department requested that the GOC provide information concerning each of these industries in the PRC for the POR. Specifically, we requested that the GOC provide the following information for each input:[16]

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

The Department requested such information to determine whether the GOC is the predominant provider of these inputs in the PRC and whether its presence in the market distorts all transaction prices.

In response, the GOC stated that it does not maintain records on the four industries at issue, rendering the identification of ownership of producers in which the GOC maintains an ownership or management interest -- either directly or through other government entities -- extremely difficult.[17] The GOC, with information from the industry association responsible for each input, provided: 1) the total volume and value of domestic consumption and production and the total

[14] See section 776(d)(1) of the Act; TPEA, section 502(3).

[15] See section 776(d)(3) of the Act; TPEA, section 502(3).

[16] See the Department's initial questionnaire and input producer appendix issued to the GOC on August 8, 2014 (Department's Initial Questionnaire), and the supplemental questionnaires issued on December 10, 2014, January 14, 2015, February 26, 2015, April 27, 2015, and May 1, 2015.

[17] See the GOC's submission dated October 21, 2014 (GOC's Initial LTAR Response), at pages 3-4, 24, and 41; see also the GOC's submission dated February 12, 2015 (GOC's Caustic Soda and LTAR Specificity Response), at page 12.

volume and value of imports of sulfuric acid;[18] 2) the volume of domestic consumption and production and the total volume and value of imports of calcium carbonate;[19] 3) estimates of the volume of domestic consumption and the volume and value of imports of steam coal;[20] and 4) the volume and value of domestic production and the volume and value of imports of caustic soda, as well as estimates of the volume and value of consumption.[21]

The Department issued supplemental questionnaires requesting that, for each of these industries, the GOC provide the number of producers in which it maintains an ownership or management interest.[22] In response, the GOC stated that it coordinated with: 1) the industry association responsible for each input to obtain a list of the names and production quantities for certain companies which produced the input during the POR; and 2) the State Administration of Industry and Commerce (SAIC) to determine whether the GOC maintained a management or ownership interest in any of these companies.[23] However, the GOC failed to completely identify, and provide GOC ownership information for, the companies comprising, the sulfuric acid, calcium carbonate, and caustic soda industries.[24] Instead, the GOC provided the requested information for producers which it stated accounted for more than 50 percent of the sulfuric acid and caustic soda industries and 18.6 percent of the calcium carbonate industry.[25] The GOC stated that it would be "too difficult" to obtain this information for all producers of each input.[26]

In a previous investigation, the Department was able to confirm at verification that the GOC maintains two databases at the SAIC: one is the business registration database, showing the most up-to-date company information; a second system, "ARCHIVE," houses electronic copies of documents such as business licenses, annual reports, capital verification reports, etc. Therefore, we find that the GOC has an electronic system available to it to gather the industry-specific information the Department requested.[27]

---

[18] See GOC's Initial LTAR Response at pages 2-3.

[19] Id., at pages 40-41.

[20] Id., at page 23.

[21] See GOC's Caustic Soda and LTAR Specificity Response at pages 11 and 12.

[22] See the Department's February 26, 2015, and May 1, 2015, supplemental questionnaires at pages 5 and 7 and pages 1-3, respectively.

[23] See the GOC's submission dated April 3, 2015 (GOC's Third Supplemental Response), at pages 19-20, 24, and 31-32; see also GOC's submission dated May 14, 2015 (GOC's Fifth Supplemental Response), at pages 5-7.

[24] Regarding the steam coal industry, the GOC provided information which it said accounted for the top 50 coal producers. See GOC's Third Supplemental Response at pages 21-23. This data shows that virtually all of these coal producers are GOC-owned or -managed companies, including all of the 13 producers with the largest volume. We find that the evidence the GOC provided is sufficient to demonstrate its substantial involvement in the steam coal market. For further discussion, see the "Provision of Steam Coal for LTAR" section, below.

[25] See GOC's Third Supplemental Response at pages 24 and 31-32; see also GOC's Fifth Supplemental Response at pages 5-7.

[26] See GOC's Fifth Supplemental Response at pages 5, 8, and 9.

[27] See Memorandum to the File from Shannon Morrison, International Trade Compliance Analyst, entitled, "Additional Documents for the Preliminary Results," dated June 1, 2015 (Additional Documents for Prelim Memorandum) at Attachment II (Memorandum to Susan Kuhbach, Director, AD/CVD Operations, Office 1, from Shane Subler and David Neubacher, International Trade Compliance Analysts, "Countervailing Duty Investigation:

Further, we determine that the GOC withheld necessary information that was requested of it and, thus, that the Department must rely on facts available in these final results.[28] 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.[29] In drawing an adverse inference, we find that PRC prices from actual transactions involving Chinese buyers and sellers are significantly distorted by the involvement of the GOC.[30] Therefore, we find that the use of an external benchmark is warranted for calculating the benefit for the provision of sulfuric acid, calcium carbonate, and caustic soda for LTAR. See Comment 2, below.

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

B. GOC – Certain Producers of Steam Coal and Calcium Carbonate are "Authorities"

In its Initial LTAR response, the GOC reported that neither the known producer of steam coal (hereinafter referred to as Company B) nor the two producers of calcium carbonate (hereinafter referred to as Companies C and D) which supplied Taihe during the POR had either: 1) Chinese Communist Party (CCP) primary organizations;[31] or 2) any owners, executive directors, or managers which were officials or representatives of any of the nine entities at any level.[32,33]

Certain Oil Country Tubular Goods from the People's Republic of China; Verification Report of the Jiangsu Province State Administration of Industry and Commerce and Tianjin Municipality State Administration of Industry and Commerce," dated October 29, 2009).

[28] See section 776(a)(2)(A) of the Act.

[29] See section 776(b) of the Act.

[30] See Preamble to Countervailing Duty Regulations, 63 FR 65348, 65377 (November 25, 1998) (Preamble).

[31] See Additional Documents for Prelim Memorandum at Attachment III (Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS379," dated May 18, 2012 (Public Body Memorandum); and its attachment, Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be 'public bodies' within the context of a countervailing duty investigation," dated May 18, 2012 (CCP Memorandum)), for a discussion of CCP primary organizations.

[32] See GOC's Initial LTAR Response at pages 34-37, 49-53, and 58-64.

[33] We note that the petitioners provided information which identified Company B as a state-owned enterprise (SOE). See Letter from the petitioners entitled, "Citric Acid And Certain Citrate Salts From The People's Republic Of China: Petitioners' Factual Information To Rebut, Clarify, Or Correct GOC's Initial LTAR Questionnaire Response," dated November 12, 2014, at Exhibit 7 (Petitioners' LTAR Rebuttal Submission).

Therefore, in supplemental questionnaires, we requested that the GOC provide official documentation from the GOC or the CCP to support these claims. In response to our request, for Companies B and C, the GOC provided statements from these companies, rather than official documentation from the GOC or CCP.[34,35] In Citric Acid Fourth Review, we found the GOC was able to obtain the information requested independently of the companies involved, and that statements from companies, rather than from the GOC or CCP themselves, were not sufficient.[36] Therefore, we find that the GOC failed to provide the information requested of it for Companies B and C. See Comment 3, below.

For Company D, the GOC stated that it was "unable to provide the relevant documentation."[37] Therefore, we asked the GOC the steps it undertook to attempt to obtain this information, including the names of the organizations it contacted. In response, the GOC stated that it contacted Company D directly, which refused to provide any supporting documentation.[38] Thus, we find that the GOC failed to provide the information requested of it for Company D.

By failing to respond to the Department's questions, the GOC withheld information requested of it regarding the CCP's role in the ownership and management of Companies B, C, and D. As we explained in the Additional Documents for Prelim Memorandum,[39] we understand the CCP to exert significant control over economic activities in the PRC. Thus, the Department finds, as it has in prior segments of this proceeding,[40] that the information requested regarding the role of CCP officials and CCP primary organizations in the management and operations of Companies B, C, and D is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act.

Therefore, we find that the GOC withheld necessary information that was requested of it and that the Department must rely on facts available in conducting our analysis of Companies B, C and D.[41] As a result of incomplete responses to the Department's initial and supplemental questionnaires, we find that the GOC failed to cooperate by not acting to the best of its ability to

[34] See the GOC's submission, dated January 9, 2015 (GOC's First Supplemental Response), at page 26 and Exhibits IV-25 and IV-26.

[35] In addition, because Company C's articles of association indicated that its ownership changed, we asked the GOC to provide official documentation demonstrating that none of these owners served as officials or representatives of any of the nine CCP entities. In response, the GOC provided a certification from the CCP; however, the CCP's certification did not provide any information regarding the owners of Company C. See GOC's Third Supplemental Response at page 25 and Exhibit IX-1.

[36] See Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012, 79 FR 78799 (December 31, 2014), and accompanying Issues and Decision Memorandum (Citric Acid Fourth Review) at "Use of Facts Otherwise Available and Adverse Inferences" and "GOC – Calcium Carbonate and Caustic Soda are Government 'Authorities.'"

[37] See GOC's First Supplemental Response at page 26.

[38] See GOC's Third Supplemental Response at page 26.

[39] See Additional Documents for Prelim Memorandum at Attachment III, which includes the Public Body Memorandum and its attachment, the CCP Memorandum.

[40] See, e.g., Citric Acid Fourth Review, at "Use of Facts Otherwise Available and Adverse Inferences."

[41] See section 776(a)(2)(A) of the Act.

comply with our requests for information. Consequently, we determine that the GOC withheld information, and that an adverse inference is warranted in the application of facts available.[42] In drawing an adverse inference, we find that CCP officials are present in Companies B, C, and D as individual owners, senior managers and members of the boards of directors, and that this gives the CCP, as the government, meaningful control over the companies and their resources. As explained in the Public Body Memorandum, an entity with significant CCP presence on its board or in management or in party committees may be controlled by the government/CCP such that the company possesses, exercises or is vested with governmental authority.[43] Thus, we find that Companies B, C, and D are "authorities" within the meaning of section 771(5)(B) of the Act.

C. GOC – Provision of Land in the Laiwu High-Tech Industrial Development Zone for LTAR

As discussed under "Programs Determined To Be Countervailable," below, we are investigating the provision of land in the Laiwu High Tech-Industrial Development Zone for LTAR by the GOC.

In the GOC's NSA Response, the GOC claimed that Taihe did not apply for, use, or benefit from this program during the period from January 1, 2003, to the end of the POR.[44] However, Taihe reported purchasing land use rights in the Laiwu High-Tech Zone in 2006 and 2012.[45] Taihe also reported that both of these land parcels were ninth grade land,[46] and it provided the floor price for that grade, noting that its land parcels were priced above this floor.[47]

Therefore, we requested that the GOC: 1) explain, with documentation, how the GOC determined the land grades; 2) explain, with documentation, how it set the price for each grade; and 3) provide diagrams demonstrating the grade of land surrounding each of the land parcels Taihe purchased.[48] In response, the GOC provided official documents entitled, "Circular of the Ministry of Land and Resources on the Issuance and Implementation of the National Standards for the Minimum Transfer Prices of Land for Industrial Purposes," and "Notice of Adjustment on Part of Land Grades (Land Resource Bureau (2008) No. 308)," which set forth the GOC's minimum land transfer prices by land grade.[49] While this documentation demonstrated that land in Laiwu City is ninth grade land, the GOC did not: 1) explain how the GOC determined these land grades; 2) explain how it set the prices for each grade; or 3) provide the requested diagrams showing the land grades surrounding Taihe's land parcels.

[42] See section 776(b) of the Act.

[43] See, e.g., Public Body Memorandum at 33-36, 38.

[44] See the GOC's submission dated January 23, 2015 (GOC's New Subsidy Allegation (NSA) Response), at page 14.

[45] See the submission from Taihe dated January 23, 2015 (Taihe's NSA Response), at pages 5-6 and Exhibit S2-3.

[46] According to information provided by the GOC, land in China is divided into 15 grades. See the GOC's submission dated May 14, 2015 (GOC's Fourth Supplemental Response), at Exhibit II-1.

[47] Id., at pages 5-6 and Exhibits S2-3 through S2-5.

[48] See the Department's February 26, 2015, supplemental questionnaire at page 2.

[49] See GOC's Third Supplemental Response at Exhibits I-2 and I-3.

In its third supplemental response, the GOC also provided a document entitled, "Opinions by the Laiwu People's Government on Wholly Implementing the Transfer of Land for Industrial Purposes through Bid Invitation, Auction and Quotation," reporting that Taihe purchased its land use rights "through quotation."[50] After reviewing this document, we requested additional information from the GOC regarding how land values were assessed in Laiwu City, both inside and outside the Laiwu High-Tech Zone, for land transferred through invitation, auction, and quotation.[51] However, the GOC did not address how land values were assessed, but rather simply described the industrial land transfer process.[52] The GOC also failed to provide requested information regarding Taihe's specific land purchases, including the GOC's starting land price and the process by which the GOC set the final price Taihe paid.[53]

Because the GOC did not provide complete responses to the Department's NSA questionnaire or supplemental questionnaires regarding this program, we determine that the GOC withheld information that was requested of it and, as a result, we must rely on facts available pursuant to section 776(a)(2)(A) of the Act in determining the specificity of this program. 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. Therefore, we determine that an adverse inference is warranted in the application of facts available.[54] In drawing an adverse inference, we find that the GOC's provision of land use rights to Taihe in 2006 and 2012 is regionally specific within the meaning of section 771(5A) of the Act, given the GOC's failure to provide information regarding how land prices in general were assessed in Laiwu City, or the process by which the GOC determined the price Taihe paid for its land purchases.

For details regarding the remainder of our analysis of this program, see "Provision of Land in the Laiwu High-Tech Industrial Development Zone for LTAR," below.

D. GOC – Provision of Electricity for LTAR

As discussed under "Programs Determined To Be Countervailable," below, we are investigating the provision of electricity for LTAR by the GOC. In the supplemental questionnaire issued to the GOC on December 10, 2014, we asked the GOC to provide the original provincial price proposals for the applicable tariff schedules that were in effect during the POR in Shandong province, where Taihe is located. Instead of providing the requested documents, the GOC stated that "these proposals are drafted by the provincial governments and submitted to the {National Development and Reform Commission} NDRC. They are working documents for the NDRC's review only. The GOC is therefore unable provide them with this response."[55] In response to our questions regarding how electricity cost increases are reflected in retail price increases, the GOC explained how price increases should theoretically be formulated but did not explain the

[50] See GOC's Third Supplemental Response at page 8 at Exhibit III-7.

[51] See the Department's April 27, 2015, supplemental questionnaire at page 2.

[52] See GOC's Fourth Supplemental Response at pages 6-8.

[53] Id., at page 9.

[54] See section 776(b) of the Act.

[55] See GOC's First Supplemental Response at page 5.

actual process that led to the price increases.[56] Therefore, in the supplemental questionnaire issued to the GOC on February 26, 2015, we noted the following:

> {a}fter reviewing the GOC's January 9 response to the Electricity Appendix, we find that the GOC did not completely answer certain questions, did not submit the requested documents, or provided theoretical responses that did not address the questions asked.

Therefore, we again asked the GOC to provide complete and detailed answers to the questions contained in the Electricity Appendix. We explained that theoretical replies and a general reference to the "Paper on China's Electricity System" contained in Exhibit IV-4 were not sufficient answers to these questions.

The GOC responded by stating:

> {t}he GOC believes the explanation in its January 9, 2015, response is sufficient. This is the same, or similar, response given to this question in previous cases.[57]

The requested price proposals are part of the GOC's electricity price adjustment process and, thus, are crucial to the Department's analysis of how prices are set within the PRC.[58] Absent this information, we are unable to rely on the information supplied by the GOC. Thus, the GOC has not provided a complete response to our requests for information regarding this program. Accordingly, and consistent with prior cases in which the GOC provided a similar response,[59] we find that the GOC's answers are inadequate and do not provide the necessary information required by the Department to analyze the provision of electricity in the PRC. The GOC did not provide the requested price proposal documents or explain how price increases were formulated. As a result, we must rely on the facts otherwise available, pursuant to sections 776(a)(1) and 776(a)(2)(A) of the Act.

We find that the GOC failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. While the GOC acknowledged the existence of the provincial price proposals, the GOC withheld them without explaining why it could not submit such documents on the record of this proceeding, particularly as the Department permits parties to submit information under administrative protective order for limited disclosure if it is business proprietary in nature.[60] Moreover, while the GOC provided electricity data for all provinces, municipalities and autonomous regions, this information is not germane to an analysis of how

---

[56] Id. at page 6.

[57] See GOC's Third Supplemental Response at page 16-17.

[58] See, e.g., Certain Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 45472 (August 2, 2010), and accompanying Issues and Decision Memorandum (Magnesia Carbon Bricks from the PRC) at Comment 8, wherein the Department quoted the GOC as reporting that these price proposals "are part of the price setting process within China for electricity."

[59] Id.

[60] See, e.g., 19 CFR 351.306.

and why the prices of the tariff schedules in effect during the POR were drafted and implemented. The GOC also did not ask for additional time to gather and provide such information, nor did the GOC provide any other documents that would have answered the Department's questions. Therefore, because the GOC failed to cooperate by not acting to the best of its ability in responding to the Department's repeated requests for this information, an adverse inference under section 776(b) of the Act is warranted in the application of facts available. Without the requested information, we cannot make a finding with respect to financial contribution or specificity because the details required to analyze the GOC's electricity price adjustment process are contained in the missing price proposals. In drawing an adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act.

E. Taihe – Provision of Sulfuric Acid, Steam Coal, and Caustic Soda for LTAR

In Taihe's Initial Questionnaire Response and Taihe's Caustic Soda Response, Taihe reported that it made certain purchases of sulfuric acid, steam coal, and caustic soda in 2013 from producers which were "unknown."[61] We requested that Taihe provide the names of these producers. However, Taihe stated that it was unable to provide this information, despite contacting the suppliers from which it sourced these inputs.[62]

Because Taihe was unable to identify the producer(s) of certain of its sulfuric acid, steam coal, and caustic soda purchases, the GOC was not able to provide a response to the Input Producer Appendix for them. Therefore, we find that the necessary information for these unidentified producers is not on the record. This information is necessary to determine whether these producers are "authorities" within the meaning of 771(5)(B) of the Act. Thus, pursuant to section 776(a)(1) of the Act, as facts available in this administrative review, we find that the percentage of sulfuric acid, steam coal, and caustic soda supplied to Taihe, and produced by unidentified suppliers, is produced by "authorities" at the same ratio as each of these inputs is produced by GOC-owned or -managed companies during the POR.[63]

Consequently, as facts available, we find that a portion of inputs supplied by these "unknown" enterprises constitutes a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act, and that Taihe received a benefit to the extent that the price it paid for sulfuric acid, steam coal, and caustic soda produced by these producers was for LTAR.[64] Our use of facts available in this regard is consistent with the Department's practice.[65]

---

[61] See Taihe's submission dated September 30, 2014 (Taihe Initial Questionnaire Response), at Exhibit 9 and Exhibit 10; see also submission from Taihe dated January 28, 2015 (Taihe's Caustic Soda Response), at Exhibit S3-1.

[62] See submission from Taihe dated January 14, 2015 (Taihe's First Supplemental Response), at pages 8-9; see also submission from Taihe dated March 9, 2015 (Taihe's Third Supplemental Response), at pages 4-5, and submission from Taihe dated May 22, 2015 (Taihe's Fifth Supplemental Response), at pages 1-2.

[63] See the "Provision of Sulfuric Acid for LTAR," "Provision of Steam Coal for LTAR," and "Provision of Caustic Soda for LTAR," sections, below, for further discussion.

[64] See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

F. GOC – the Environmental Tax Offset and National Support Fund Programs are Specific

On March 9, 2015, in response to the Department's request, Taihe provided a response to the Standard Questions Appendix and the Income Tax Programs Appendix for the environmental tax offsets it received in tax year 2012, as well as the Standard Questions Appendix and the Usage Appendix for the National Support Fund program it received in 2011.[66] In a supplemental questionnaire dated April 27, 2015, we asked the GOC to provide responses to the Standard Questions Appendix, the Income Tax Appendix, and the Usage Appendix, as applicable, for these programs.

In its May 14, 2015, response, the GOC provided complete responses to the Income Tax Appendix for the environmental tax offsets and the Usage Appendix for the National Support Fund program.[67] However, the GOC failed to provide the following information requested in the Standard Questions Appendix for both programs: 1) how Taihe met the eligibility criteria; 2) the amount of the assistance Taihe received; 3) the total amount of assistance approved for all companies; 4) the total number of companies approved for assistance; 5) the total amount of assistance approved for each industry, including the citric acid industry; and 6) the total number of companies denied assistance.[68]

Therefore, on May 28, 2015, we again asked the GOC to provide this information for both programs. In its June 11, 2015, response, the GOC provided, for both programs, information regarding how Taihe met the eligibility criteria and the amount of assistance Taihe received. However, the GOC failed to provide complete responses to the Department's remaining questions.[69] Specifically, regarding the Department's request for the total amount of assistance approved for all companies and the total number of companies approved for assistance, the GOC simply stated it was unable to provide these figures for either program. Regarding the total amount of assistance approved for each industry, the GOC stated that it was unable to gather this information for either program because neither the State Administration of Taxation nor the Shandong Environmental Protection Department, respectively, maintained such statistics. Finally, regarding the total number of companies denied assistance, the GOC stated that it was not aware of any denials of the environmental tax offset; however, for the National Support Fund, the GOC stated that it was unable to provide the requested data.

Because the GOC declined to provide information necessary for the Department to analyze whether these programs are specific, we determine that the GOC withheld information that was requested of it. As a result, we must rely on facts available pursuant to section 776(a)(2)(A) of the Act in determining the specificity of these programs. Moreover, we determine that the GOC

---

[65] 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), accompanying Issues and Decision Memorandum at "Provision of Primary Aluminum for LTAR."

[66] See Taihe's Third Supplemental Response at Appendices S4-2 and S4-3. Taihe reported 2011 figures for allocation purposes.

[67] See GOC's Fourth Supplemental Response at pages 14 - 29.

[68] Id., at pages 19, 26, and 27.

[69] See the GOC's submission dated June 11, 2015 (GOC's Sixth Supplemental Response), at pages 2-4.

failed to cooperate by not acting to the best of its ability to comply with our requests for information. With the exception of the requested industry data, the GOC did not explain why it was unable to provide the requested information, nor did it request additional time in order to provide it. Therefore, we determine that an adverse inference is warranted in the application of facts available. In drawing an adverse inference, we find that the GOC's provision of environmental tax offsets and grants under the National Support Fund program are specific.

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

The average useful life (AUL) period in this proceeding, as described in 19 CFR 351.524(d)(2), is 9.5 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture the subject merchandise. Consistent with the Department's practice, we rounded the 9.5 years up to 10 years for purposes of setting the AUL.[70]

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

B. Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsides 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 the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department's authority to

[70] See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review, 72 FR 43607, 43608 (August 6, 2007), unchanged in Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 73 FR 7708 (February 11, 2008).

attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[71]

Taihe

In its initial questionnaire response, Taihe stated that it has only one affiliated company, which specializes in petty loan operations and financial advisory services.[72] According to Taihe, this affiliated company was not involved in the production or sale of subject merchandise during the POR.[73] In addition, Taihe stated that this affiliated company is neither a holding company nor Taihe's parent company.[74] Therefore, we determine that Taihe's affiliated company does not meet any of the attribution conditions set forth in 19 CFR 351.525(b)(6)(ii)-(v); as a result, we did not include this affiliated company in our subsidy analysis.

C. Denominators

In accordance with 19 CFR 351.525(b), when selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considers the basis for the respondent's receipt of benefits under each program. As discussed in further detail below in the "Programs Determined to be Countervailable" section, because all used programs have been found to be countervailable as domestic subsidies, we used Taihe's total sales as the denominator.[75,76]

VI. BENCHMARKS AND DISCOUNT RATES

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

Short-Term Loans Denominated in Renminbi (RMB)

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a

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

[72] See Taihe's Initial Questionnaire Response at page III-3. Taihe has claimed business proprietary treatment for the name of this affiliated company; as a result, we cannot disclose the name of this affiliated company here.

[73] Id., at page III-4.

[74] Id., at page III-5.

[75] Taihe did not report receiving any countervailable export subsidies, except for the program "Exemption from Inspection and Quarantine Fees for Exports in Laiwu City." However, as noted under "Programs Determined Not To Provide Measurable Benefits During the POR," below, we determined that this program did not provide measurable benefits to Taihe during the POR.

[76] See Memorandum to the File from Elizabeth Eastwood, Senior International Trade Compliance Analyst, entitled, "Final Results of the 2013 Administrative Review of the Countervailing Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China (PRC): Final Results Calculation Memorandum for Laiwu Taihe Biochemistry Co., Ltd. (Taihe)" (Taihe Final Calc Memorandum), dated December 7, 2015.

comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a benchmark.[77] If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that it "may use a national average interest rate for comparable commercial loans."[78] Section 771(5)(E)(ii) of the Act also indicates that the benchmark should be a market-based rate.

For the reasons first explained in CFS from the PRC,[79] loans provided by PRC banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.[80] Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a PRC benchmark for loans, the Department is selecting an external market-based benchmark interest rate.[81]

We first developed in CFS from the PRC,[82] and more recently updated in Thermal Paper from the PRC,[83] the methodology used to calculate the external benchmark. Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as low income, lower-middle income, upper-middle income, and high income. As explained in CFS from the PRC, the pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.[84] Beginning in 2010, however, the PRC is listed in the upper-middle income category.[85] Accordingly, as explained below, we

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

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

[79] See 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 (CFS from the PRC) at Comment 10; see also Memorandum to the File from Shannon Morrison, International Trade Compliance Analyst, AD/CVD Operations, Office II, regarding "Placement of Banking Memoranda on Record of the Instant Review," dated June 1, 2015 (Banking Memoranda).

[80] See Additional Documents for Prelim Memorandum at Attachment 1.

[81] The use of an external benchmark is consistent with the Department's practice. For example, in Softwood Lumber from Canada, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002), and accompanying Issues and Decision Memorandum (Softwood Lumber from Canada) at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

[82] See CFS from the PRC at Comment 10.

[83] 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 (Thermal Paper from the PRC) at pages 8-10.

[84] See Memorandum to the File from Shannon Morrison, International Trade Compliance Analyst, AD/CVD Operations, Office II, regarding "Interest Rate Benchmark Memorandum (2001 – 2013)" (Interest Rate Benchmark Memorandum), dated June 1, 2015.

[85] Id.

are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2001-2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010- 2013. As explained in CFS from the PRC, by pooling countries in this manner, we capture the broad inverse relationship between income and interest rates.

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

In each year from 2001-2009, and 2011-2013, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group.[86] This contrary result for a single year does not lead the Department to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since CFS from the PRC to compute the benchmarks for the years from 2001-2009, and 2011-2013. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund (IMF), and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010-2013, and "lower middle income" for 2001-2009. First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question (e.g., Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan). Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments.[87] Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.[88]

The resulting inflation-adjusted benchmark lending rates are included in Taihe's final calculation memorandum. Because these rates are net of inflation, we adjusted the benchmark to include an inflation component.

---

[86] Id.

[87] For example, in certain years Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L'Este reported dollar-denominated rates; therefore, such rates have been excluded.

[88] For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country's real interest rate was 34.95 percent and 37.25 percent, respectively. See Interest Rate Benchmark Memorandum.

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly-available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.[89]

In the Citric Acid Investigation, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.[90] Because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

Discount Rate Benchmarks

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.

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

VII. ANALYSIS OF PROGRAMS

I. Programs Determined To Be Countervailable

A. Shandong Province Policy Loans Program

In Citric Acid Third Review, the Department found that the Shandong Province Development Plan of Chemical Industry during "Twelfth Five-Year Plan" Period (12th Five-Year Plan) identifies objectives and goals, in conjunction with the Government of Shandong's past and present policies, for the development of the citric acid industry and calls for lending to support these objectives and goals.[91] Moreover, loan documents, reviewed by the Department in the first administrative review, stated that, because the food-use citric acid industry "has characteristics of capital and technology concentration and belongs to high and new technology … the State

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

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

[91] See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review: 2011, 79 FR 108 (January 2, 2014), and accompanying Issues and Decision Memorandum (Citric Acid Third Review) at Comment 7.

always takes positive policy to encourage its development."[92] The GOC reported that there were no changes to this loan program during the POR.[93]

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

Further, consistent with Citric Acid Investigation, Citric Acid First Review, Citric Acid Second Review,[94] Citric Acid Third Review, and Citric Acid Fourth Review,[95] we find that Shandong Province policy loans from state-owned commercial banks constitute financial contributions from "authorities" within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act. Further, pursuant to section 771(5)(E)(ii) of the Act, such financing provides a benefit equal to the difference between the interest Taihe paid on the loans and the amount of interest it would have paid on comparable commercial loans. Taihe reported that it had loans outstanding during the POR, which were provided by state-owned commercial banks.[96] To calculate the benefit under this program, we compared the amount of interest Taihe paid on its outstanding loans to the amount of interest it would have paid on comparable commercial loans.[97] In conducting this comparison, we used the interest rates described in the "Benchmark Interest Rates" section above. We attributed benefits under this program to Taihe's total POR sales, as discussed in the "Attribution of Subsidies" section above. On this basis, we find that Taihe received a countervailable subsidy of 0.36 percent ad valorem.[98]

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

In the Citric Acid First Review, Citric Acid Second Review, Citric Acid Third Review, and Citric Acid Fourth Review, the Department found this program to be countervailable.[99] As discussed in the Citric Acid First Review Prelim, Article 28.2 of the Enterprise Income Tax Law authorizes a reduced income tax rate of 15 percent for high- and new-technology enterprises

[92] See Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, 76 FR 33219, 33228 (June 8, 2011) (Citric Acid First Review Prelim), unchanged in Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review, 76 FR 77206 (December 12, 2011) (Citric Acid First Review).

[93] See GOC's First Supplemental Response at page 1.

[94] See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010, 77 FR 72323 (December 5, 2012) (Citric Acid Second Review).

[95] See Citric Acid Fourth Review, at "Shandong Province Policy Loans Program."

[96] See Taihe's Initial Questionnaire Response at page III-12 and Exhibit 8, and Taihe's First Supplemental Response at Exhibit S-10.

[97] See 19 CFR 351.505(a).

[98] See Taihe Final Calc Memorandum for our calculations.

[99] See Citric Acid First Review, Citric Acid Second Review, Citric Acid Third Review, and Citric Acid Fourth Review, at "Reduced Income Tax Rate for High or New Technology Enterprises."

(HNTEs).[100] The criteria and procedures for identifying eligible HTNEs are provided in the Measures on Recognition of High and New Technology Enterprises (GUOKEFAHUO {2008} No. 172) (Measures on Recognition of HNTEs) and the Guidance on Administration of Recognizing High and New Technology Enterprises (GUOKEFA HUO {2008} No.362).[101] Article 8 of the Measures on Recognition of HNTEs provides that the science and technology administrative departments of each province, autonomous region, and municipality directly under the central government or cities under separate state planning shall collaborate with the finance and taxation departments at the same level to recognize HNTEs in their respective jurisdictions.[102]

The annex of the Measures on Recognition of HNTEs lists eight high- and new-technology areas selected for the State's "primary support": 1) Electronics and Information Technology; 2) Biology and New Medicine Technology; 3) Aerospace Industry; 4) New Materials Technology; 5) High-tech Service Industry; 6) New Energy and Energy-Saving Technology; 7) Resources and Environmental Technology; and 8) High-tech Transformation of Traditional Industries.[103] On the record of the instant review, the GOC reported that there were no changes to this program during the POR.[104] Taihe reported that it received tax savings under this program on its 2012 income tax return filed during the POR.[105]

Consistent with the Citric Acid First Review, Citric Acid Second Review, Citric Acid Third Review, and Citric Acid Fourth Review, we find that the reduced income tax rate paid by Taihe is a financial contribution in the form of revenue foregone by the GOC, and provides a benefit to the recipient in the amount of the tax savings.[106] We also find, consistent with the previous reviews, that the reduction afforded by this program is limited as a matter of law to certain new- and high-technology companies selected by the government pursuant to legal guidelines specified in Measures on Recognition of HNTEs and, hence, is specific under section 771(5A)(D)(i) of the Act. Both the number of targeted industries (eight) and the narrowness of the identified project areas under those industries support a finding that the legislation expressly limits access to the program to a specific group of enterprises or industries.

To calculate the benefit, we compared the income tax rate that Taihe would have paid in the absence of the program (i.e., 25 percent) to the income tax rate that it actually paid.[107] We treated the income tax savings realized by Taihe as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POR by Taihe's POR

[100] See Citric Acid First Review Prelim, 76 FR at 33229-30.

[101] Id.

[102] Id.

[103] Id.

[104] See GOC's Initial Questionnaire Response at III-6.

[105] See Taihe's Initial Questionnaire Response at III-12, Appendix 1, and Exhibits 3 and 4.

[106] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

[107] See Taihe's Initial Questionnaire Response at Appendix 1 and Exhibit 4; see also GOC Initial Questionnaire Response at III-8.

sales. On this basis, we find that Taihe received a countervailable subsidy of 0.25 percent ad valorem.[108]

C. Income Tax Credits on Purchases of Domestically Produced Equipment

In Citric Acid Investigation, Citric Acid First Review, Citric Acid Second Review, and Citric Acid Third Review, the Department found this program to be countervailable.[109] As discussed in the Citric Acid First Review Prelim, according to the Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation {Projects} (CAI SHU ZI {1999} No. 290), a domestically-invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC.[110] Specifically, a tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous year.[111]

On the record of the instant review, the GOC reported that that there were no changes to this program during the POR.[112] Further, the GOC reported that, although this program was terminated in January 2008, previously-eligible enterprises may continue to use this tax credit for five years after the effective date.[113] Taihe reported that it received tax savings under this program on its 2012 income tax return filed during the POR.[114]

Consistent with the prior segments of this proceeding and prior CVD determinations, we find that income tax credits for the purchase of domestically-produced equipment are countervailable subsidies. The tax credits are a financial contribution in the form of revenue foregone by the government and provide a benefit to the recipients in the amount of the tax savings, within the meaning of section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further find that these tax credits are contingent upon the use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

We treated the income tax savings enjoyed by Taihe as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings by Taihe's total POR sales. On this basis, we find that the Taihe received a countervailable subsidy of 0.21 percent ad valorem.[115]

[108] See Taihe Final Calc Memorandum for our calculations.

[109] See Citric Acid Investigation, Citric Acid First Review, Citric Acid Second Review, and Citric Acid Third Review, at "Income Tax Credits on Purchases of Domestically Produced Equipment."

[110] See Citric Acid First Review Prelim, 76 FR at 33230.

[111] Id.

[112] See GOC's Initial Questionnaire Response at III-4 – III-6, and Exhibits 1 and 2.

[113] Id., at III-4.

[114] See Taihe's Initial Questionnaire Response at III-12 and Appendix 2.

[115] See Taihe Final Calc Memorandum for our calculations.

D. Provision of Sulfuric Acid for LTAR

The Department is examining whether Taihe was provided with sulfuric acid for LTAR during the POR. In the Citric Acid First Review, Citric Acid Second Review, Citric Acid Third Review, and Citric Acid Fourth Review, the Department found that this program provides countervailable subsidies.[116]

The GOC challenged the specificity of this program in this administrative review.[117] A previous determination of countervailability places the burden on the challenging party to present new evidence sufficient for the Department to revisit its prior finding.[118] We find that the information the GOC submitted does not provide sufficient evidence to warrant a reversal of our earlier specificity finding regarding this program.[119] See Comment 1, below. As a result, the Department continues to find that this program is specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Taihe reported that it purchased sulfuric acid from one known producer and additional unknown producer(s) during the POR.[120] The GOC reported that the known producer (hereinafter referred to as Company A) has a CCP primary organization.[121]

We explained in the Public Body Memorandum and the CCP Memorandum that "available information and record evidence indicates that the CCP meets the definition of the term 'government' for the limited purpose of applying the U.S. CVD law to China."[122] Additionally, publicly-available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in the company's affairs.[123] The GOC did not provide information that would alter our understanding of the CCP organizations nor has the GOC substantiated its claims, either in the laws that it provided or with expert, third-party sources, that CCP organizations and the businesses in which they operate are on "parallel" tracks that never affect each other.[124] As discussed in the Public Body Memorandum, when there is significant CCP presence in an entity, that entity may be meaningfully controlled by the GOC

[116] See Citric Acid First Review, Citric Acid Second Review, Citric Acid Third Review, and Citric Acid Fourth Review, at "Provision of Sulfuric Acid for LTAR."

[117] See GOC's Initial LTAR Response at page 2.

[118] See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 7395 (February 17, 2009), and accompanying Issues and Decision Memorandum (DRAMs from Korea) at "Programs Previously Determined to Confer Subsidies." See also Magnola Metallurgy, Inc. v. United States, 508 F.3d 1349 (Fed. Cir. 2007) (Magnola).

[119] See GOC's Caustic Soda and LTAR Specificity Response at pages 5-6.

[120] See Taihe's Initial Questionnaire Response at Exhibit 9 and Taihe's Fifth Supplemental Response at pages 1-2.

[121] See GOC's Initial LTAR Response at 16-17.

[122] See Additional Documents for Prelim Memorandum at Attachment III, which includes the Public Body Memorandum and its attachment, the CCP Memorandum, at page 33.

[123] Id., at Public Body Memorandum at 35-36 and sources cited therein.

[124] See GOC Initial LTAR Response at 12-22.

such that the GOC uses it to effectuate its policy goals, meaning that the entity may possess, exercise or be vested with government authority.[125] The presence of a CCP primary organization is significant. Therefore, because Company A has a CCP primary organization and the GOC has not provided sufficient information to counter the record information indicating that CCP primary organizations may act to render a company an "authority" within the meaning of the Act, we determine that Company A is an "authority" capable of providing a financial contribution.[126] See Comment 3.

Additionally, as discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, because Taihe was unable to identify the producer(s) of the sulfuric acid for certain of its purchases, the GOC was not able to provide a response to the Input Producer Appendix for them. As a result, we find that the necessary information about these unidentified producers is not on the record. Thus, pursuant to 776(a)(1) of the Act, as facts available in this administrative review, we find that the percentage of sulfuric acid supplied to Taihe by unidentified producers is produced by "authorities" at the same ratio sulfuric acid was produced by GOC-owned or -managed companies during the POR.[127]

As discussed under "Use of Facts Otherwise Available and Adverse Inferences" above, we are relying on AFA to determine that actual transaction prices for sulfuric acid in the PRC are significantly distorted by the government's involvement in the market. See also Comment 2. As such, we determine that domestic prices in the PRC cannot serve as viable, tier one benchmark prices. For the same reasons, we determine that import prices into the PRC cannot serve as a benchmark.[128] Accordingly, to determine whether the provision of sulfuric acid conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, consistent with the previous reviews of this order,[129] we applied a tier two benchmark (i.e., world market prices available to purchasers in the PRC).[130]

The petitioners and Taihe submitted prices that they suggested are appropriate for use as a tier two benchmark. Specifically, in May 2015, the petitioners and Taihe submitted POR monthly export prices for various countries from the Global Trade Information Services (GTIS).[131] For purposes of these final results, we used the GTIS data provided by Taihe to construct the benchmark price for sulfuric acid because the petitioners' data appeared to be truncated.

---

[125] See Public Body Memorandum at 35-36, 38 and sources cited therein.

[126] See section 771(5)(B) of the Act.

[127] As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we find that PRC prices from actual transactions involving Chinese buyers and sellers are significantly distorted by the involvement of the GOC. As a result, for these final results, we are assuming that 100 percent of the sulfuric acid produced during the POR in the PRC was produced by GOC-owned or -managed companies.

[128] See Citric Acid First Review, Citric Acid Second Review, Citric Acid Third Review, and Citric Acid Fourth Review, at "Provision of Sulfuric Acid for LTAR."

[129] Id.

[130] See 19 CFR 351.511(a)(2)(ii)

[131] See the Petitioners' Benchmark Submission at Exhibit 8; see also Taihe's Benchmark Submission at Exhibit 3.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we included international freight and inland freight. See Comment 4, below. The petitioners and Taihe placed on the record POR ocean freight pricing data from Maersk for chemical shipments from various ports to Shanghai, China.[132] See Comment 5, below. We averaged the international ocean freight rates submitted by the petitioners and Taihe; we added an amount for hazardous shipping charges to the rates Taihe provided. See Comment 7, below.

We also added to the benchmark prices: 1) inland freight from the factory to the port based on Taihe's per-metric ton freight expenses for transporting the finished product;[133] 2) import duties reported by the GOC; and 3) the value added tax (VAT) applicable to imports of sulfuric acid into the PRC.[134]

Finally to derive the benchmark, we did not include marine insurance. In prior CVD proceedings involving the PRC, the Department found that, while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities actually require importers to pay insurance charges.[135]

Comparing the adjusted benchmark prices to the prices paid by Taihe for sulfuric acid during the POR, we find that the GOC provided sulfuric acid for LTAR, and that a benefit exists in the amount of the difference between the benchmark price and the price that Taihe paid.[136] To calculate the benefit, we calculated the difference between the delivered world market price and the price that Taihe paid for sulfuric acid, including any taxes or delivery charges incurred to deliver the product to Taihe. We divided the total benefits by Taihe's total POR sales. On this basis, we determine that Taihe received a countervailable subsidy of 5.03 percent ad valorem.[137]

[132] See the Petitioners' Benchmark Submission at Exhibit 9 (providing rates for inorganic chemicals shipped in 40-foot containers, including hazardous shipping charges); see also Petitioners' Rebuttal Benchmark Submission at Exhibit 4 (providing rates for inorganic chemicals shipped in 20-foot containers, including hazardous shipping charges). Taihe argues in its case brief that these are the data the Department should use in its final calculations.

[133] See Taihe's First Supplemental Response at Exhibit S-11.

[134] For import duties and VAT, see GOC's Initial LTAR Response at 4.

[135] See, e.g., Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum (PC Strand from the PRC) at Comment 13.

[136] See 19 CFR 351.511(a).

[137] See Taihe Final Calc Memorandum for our calculations.

E. Provision of Steam Coal for LTAR

The Department is examining whether Taihe was provided with steam coal for LTAR during the POR. In the Citric Acid Second Review, Citric Acid Third Review, and Citric Acid Fourth Review, the Department found that this program provides countervailable subsidies.[138]

The GOC challenged the specificity of this program in this administrative review.[139] A previous determination of countervailability places the burden on the challenging party to present new evidence sufficient for the Department to revisit its prior finding.[140] We find that the information the GOC submitted does not provide sufficient evidence to warrant a reversal of our earlier specificity finding regarding this program.[141] See Comment 1, below. Thus, the Department continues to find that this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Taihe reported that it purchased steam coal from one known producer (Company B) and additional unknown producer(s) during the POR.[142] As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine that Company B is an "authority" within the meaning of section 771(5)(B) of the Act and that Taihe received a financial contribution from it in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act. See Comment 3, below.

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, because Taihe was unable to identify the producer(s) of the steam coal for certain of its purchases, the GOC was not able to provide a response to the Input Producer Appendix for them. As a result, we find that the necessary information about these unidentified producers is not on the record. Thus, pursuant to 776(a)(1) of the Act, as facts available in this administrative review, we find that the percentage of steam coal supplied to Taihe by unidentified producers is produced by "authorities" at the same ratio steam coal was produced by GOC-owned or -managed companies during the POR.[143]

---

[138] See Citric Acid Second Review, Citric Acid Third Review, and Citric Acid Fourth Review, at "Provision of Steam Coal for LTAR."

[139] See GOC's Initial LTAR Response at 22.

[140] See DRAMs from Korea, at "Programs Previously Determined to Confer Subsidies." See also Magnola, 509 F.3d 1349.

[141] See GOC's Caustic Soda and LTAR Specificity Response at pages 7-8 and Exhibits 1, 2, and 3.

[142] See Taihe's Initial Questionnaire Response at Exhibit 10. In addition, Taihe was unable to identify the producers of the steam coal it purchased from trading companies during the POR. See Taihe's First Supplemental Response at pages 8-9.

[143] As discussed further below, we find that the GOC has provided sufficient evidence to demonstrate its substantial involvement in the steam coal market. As a result, for these final results, we have relied on the percentage of steam coal production represented by GOC owned or managed companies in the GOC's reported data (i.e., 90.46 percent). See Memorandum to the File from Shannon Morrison, International Trade Compliance Analyst, entitled, "Countervailing Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Calculation of Percentage of Domestic Supply of Steam Coal Controlled by the Government," dated June 1, 2015, for the calculation of this percentage.

Moreover, we find that the GOC provided sufficient evidence to demonstrate its substantial involvement in the steam coal market. Specifically, the GOC reported data for the largest 50 coal producers showing that virtually all of these companies are GOC-owned or -managed companies.[144] Thus, we determine that actual transaction prices for steam coal in the PRC are significantly distorted by the government's involvement in the market. As such, we determine that domestic prices in the PRC cannot serve as viable, tier one benchmark prices. For the same reasons, we determine that import prices into the PRC cannot serve as a benchmark.[145] Accordingly, to determine whether the provision of steam coal conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, consistent with the Citric Acid Second Review, Citric Acid Third Review, and Citric Acid Fourth Review, we applied a tier two benchmark (i.e., world market prices available to purchasers in the PRC).[146]

The petitioners and Taihe submitted prices that they suggested are appropriate for use as a tier two benchmark. Specifically, in May 2015, the petitioners submitted POR monthly export prices from GTIS for HTSUS number 2701.11 (i.e., anthracite coal), POR monthly prices for Australia from the IMF, and monthly POR prices from Platts.[147] The Platts data include monthly prices for six countries: Australia, Colombia, Japan, Korea, Poland, and Russia. However, only the Platts prices for Poland, Russia, and Australia are clearly export "free, on board" (FOB) prices.[148] Taihe also submitted POR monthly export prices from GTIS for HTSUS number 2701.19 (i.e., coal, other than anthracite or bituminous).[149] Thus, for these final results, we are relying on the following 2013 data sources: GTIS POR monthly export prices for HTSUS numbers 2701.11 and 2701.19, IMF monthly export prices from Australia, and Platts monthly export prices from Poland, Russia, and Australia.[150]

Section 351.511(a)(2)(ii) of the Department's regulations states that where there is more than one commercially-available world market price, the Department will average the prices to the extent practicable. Therefore, we are weight averaging the GTIS data on the record while continuing to use the non-GTIS data sources discussed above. Specifically, we first calculated simple averages across data sources per country to determine an average unit value for each country. Then, we weight averaged those country-specific unit prices to create single monthly weighted-average benchmark prices for steam coal.

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

---

[144] See GOC's Third Supplemental Response at pages 21-23.

[145] See Citric Acid Second Review, Citric Acid Third Review, and Citric Acid Fourth Review, at "Provision of Steam Coal for LTAR."

[146] See 19 CFR 351.511(a)(2)(ii).

[147] See the Petitioners' Benchmark Submission at Exhibit 12, 13, and 14.

[148] Id., at Exhibit 14. We have not relied on the remaining Platts data because:1) the prices for Korea and Japan include freight or other costs; and 2) the prices for Colombia are not clearly export FOB prices.

[149] See Taihe's Benchmark Submission at Exhibit 4.

[150] See Taihe Final Calc Memorandum.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we included international freight and inland freight. See Comment 4, below. The petitioners placed on the record ocean freight pricing data from a 2010 Platts International Coal Report for shipments of steam coal from Hay Point, Australia to Qingdao, China and Paradip, India.[151] Taihe placed on the record POR ocean freight pricing data from Maersk for shipments of mineral fuels from various ports to Shanghai, China.[152] We did not rely on the Platts freight data submitted by the petitioners because these data are not contemporaneous with the POR. Rather, we relied on the 2013 Maersk international freight rates submitted by Taihe.

We also added to the benchmark prices: 1) inland freight from the factory to the port based on Taihe's per-metric ton freight expenses for transporting the finished product; [153] 2) import duties reported by the GOC; and 3) the VAT applicable to imports of steam coal into the PRC.[154] Finally to derive the benchmark, we did not include marine insurance for the reasons discussed above in "Provision of Sulfuric Acid for LTAR."

Comparing the adjusted benchmark prices to the prices paid by Taihe for steam coal during the POR, we find that the GOC provided steam coal for LTAR, and that a benefit exists in the amount of the difference between the benchmark price and the price that Taihe paid.[155] To calculate the benefit, we calculated the difference between the delivered world market price and the price that Taihe paid for steam coal, including taxes or delivery charges incurred to deliver the product to Taihe. We divided the total benefits by Taihe's total POR sales. On this basis, we determine that Taihe received a countervailable subsidy of 3.06 percent ad valorem.[156]

F. Provision of Calcium Carbonate for LTAR

The Department is examining whether Taihe was provided with calcium carbonate for LTAR during the POR. In the Citric Acid Third Review and Citric Acid Fourth Review, the Department found that this program provides countervailable subsidies.[157]

The GOC challenged the specificity of this program in this administrative review.[158] A previous determination of countervailability places the burden on the challenging party to present new

[151] See the Petitioners' Benchmark Submission at Exhibits 15 through 20.

[152] See Taihe's Benchmark Submission at Exhibit 9.

[153] See Taihe's Initial Questionnaire Response at III-18; see also Taihe's First Supplemental Response at Exhibit S-11.

[154] For import duties and VAT, see GOC's Initial LTAR Response at 25.

[155] See 19 CFR 351.511(a).

[156] See Taihe Final Calc Memorandum for our calculations.

[157] See Citric Acid Third Review and Citric Acid Fourth Review, at "Provision of Calcium Carbonate for LTAR."

[158] See GOC's Initial LTAR Response at 39.

evidence sufficient for the Department to revisit its prior finding.[159] We find that the information the GOC submitted does not provide sufficient evidence to warrant a reversal of our earlier specificity finding regarding this program because the GOC was unable to support the POR calcium carbonate consumption data by industry that it provided.[160,161] See Comment 1, below. Thus, the Department continues to find that this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Taihe reported that it purchased calcium carbonate from two producers during the POR (Companies C and D).[162] As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine that Companies C and D are "authorities" within the meaning of section 771(5)(B) of the Act and that Taihe 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. See Comment 3, below.

Moreover, as discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine that actual transaction prices for calcium carbonate in the PRC are significantly distorted by the government's involvement in the market. See also Comment 2, below. As a result, we determine that domestic prices in the PRC cannot serve as viable, tier one benchmark prices. For the same reasons, we determined that import prices into the PRC cannot serve as a benchmark.[163] Accordingly, to determine whether the provision of calcium carbonate conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, consistent with the Citric Acid Third Review and Citric Acid Fourth Review, we applied a tier two benchmark (i.e., world market prices available to purchasers in the PRC).[164]

The petitioners and Taihe submitted prices that they suggested are appropriate for use as a tier two benchmark. Specifically, both the petitioners and Taihe provided POR monthly export prices from GTIS for limestone flux (i.e., ground calcium carbonate); in addition, the petitioners also provided POR monthly export prices from GTIS for precipitated calcium carbonate.[165] In its first supplemental response, Taihe reported that it only purchased ground calcium carbonate during the POR.[166] Therefore, consistent with Citric Acid Third Review, we used Taihe's GTIS data for limestone flux to calculate the monthly benchmark price for calcium carbonate.[167] We did not use the data reported by the petitioners because they appeared to be truncated.

---

[159] See DRAMs from Korea, at "Programs Previously Determined to Confer Subsidies." See also Magnola, 509 F.3d 1349.

[160] See GOC's Initial LTAR Response at pages 42-43.

[161] See GOC's Caustic Soda and LTAR Specificity Response at page 9.

[162] See Taihe's Initial Questionnaire Response at Exhibit 11.

[163] See Citric Acid Third Review and Citric Acid Fourth Review, at "Provision of Calcium Carbonate for LTAR."

[164] See 19 CFR 351.511(a)(2)(ii).

[165] See Petitioners' Benchmark Submission at Exhibits 1 and 2; see also Taihe's Benchmark submission at Exhibit 1.

[166] See Taihe's First Supplemental Response at page 10 and Exhibit S-16.

[167] See Citric Acid Third Review, at Comment 12, where the Department determined that precipitated calcium carbonate and ground calcium carbonate (i.e., limestone flux) are different grades of calcium carbonate.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we included international freight and inland freight. See Comment 4, below. The petitioners and Taihe placed on the record POR ocean freight pricing data from Maersk for calcium carbonate shipments from various ports to Shanghai, PRC.[168] See Comment 5, below. Consistent with Citric Acid Fourth Review, we used the international ocean freight rates submitted by the petitioners, which includes a "flat rack" "special equipment" fee, because Taihe did not demonstrate that the data it provided are appropriate.[169] We adjusted these international freight rates based on the payload of a flat rack container (i.e., 34,500 kilograms). See Comment 6, below.

We also added to the benchmark prices: 1) inland freight from the factory to the port based on Taihe's per-metric ton freight expenses for transporting the finished product;[170] 2) import duties reported by the GOC; and 3) VAT applicable to imports of calcium carbonate into the PRC.[171] Finally to derive the benchmark, we did not include marine insurance for the reasons discussed above in "Provision of Sulfuric Acid for LTAR."

Comparing the adjusted benchmark prices to the prices paid by Taihe for calcium carbonate during the POR, we find that the GOC provided calcium carbonate for LTAR, and that a benefit exists in the amount of the difference between the benchmark price and the price that Taihe paid.[172] To calculate the benefit, we calculated the difference between the delivered world market price and the price that Taihe paid for calcium carbonate, including any taxes or delivery charges incurred to deliver the product to Taihe. We divided the total benefits by Taihe's total POR sales. On this basis, we determine that Taihe received a countervailable subsidy of 6.03 percent ad valorem.[173]

G. Provision of Caustic Soda for LTAR

The Department is examining whether Taihe was provided with caustic soda for LTAR during the POR. In the Citric Acid Fourth Review, the Department found that this program provides countervailable subsidies.[174]

The GOC challenged the specificity of this program in this administrative review.[175] A previous determination of countervailability places the burden on the challenging party to present new

[168] See Petitioners' Benchmark Submission at Exhibits 3 and 4; see also Taihe's Benchmark Submission at Exhibit 7.

[169] See Citric Acid Fourth Review, at Comment 8.

[170] See Taihe's Initial Questionnaire Response at page 20 and Taihe's First Supplemental Response at Exhibit S-11.

[171] See GOC's Initial LTAR Response at 42.

[172] See 19 CFR 351.511(a).

[173] See Taihe Final Calc Memorandum for our calculations.

[174] See Citric Acid Fourth Review, at "Provision of Caustic Soda for LTAR."

[175] See GOC's Caustic Soda and LTAR Specificity Response at page 9.

evidence sufficient for the Department to revisit its prior finding.[176] We find that the information the GOC submitted does not provide sufficient evidence to warrant a reversal of our earlier specificity finding regarding this program because the GOC provided data from the China Clor-Alkali Industry Association (CCAIA), and we determined that the data from this source was unreliable in Citric Acid Fourth Review.[177,178] See Comment 1, below. As such, the Department continues to find that this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Taihe reported that it purchased caustic soda from three known producers and additional unknown producer(s) during the POR.[179] The GOC reported that the first of these known producers (hereinafter referred to as Company E) is majority government-owned.[180] As explained in the Public Body Memorandum, producers in the PRC that are majority-owned by the government possess, exercise, or are vested with governmental authority.[181] The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we determine that Company E is an "authority" within the meaning of section 771(5)(B) of the Act.

Regarding the second and third known producers (hereinafter referred to as Companies F and G), the GOC reported that, during the POR, the chairman of Company F's board of directors was a representative of the People's Congress of Dongying City.[182] In addition, the GOC reported that Company F's parent company had a CCP primary organization.[183] Regarding Company G, the GOC reported that during the POR: 1) the chairman of the board of directors of one of its parent companies was a representative of the People's Congress of Dongying City;[184] and 2) another of its parent companies had a CCP primary organization.[185] As noted under "Provision of Sulfuric Acid for LTAR," we determine that the presence of a CCP primary organization at a company constitutes evidence that the producer may be an "authority."[186] Therefore, because the parents

[176] See DRAMs from Korea, at "Programs Previously Determined to Confer Subsidies." See also Magnola, 509 F.3d 1349.

[177] See GOC's Fourth Supplemental Response at page 12.

[178] See Citric Acid Fourth Review, at Comment 5A.

[179] See Taihe's Caustic Soda Response at Exhibit S3-1. In addition, Taihe was unable to identify one of the producers from which it purchased caustic soda during the POR. See Taihe's Fourth Supplemental Response at pages 4-5.

[180] See GOC's Caustic Soda and LTAR Specificity Response at page 20; see also GOC's Third Supplemental Response at pages 33-34.

[181] See Additional Documents Prelim Memorandum at Attachment III: Public Body Memorandum at 35-36 and sources cited therein.

[182] See GOC's Caustic Soda and LTAR Specificity Response at page 28.

[183] Id., at pages 25-26; see also GOC's Third Supplemental Response at page 46.

[184] See GOC's Caustic Soda and LTAR Specificity Response at page 40.

[185] See GOC's Third Supplemental Response at page 46.

[186] See Additional Documents for Prelim Memorandum at Attachment III: Public Body Memorandum at 35-36 and sources cited therein.

of Companies F and G had CCP primary organizations, and the GOC has not provided sufficient information to counter the record information indicating that CCP primary organizations may act to render a company an "authority" within the meaning of the Act, we find that these producers are "authorities" within the meaning of section 771(5)(B) of the Act. See Comment 3, below. As a result, we find that Taihe received a financial contribution in the form of the provision of a good from Companies E, F, and G, pursuant to section 771(5)(D)(iii) of the Act.

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, because Taihe was unable to identify the producer(s) of the caustic soda for certain of its purchases, the GOC was not able to provide a response to the Input Producer Appendix for them. See also Comment 2, below. As a result, we find that the necessary information about these unidentified producers is not on the record. Thus, pursuant to 776(a)(1) of the Act, as facts available in this administrative review, we find that the percentage of caustic soda supplied to Taihe by unidentified producers is produced by "authorities" at the same ratio caustic soda was produced by GOC-owned or -managed companies during the POR.[187]

Moreover, as also discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine that actual transaction prices for caustic soda in the PRC are significantly distorted by the government's involvement in the market. Thus, we determine that domestic prices in the PRC cannot serve as viable, tier one benchmark prices. For the same reasons, we determined that import prices into the PRC cannot serve as a benchmark.[188] Accordingly, to determine whether the provision of caustic soda conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, consistent with Citric Acid Third Review, we applied a tier two benchmark (i.e., world market prices available to purchasers in the PRC).[189]

The petitioners and Taihe submitted prices that they suggested are appropriate for use as a tier two benchmark price for caustic soda. Specifically, in May 2015, the petitioners and Taihe submitted POR monthly export prices for numerous countries from GTIS for caustic soda.[190] We used Taihe's GTIS data to construct the benchmark price for caustic soda. We did not use the data reported by the petitioners because they appeared to be truncated.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we included international freight and inland freight. See Comment 4, below. The petitioners and Taihe placed on the record POR ocean freight pricing

[187] As discussed under "Use of Facts Otherwise Available and Adverse Inferences" above, we find that PRC prices from actual transactions involving Chinese buyers and sellers are significantly distorted by the involvement of the GOC. As a result, for these final results, we are assuming that 100 percent of the caustic soda produced during the POR in the PRC was produced by GOC-owned or -managed companies.

[188] See Citric Acid Third Review, at "Provision of Caustic Soda for LTAR."

[189] See 19 CFR 351.511(a)(2)(ii)

[190] See Petitioners' Benchmark Submission at Exhibit 7; see also Taihe's Benchmark Submission at Exhibit 2.

data from Maersk for chemical shipments from various ports to Shanghai, China.[191] See Comment 5, below. We averaged the international ocean freight rates submitted by submitted by the petitioners; we added an amount for hazardous shipping charges to the rates Taihe provided. See Comment 7, below.

We also added to the benchmark prices: 1) inland freight from the factory to the port based on Taihe's per-metric ton freight expenses for transporting the finished product;[192] 2) import duties reported by the GOC; and 3) the VAT applicable to imports of caustic soda into the PRC.[193] Finally to derive the benchmark, we did not include marine insurance for the reasons discussed above in "Provision of Sulfuric Acid for LTAR."

Comparing the adjusted benchmark prices to the prices paid by Taihe for caustic soda during the POR, we find that the GOC provided caustic soda for LTAR, and that a benefit exists in the amount of the difference between the benchmark price and the price that Taihe paid.[194] To calculate the benefit, we calculated the difference between the delivered world market price and the price that Taihe paid for caustic soda, including any taxes or delivery charges incurred to deliver the product to Taihe. We divided the total benefits by Taihe's total POR sales. On this basis, we determine that Taihe received a countervailable subsidy of 11.72 percent ad valorem.[195]

H. Provision of Land in the Laiwu High-Tech Industrial Development Zone for LTAR

The petitioners alleged that Taihe received benefits under this program in their new subsidy allegations.[196] We find that the GOC's provision of land constitutes a financial contribution in the form of provision of a good within the meaning of section 771(5)(D)(iii) of the Act. Further, as discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we determine that the GOC's provision of land to Taihe was regionally specific.

19 CFR 351.511(a)(2) sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. These potential benchmarks are listed in hierarchical order by preference: 1) market prices from actual transactions within the country under investigation; 2) world market prices that would be available to purchasers in the country under investigation; or 3) an assessment of whether the government price is consistent with market principles. As explained in detail in previous

[191] See Petitioners' Benchmark Submission at Exhibit 9 (providing rates for inorganic chemicals shipped in 40-foot containers, including hazardous shipping charges); see also Petitioners' Rebuttal Benchmark Submission at Exhibit 4 (providing rates for inorganic chemicals shipped in 20-foot containers, including hazardous shipping charges). Taihe argues in its case brief that these are the data the Department should use in its final calculations.

[192] See Taihe's Caustic Soda Questionnaire Response at page 2 and Exhibit S3-2, and Taihe's First Supplemental Response at Exhibit S-11.

[193] See GOC's Caustic Soda and LTAR Specificity Response at 13.

[194] See 19 CFR 351.511(a).

[195] See Taihe Final Calc Memorandum for our calculations.

[196] See Petitioners' New Subsidy Allegations at pages 8-10.

investigations, the Department cannot rely on the use of so-called "first-tier" and "second-tier" benchmarks to assess the benefits from the provision of land for LTAR in the PRC.[197] For this administrative review, we relied on Thailand industrial land benchmark data from "Asian Marketview Reports" by CB Richard Ellis (CBRE), which we used to calculate land benchmarks in Citric Acid Fourth Review and other recent cases.[198] We initially selected this information in Laminated Woven Sacks after considering a number of factors, including national income levels, population density, and producers' perceptions that Thailand is a reasonable alternative to China as a location for Asian production.[199] We find that these benchmark data are suitable for use in these final results, adjusted accordingly for inflation.[200]

To calculate the benefit, we first multiplied the total area of Taihe's countervailable land parcels by the Thailand industrial land benchmarks discussed above. We then subtracted the price actually paid for each parcel to derive the total unallocated benefit. Next, we performed the 0.5 percent test, as instructed by 19 CFR 351.524(b)(2), by dividing the benefit for each parcel by Taihe's sales for the year of each land-use agreement. Because these ratios exceeded 0.5 percent of Taihe's total sales in the relevant years, we allocated the benefit across the terms of the land-use agreements, pursuant to the standard allocation formula of 19 CFR 351.524(d), and determined the amounts attributable to the POR. We used the discount rates described under "Benchmark and Discount Rates," above, in our allocation calculations.

To calculate the net subsidy rate, we divided the amount of the subsidy allocated to the POR by Taihe's total POR sales. On this basis, we determine that Taihe received a countervailable subsidy of 1.05 percent ad valorem.[201]

I. Technology Innovation Advanced Unit Award

In the Citric Acid Third Review, the Department found this program to be countervailable.[202] Taihe reported that it received a grant from the Laiwu Economic Development Zone because of

[197] See, e.g., Laminated Woven Sacks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008) (Laminated Woven Sacks).

[198] See, e.g., Citric Acid Fourth Review, at "Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Shandong Province." See also 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), and accompanying Issues and Decision Memorandum (Solar Cells from the PRC).

[199] The complete history of our reliance on this benchmark is discussed in Solar Cells from the PRC, at page 6 and Comment 11.

[200] See Additional Documents for Prelim Memorandum at Attachment IV (Memorandum to The File, from Toni Page, International Trade Analyst, "Land Benchmark Information," dated November 26, 2007; and the CBRE's "Asia Marketview," CB Richard Ellis, CBRE Research, Q1-Q4 2010).

[201] See Taihe Final Calc Memorandum for our calculations.

[202] See Citric Acid Third Review, at "Technology Innovation Advanced Unit Award."

its advanced technological performance during the POR.[203] Taihe reported that it did not have to apply for the grant.[204]

Consistent with the Citric Acid Third Review, we determine that the grant received by Taihe constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grant is limited to enterprises with advanced technological performance, we determine that the grant is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit Taihe received in the instant review, we divided the grant amount by Taihe's total POR sales and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we expensed the total amount of the grant to the year of receipt (i.e., the POR). On this basis, we determine that Taihe received a countervailable subsidy of 0.01 percent ad valorem.

J. Laiwu City Award for Advanced Construction of Large Projects[205]

In 2013, the Laiwu Municipal Government honored and rewarded units and individuals for achievements in 2012. [206] Taihe was included in the list of honorees and received a monetary reward.[207]

We determine that the amount received by Taihe constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, upon examination of the official document supplied by the GOC, we determine that this program is limited to certain enterprises.[208] As a result, we determine that this program is specific under section 771(5A)(D)(i) of the Act.

Pursuant to 19 CFR 351.524(c), we are treating this amount as a non-recurring benefit. In accordance with 19 CFR 351.524(b)(2), we divided the total grant amount received by Taihe in 2013 by its total POR sales and found that the amount was less than 0.5 percent. Therefore, we expensed the total amount of the grant to the year of receipt (i.e., the POR). On this basis, we determine that Taihe received a countervailable subsidy of 0.03 percent ad valorem.[209]

[203] See Taihe's Initial Questionnaire Response at III-15 and Appendix 3.

[204] Id., at Appendix 3.

[205] The GOC confirmed that this program is the same as the "Excellence Award for Large Project Construction" program. See GOC First Supplemental Response at page 2.

[206] See GOC's First Supplemental Response at Exhibit II-1.

[207] Id.

[208] Id.

[209] See Taihe Final Calc Memorandum for our calculations.

K. Laiwu High-Tech Zone Development Fund for Small & Medium Enterprises with Regional Characteristic Industries[210]

The GOC reported that this program was established in February 2013 with the purpose of supporting local small- and medium-sized enterprises with technological progress, energy conservation, and emission reduction in the Laiwu New and Hi-Tech Industrial Development Zone, which administers this program.[211] Taihe reported that it received a grant under this program during the POR and stated that it did not have to apply for this grant.[212] The GOC provided a circular that is the basis for the criteria and approval for receiving a grant under this program.[213] Only two enterprises received benefits under this program.[214]

We determine that the grant received by Taihe constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Because there are only two users of this program, consistent with section 771(5A)(D)(iii)(I) of the Act, we determine that this program is de facto specific as the actual recipients of the subsidy are limited in number.[215]

Pursuant to 19 CFR 351.524(c), we are treating this amount as a non-recurring benefit. In accordance with 19 CFR 351.524(b)(2), we divided the total grant amount received by Taihe in 2013 by its total POR sales and found that the amount was less than 0.5 percent. Therefore, we expensed the total amount of the grant to the year of receipt (i.e., the POR). On this basis, we determine that Taihe received a countervailable subsidy of 0.01 percent ad valorem.[216]

L. Provision of Electricity for LTAR

The Department is examining whether the GOC provided Taihe with electricity for LTAR during the POR. We determine that this program confers a countervailable subsidy. As discussed in "Use of Fact Otherwise Available and Adverse Inferences," we are basing our finding on the government's provision of electricity, in part, on AFA. We determine that the GOC's provision of electricity is a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act, and that it is specific within the meaning of section 771(5A)(D) of the Act.

In a CVD proceeding, the Department requires information from both the government of the country whose merchandise is under investigation and from the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy

[210] The GOC confirmed that this program is the same as the "Medium and Small Enterprises Development Funds of Industries with Local Feature in Laiwu New and Hi-Tech Industrial Development Zone" program. See GOC First Supplemental Response at page 2.

[211] See GOC's Initial Questionnaire Response at III-53.

[212] See Taihe's Initial Questionnaire Response at III-27 and Appendix 5.

[213] See GOC's First Supplemental Questionnaire response at Exhibit II-3.

[214] See GOC's Fourth Supplemental Questionnaire response at page 5.

[215] Id. See also GOC's First Supplemental Response at Exhibit II-3.

[216] See Taihe Final Calc Memorandum for our calculations.

programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific.[217] However, where possible, the Department will rely on a respondent's reported information to determine the existence and the amount of the benefit to the extent that such information is useable and verifiable.[218]

Taihe reported that it purchased electricity from provincial utility companies.[219] To determine the existence and amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the company's reported electricity consumption volumes and electricity rates. We compared the rates paid by Taihe for its electricity to the highest rates that it could have paid in the PRC during the POR. In accordance with 19 CFR 351.511(a)(2), we selected the highest non-seasonal provincial rates in the PRC for each applicable user category (i.e., "resident user," "large industrial user," and "normal industrial and commercial user"), voltage class (e.g., 1-10kv, 35-110kv), and basic fee (e.g., transformer capacity).[220] Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a user category. The selected benchmark electricity rates reflect an adverse inference because of the GOC's failure to act to the best of its ability in providing requested information about the provision of electricity in this administrative review, as discussed in "Use of Facts Otherwise Available and Adverse Inferences." We calculated benchmark electricity payments by multiplying consumption volumes by the benchmark electricity rate corresponding to the user category, voltage class, and time period (i.e., peak, normal, and valley), where applicable. We then compared the calculated benchmark payments to the actual electricity payments made by the company during the POR. Where the benchmark payments exceeded the payments made by the company, a benefit was conferred. Based on this comparison, we find that electricity was provided for LTAR to Taihe.

To calculate the net subsidy rates for Taihe for the POR, we summed the company's benefits and divided the amount by its total POR sales. On this basis, we determine that Taihe received a countervailable subsidy of 2.92 percent ad valorem.[221]

M. Environmental Tax Offset

The GOC reported that this program was established in 2008 as part of the Enterprises Income Tax Law (EITL) for the purpose of supporting and encouraging environmental protection, energy and water conservation, and safety production.[222] According to Article 34 of the EITL, enterprises investing in facilities for environmental protection, energy saving, water

[217] See, e.g., Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011, 78 FR 58283 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 3, "Provision of Electricity."

[218] See Taihe's Initial Questionnaire Response at Exhibit 7 and Taihe's Third Supplemental Response at Exhibit S4-23.

[219] See Taihe's Initial Questionnaire Response at Exhibit 7.

[220] See Taihe Final Calc Memorandum for more information on Taihe's electricity usage categories and the benchmark rates we have used in the benefit calculations.

[221] See Taihe Final Calc Memorandum for our calculations.

[222] See the GOC's Fourth Supplemental Response at page 14.

conservation, and work safety may be granted a tax offset amount at a certain ratio.[223] Specifically, Article 100 of the Regulation on the Implementation of EITL states that if the facility is included on a tax preference list, then a company may use ten percent of its investment in that year as an offset to its taxes.[224]

Taihe reported that it received tax savings for "Purchases of Environmentally Friendly Equipment" and "Purchases of Energy and Water Saving Equipment" under this program on its 2012 income tax return filed during the POR.[225]

We determine that the tax credits are a financial contribution in the form of revenue foregone by the GOC, and provide a benefit to the recipient in the amount of the tax savings.[226] As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we find that the GOC failed to cooperate to the best of its ability by not providing information necessary for the Department to analyze whether this program is specific. Therefore, relying on AFA, we determine that this program is specific.

We treated the income tax saving Taihe received as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the tax savings by Taihe's total POR sales. On this basis, we find that Taihe received a countervailable subsidy of 0.21 percent ad valorem.[227]

N. National Support Fund for 2011 Energy Saving Project, Circulation Economy and Resource Conservation Project and Pollution Abatement Project

The GOC reported that this program was established in November 2010 to support environmental protection, energy conservation, and economic development and is administered by the Laiwu Environmental Protection Bureau.[228] Taihe reported that it received a grant under this program in 2011 based upon the GOC's approval of its application.[229] The GOC provided a circular and other official measures that are the basis for the criteria and approval for receiving a grant under this program.[230] According to the GOC, Taihe's "efficient and deep waste water treatment and water recycle transformation project" met the eligibility criteria of environmental protection and energy conservation for this program.[231]

We determine that the grant received by Taihe constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under "Use of

[223] Id., at Exhibit VIII-1.

[224] Id., at Exhibit VIII-2. See also Taihe's Third Supplemental Response at Appendix S4-3.

[225] See submission from Taihe dated January 14, 2015, at Exhibit S-9.

[226] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

[227] See Taihe Final Calc Memorandum for our calculations.

[228] See the GOC's Fourth Supplemental Response at page 22.

[229] See Taihe's Third Supplemental Response at Exhibit S4-2.

[230] See the GOC's Sixth Supplemental Response at page 1 and Exhibits 2 and 3.

[231] Id., at page 1.

Facts Otherwise Available and Adverse Inferences," above, we find that the GOC failed to cooperate to the best of its ability by not providing information necessary for the Department to analyze whether this program is specific. Therefore, relying on AFA, we determine that this program is specific.

Pursuant to 19 CFR 351.524(c), we are treating this amount as a non-recurring benefit. In accordance with 19 CFR 351.524(b)(2), we divided the total grant amount received by Taihe in 2011 by its total 2011 sales and found that the amount was greater than 0.5 percent. Therefore, we allocated the benefit across the AUL period,[232] pursuant to the standard allocation formula of 19 CFR 351.524(d), and determined the amount attributable to the POR. We used the discount rates described above in the section on "Benchmark and Discount Rates."

To calculate the net subsidy rate, we divided the amount of the subsidy allocated to the POR by Taihe's total POR sales. On this basis, we determine that Taihe received a countervailable subsidy of 0.04 percent ad valorem.[233]

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

Those programs for which we find that Taihe received a countervailable benefit are described above. We determine that the benefit from the programs listed below each result in a net subsidy rate that is less than 0.005 percent ad valorem.[234] Consistent with the Department's practice, we did not include these programs in our net countervailing duty rate calculations for these final results.[235]

A. Exemption from Inspection and Quarantine Fees for Exports in Laiwu City
B. Laiwu High-Tech Zone Award for the Contribution to Large Projects

III. Programs Determined Not to be Used

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

1. Export Seller's Credit for High- and New Technology Products
2. National Policy Lending
3. Reduced Income Tax Rates to Foreign Invested Enterprises (FIEs) Based on Location
4. Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs
5. Two Free, Three Half Program

[232] See Preliminary Results, at "Subsidies Valuation Information," for a discussion of the AUL period used in this proceeding.

[233] See Taihe Final Calc Memorandum for our calculations.

[234] Id.

[235] See, e.g., CFS from the PRC, at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE"; see also Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 77 FR 17017 (March 23, 2012), and accompanying Issues and Decision Memorandum at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District."

6. Local Income Tax Exemption and Reduction Program for "Productive" FIEs
7. VAT and Duty Exemptions on Imported Equipment
8. VAT Rebate on Purchases by FIEs of Domestically Produced Equipment
9. Famous Brands Program – Yixing City
10. Energy and Water Savings Grant – Anqui City
11. Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products
12. Fund for Energy-saving Technological Innovation
13. Jiangsu Province Energy Conservation and Emissions Reduction Program
14. Rizhao City: Subsidies to Encourage Enterprise Expansion
15. Rizhao City: Subsidy for Antidumping Investigations
16. Rizhao City: Special Fund for Enterprise Development
17. Rizhao City: Technological Innovation Grants
18. Shandong Province: Special Fund for the Establishment of Key Enterprise Technology Centers
19. Shandong Province: Subsidy for Antidumping Investigations
20. Shandong Province: Award Fund for Industrialization of Key Energy-saving Technology
21. Shandong Province: Environmental Protection Industry R&D Funds
22. Shandong Province: Waste Water Treatment Subsidies
23. Shandong Province: Construction Fund for Promotion of Key Industries
24. Shandong Province: Financial Special Fund for Supporting High and New Technology Industry Development Project (Technology Special Fund)
25. Yixing City: Leading Enterprise Program
26. Yixing City: Tai Lake Water Improvement Program
27. Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River
28. Enterprise Development Supporting Fund from Zibo City Financial Bureau
29. Science and Technology Export Innovation Support
30. Donggang Finance Bureau IPO Preparation Subsidy
31. Shandong Province Science and Technology Development Fund
32. First Industrial Enterprises Development Budget in District Level
33. First and Second Industrial Enterprises Development Budget in City Level
34. Award for Contribution to City and People
35. Award for Enterprise Technology Improvement Project[236]
36. Shandong Self-Innovation Subsidy
37. Return of Land Use Right Deed Tax[237]
38. Enterprise Technology Research and Development Subsidy
39. Financial Resource Construction Award
40. Special Fund for Foreign Trade Public Service Platform
41. Subsidy for Providing Employment Internship Base
42. Application Technology Research and Development Fund
43. Self-Innovation Special Fund
44. Economic Task Special Contribution Award

[236] Also known as "Subsidy for Technique Improvement" and "Rizhao City: Technology Research and Development Fund."

[237] Also known as "Return of Land Use Right Deed Tax for IPO Companies."

45. Self-Innovation Achievement Convert into Major Industry Structure Optimization Upgrade Project
46. Provision of Land in the Anqui Economic Development Zone for LTAR
47. Land-Use Rights Extension in Yinxing City
48. Discounted Loans for Export-Oriented Industries
49. Grants Provided for the Rationalization of the Citric Acid Industry
50. Loans Provided to the Northeast Revitalization Program
51. State Key Technology Renovation Project Fund
52. National Level Grants to Loss-making SOEs
53. Income Tax Exemption Program for Export-Oriented FIEs
54. Tax Benefits to FIEs for Certain Reinvestment of Profits
55. Preferential Income Tax Rate for Research and Development at FIEs
56. Preferential Tax Programs for Encouraged Industries
57. Preferential Tax Policies for Township Enterprises
58. Provincial Level Grants to Loss-making SOEs
59. Reduced Income Tax Rates for Encouraged Industries in Anhui Province
60. Provision of Land for LTAR in Anhui Province
61. Funds for Outward Expansion of Industries in Guangdong Province
62. Income Tax Exemption for FIEs Located in Jiangsu Province
63. Administration Fee Exemption in the Yixing Economic Development Zone (YEDZ)
64. Tax Grants, Rebates, and Credits in the YEDZ
65. Provision of Construction Services in the YEDZ for LTAR
66. Grants to FIEs for Projects in the YEDZ
67. Provision of Electricity in the YEDZ for LTAR
68. Provision of Water in the YEDZ for LTAR
69. Provision of Land in the YEDZ for LTAR
70. Provision of Land to SOEs for LTAR
71. Exemption from Land-use Fees and Provision of Land for LTAR in Jiangsu Province
72. Torch Program – Grant
73. Provision of Land in the Zhuqiao Key Open Park for LTAR
74. Special Funds for Energy Saving and Recycling Program
75. Water Resource Reimbursement Program
76. Shandong Province: Energy Saving Award
77. International Market Development Fund Grants for Small and Medium Enterprises
78. Ecology Compensation Subsidy Funds
79. Award for Shandong Province Famous Trademark
80. Foreign Trade Development Special Fund
81. Subsidy for Monitoring Unemployment Information Collection
82. Enterprise Technology Improvement Award
83. Financial Grant for Enterprise Outstanding Financial Information Works
84. Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Rizhao City
85. Provision of Plants for LTAR to Enterprises in the Science and Technology Incubator of Rizhao High-Tech Industrial Development Zone
86. Fund for Large Technology-Intensive Projects in the Donggang District
87. Strategic Emerging Industries Fund of Shandong Province

88. Tax Refunds for Export-Oriented Trading Companies in the Donggang District
89. Tax Refunds to Large-Scale Trading Companies in the Donggang District
90. Provision of Natural Gas for LTAR
91. Provision of Water for LTAR
92. Grants to State Key New Products
93. Subsidies to Shandong Province Enterprise Key Technology Renovation Projects
94. Shandong Province Brand Development Fund
95. Donggang District Awards for Famous Brands
96. Donggang District Awards for New Products and Technology Centers
97. Donggang District Interest Rate Subsidy to Technology Renovation Projects
98. China Export-Import Bank Buyer's Credits
99. Cleaning Production Inspection Expense Reimbursement
100. Subsidy for Shandong Province Science and Technology Award
101. Rizhao City: Patent Development Special Fund
102. Shandong Province: Patent Development Special Fund
103. Award for Work Safety Demonstrative Enterprises of Juxian County
104. Top Ten Industrial Enterprise
105. Economic Work Contribution Golden Award
106. Outstanding Integrity Industrial Enterprise
107. Provision of Land for LTAR to Enterprises Located in Development Parks/Zones in the Donggang District
108. Awards to Enterprise Technology Centers in the Donggang District
109. Award to Advanced Industry-Academia-Research Cooperation Innovation Entities of Shandong Province
110. Resource Conservation & Environmental Protection
111. Loan Interest Subsidies from the Laiwu City Government
112. Income Tax and VAT Rebates from the Laiwu City Government
113. Tax Refunds for Companies Located in the Laiwu High-Tech Industrial Development Zone
114. Exemptions and Reductions of Administrative Fees for Companies Located in Laiwu High-Tech Industrial Development Zone
115. Provision of Grants for Electricity Usage, or Electricity for LTAR by the Laiwu City Government
116. Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Shandong Province

VIII. ANALYSIS OF COMMENTS

Comment 1: *Whether to Find the Input for LTAR Programs Not Specific*

In the Preliminary Results, we found the four input for LTAR programs in this review (i.e., sulfuric acid, steam coal, calcium carbonate, and caustic soda) to be specific in accordance with section 771(5A)(D) of the Act. The GOC argues that the Department's specificity finding for each of these input LTAR programs is contrary to law and should be reversed. As an initial matter, the GOC notes that the Department typically finds input for LTAR programs in the PRC to be de facto specific because there are a limited number of recipients of the subsidy. The GOC

points out that, according to the Preamble, the Department's analysis is focused on the makeup of the users, not the number of enterprises involved and, if numerous enterprises that received benefits represent a limited number of industries, then a program would be found to be specific.[238] However, the GOC states that, according to the Preamble, if those numerous enterprises receiving benefits represented numerous and diverse industries, then a program would not be found to be specific.[239] Notwithstanding these clear guidelines, the GOC argues that the Department has applied this standard in PRC CVD cases very differently from its pre-PRC CVD practice. The GOC contends that, in market economy cases addressing input for LTAR programs, the Department's specificity findings have related to inputs that were truly limited to a handful of industries.[240] The GOC contrasts the facts of those cases with those present here, where the inputs at issue are used by a large number of different industries. Further, the GOC argues that, unlike other PRC CVD cases involving inputs for LTAR, such as hot-rolled steel or wire rod that are limited to the steel industry, sulfuric acid, steam coal and calcium carbonate are sold to a broad spectrum of industries for a wide variety of uses.

The petitioners disagree, noting that the GOC reported no changes to the sulfuric acid, steam coal, calcium carbonate, or caustic soda for LTAR programs in its initial questionnaire responses, nor did it respond to the Standard Questionnaire Appendix, a requirement for the Department to consider revisiting a program previously found to be countervailable. According to the petitioners, the GOC cannot successfully challenge the Department's previous specificity findings when it failed to provide the information necessary to do so. The petitioners assert that the Department's longstanding practice in situations where it has previously found a program countervailable is to place the burden on the challenging party to present new evidence which would cause the Department to revisit its prior finding.[241] The petitioners maintain that the GOC neither met its burden in the prior review, where it also challenged the specificity of these input LTAR programs, nor this one. As a result, the petitioners state that the Department should not reanalyze the specificity of the sulfuric acid, steam coal, calcium carbonate, or caustic soda for LTAR programs for the final results.

Department's Position:

The Department found the provision of sulfuric acid, steam coal, calcium carbonate, and caustic soda for LTAR to be countervailable in Citric Acid Fourth Review,[242] and the GOC provided insufficient information in this review to demonstrate that there has been any change in these

[238] See Preamble, 63 FR at 65357.

[239] Id.

[240] See, e.g., Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination, 72 FR 60642 (October 25, 2007), and accompanying Issues and Decision Memorandum at Comment 10; Notice of Preliminary Results and Extension of Final Result of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada, 71 FR 33932 (June 26, 2006); Bethlehem Steel Corp. v. United States, 25 CIT 307, 322 (2001); and Royal Thai Gov't v. United States, 341 F. Supp. 2d 1315, 1319 (CIT 2004).

[241] See Citric Acid Fourth Review, at Comment 4.

[242] Id., at "Provision of Sulfuric Acid for LTAR," "Provision of Steam Coal for LTAR," "Provision of Calcium Carbonate for LTAR," and "Provision of Caustic Soda for LTAR."

programs. In the initial and supplemental questionnaires we issued to the GOC, we notified the GOC that:

> The Department found th{ese} program{s} to be countervailable in an earlier segment of this proceeding. If there were any changes to the operation of th{ese} program{s} during the POR, please explain the changes and answer all relevant questions in the **Standard Questions Appendix**.[243]

In response, the GOC did not indicate any changes to these input for LTAR programs by providing a response to the Standard Questions appendix.[244] A previous countervailability determination shifts the burden to the challenging party to present new evidence sufficient for the Department to revisit its prior finding.[245]

The specific arguments raised for each of the input for LTAR programs is addressed below.

A. Sulfuric Acid

The GOC disagrees with the Department's conclusion that the GOC did not place sufficient evidence on the record of this review to warrant a reexamination of the sulfuric acid for LTAR program. According to the GOC, the Department based its conclusion on the fact that the industries which used sulfuric acid during the POR are in many of the same industry subgroups identified in Citric Acid First Review.[246] Specifically, the GOC notes that in Citric Acid First Review: 1) the GOC identified 44 industry groups that fell into three macro industry categories (i.e., mining, manufacturing, and electric gas); and 2) because 37 of the 44 industry groups were in the manufacturing category, the Department found that the program was limited to manufacturing and, therefore, specific.[247] The GOC argues that this analysis is seriously flawed and should be reversed. The GOC contends that manufacturing cannot be considered an industry grouping relevant for the Department's specificity analysis. The GOC notes that in every case each input at issue is primarily used by manufacturing industries; however, no reasonable person could argue that the chemical industry and the steel industry are the same. The GOC claims that this analysis would lead the Department to find every alleged input for LTAR program specific, when that is clearly not so. Therefore, the GOC argues that the Department should analyze the individual industry categories it provided to determine whether the composition of these users is sufficiently diverse.[248]

---

[243] See the Department's Initial Questionnaire at pages II-5 through II-11; and the Department's Caustic Soda and LTAR Specificity supplemental questionnaire at to the GOC at page 2.

[244] See GOC's Initial LTAR Response at pages 1- 45 and GOC's Caustic Soda and LTAR Specificity Response at pages 9-19.

[245] See DRAMs from Korea, at "Programs Previously Determined to Confer Subsidies." See also Magnola, 508 F.3d 1349.

[246] See Preliminary Results, at "Provision of Sulfuric Acid for LTAR."

[247] See Citric Acid First Review, at Comment 7.

[248] See GOC's Caustic Soda and LTAR Specificity Response at pages 5-6.

According to the GOC, the 15 industry consumer categories it provided from the Industrial Classification for National Economic Activities in this review are not the same sub-groups as those identified in Citric Acid First Review, where the Department noted that the relevant sub-categories included manufacturing raw chemicals, chemical products, household chemical products, and food and beverages.[249] The GOC argues that the only category on the industry list provided in this review that falls into these sub-categories is "Chemical materials and chemical products manufacturing," and that none of the other categories it provided falls into the subcategories identified in Citric Acid First Review. As a result, the GOC contends that, if the citric acid industry is only one of 15 industries using sulfuric acid and these industries represent a wide range of products, the Department cannot continue to find the sulfuric acid for LTAR program to be specific.

The petitioners disagree, noting that the GOC points to the individual industry categories it provided in its response. However, the petitioners maintain that the information the GOC provided is insufficient for the Department to revisit its prior countervailability determination for this program. Specifically, the petitioners note that, while the GOC in its response indicated that the China Sulfuric Acid Industry Association (CSAIA) maintains statistics on the consumption of sulfuric acid by industry, the GOC in its response: 1) failed to provide any sulfuric acid consumption data; 2) provided only a list of the main relevant downstream industries identified by CSAIA; and 3) included no primary source data from CSAIA.[250] According to the petitioners, this information provides no basis for the Department to reverse its preliminary finding that the GOC failed to provide sufficient evidence to warrant reexamination of the countervailability of the sulfuric acid LTAR program.

Department's Position:

Regarding the specific information the GOC provided in its October 21, 2014, and February 12, 2015, submissions, we find that it does not provide sufficient evidence to warrant a reversal of our specificity determination for the provision of sulfuric acid for LTAR program. Section 771(5A)(D)(iii) of the Act provides:

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

[249] See Citric Acid First Review, at Comment 7.

[250] See GOC's Caustic Soda and LTAR Specificity Response at page 5.

The information the GOC provided from the CSAIA indicates that sulfuric acid is consumed by: 1) "industrial users" (using 37.6 percent);[251] and 2) the fertilizer industry (using 62.4 percent).[252] While this information indicates that the fertilizer industry is the largest consumer of sulfuric acid, the Department must also analyze whether sulfuric acid consumption is limited in number to certain enterprises or industries.[253] As stated in Citric Acid Second Review, the Department, in determining whether a particular industry or enterprise fits within the term "limited," does not necessarily limit its consideration to the number of enterprises, but must also focus on the make-up of the users.[254] The make-up of the users and the number of industries or enterprises they represent are both factors in the Department's analysis of whether the users of sulfuric acid are limited in number. The record of the instant review indicates that sulfuric acid consumption is limited to two main industries, fertilizers and "industrial users."

The GOC's new information demonstrates that: 1) the industries consuming sulfuric acid remain limited (i.e., fertilizer production and "industrial users"); and 2) the chemical industry, which includes citric acid producers, accounts for 70 percent of "industrial users."[255] Thus, we find that the information provided by the GOC confirms our original determination that the sulfuric acid for LTAR program is specific because the actual recipients of the subsidy, on an industry basis, are limited in number.

Therefore, we find that the GOC has provided no new evidence in this review that would cause us to reverse our findings from prior administrative reviews regarding the specificity of the sulfuric acid for LTAR program.[256] Consequently, consistent with Citric Acid Fourth Review, we continue to find that this LTAR program is specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act.

B. Steam Coal

The GOC claims that the Department misinterpreted the facts when it concluded that the list of industries which purchase steam coal provided by the GOC did not match the Industrial Classification for National Economic Activities and, as a result, refused to reexamine specificity for the steam coal for LTAR program.[257] According to the GOC, the Industrial Classification for

[251] The information from CSAIA identified "industrial users" as: 1) chemical producers, including titanium oxide, hydrofluoric acid, caprolactam, and other chemicals (approximately 70 percent); and 2) light industry, textile industry, steel industry, nonferrous metal, and "others" (approximately 30 percent). See GOC's Initial LTAR Response at Exhibit 2. Thus, while the GOC lists 15 industry user categories from the Industrial Classification for National Economic Activities at pages 5 and 6 of GOC's Caustic Soda and LTAR Specificity Response, these categories do not appear to correspond to the categories in the consumption information provided by CSAIA despite the fact that the Department requested that the GOC identify the consuming industries using a consistent level of industrial classification.

[252] Id.

[253] See section 771(5A)(D)(iii)(I) of the Act.

[254] See Citric Acid Second Review, at Comment 4.

[255] We also found that the chemical industry represents a "notable concentration" of the "industrial uses" of sulfuric acid in prior administrative reviews. See, e.g., Citric Acid Fourth Review, at Comment 4.

[256] See Magnola, 508 F.3d at 1355.

National Economic Activities was not used to compile the list of industries that purchase steam coal, nor was it meant to "demonstrate a one-to-one match" with the list of industries provided by the China National Coal Association (CNCA) (which the CNCA compiled using its own industry groupings).[258] The GOC notes that the list of industries provided by the CNCA may not be identical in name or scope with the industries identified in official government statistics. In any event, the GOC argues that there was no need for the Department to attempt to match the CNCA's industry list with official industry classifications because it has the CNCA's list of industries and consumption figures. Therefore, the GOC contends that the Department should analyze the specificity of this program relying on the CNCA's information. The GOC claims that this information shows that the use of steam coal is not limited to certain industries or that the chemical industry predominantly or disproportionately uses that input.[259] Further, the GOC argues that steam coal is widely distributed throughout the economy of the PRC and is used in numerous industries, with the electricity industry as the predominant user and the chemical industry using only a small percentage.[260] Consequently, the GOC contends that the steam coal for LTAR program is not specific and, thus, not countervailable.

The petitioners point out that, according to the GOC itself, the list of industries that purchase steam coal provided by the CNCA was compiled using that organization's own industry groupings, not the Industrial Classification for National Economic Activities. In addition, the petitioners note further deficiencies with the GOC's data, including that it did not provide a complete list of the industries that purchase steam coal directly, instead providing the Department with what it deemed to be the relevant information (i.e., one page from the China Statistical Energy Yearbook (2013)). The petitioners note that the document from which this page was taken appears to contain steam coal consumption data for each of the industries listed, which the GOC did not provide.[261,262] The petitioners maintain that another excerpt the GOC provided from the Annual Report on Coal Market Development of China (2014) is also insufficient because: 1) the GOC did not provide the full report; and 2) the limited data provided do not correspond to any consistent industry classification.[263] As a result, the petitioners contend that there is insufficient data to warrant a reexamination of the countervailability of this program.

---

[257] See Preliminary Results, at "Provision of Steam Coal for LTAR."

[258] See GOC's Caustic Soda and LTAR Specificity Response at Exhibit 2.

[259] The GOC notes that, in the event the Department believes that it is necessary to compare the CNCA classifications with those contained in Industrial Classification for National Economic Activities, it has provided this comparison in its case brief using information contained in GOC's Caustic Soda and LTAR Specificity Response at Exhibits 1 and 2. See GOC's Case Brief at Attachment 1.

[260] See GOC's Caustic Soda and LTAR Specificity Response at Exhibit 2.

[261] Id., at Exhibit 2.

[262] The petitioners also take issue with Attachment 1 of the GOC's case brief, arguing that, contrary to the GOC's contention, this information does not match GOC's Caustic Soda and LTAR Specificity Response at Exhibits 1 and 2. According to the petitioners, the Department should not be left to decode what information in this attachment is already on the record and what is untimely new factual information. In any event, the petitioners maintain that this attachment provides insufficient information to affect the Department's specificity analysis.

[263] Id., at Exhibit 3.

Department's Position:

Regarding the specific information the GOC provided in its October 21, 2014, and February 12, 2015, submissions, we find that it does not provide sufficient evidence to warrant a reversal of our specificity determination for the provision of steam coal for LTAR program. As noted above, section 771(5A)(D)(iii) of the Act provides:

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

The information the GOC provided from the CNCA indicates that the chemical industry, which includes citric acid producers, is one of only five industries that consume steam coal.[264] While this information shows that the chemical industry may not be a predominant user of steam coal, it nonetheless shows that the number of industries using steam coal is limited. Further, while the GOC has provided a purported reconciliation of the information contained in Exhibits 1 and 2 of the GOC's Caustic Soda and LTAR Specificity Response (i.e., the Industrial Classification for National Economic Activities and the industries which purchase steam coal, as listed in the China Energy Statistical Yearbook (Version 2013)), this information does not correspond to the 2013 consumption data by industry that the GOC provided in Exhibit 3 of this submission.[265] Therefore, we find that the information provided by the GOC confirms our original determination that the steam coal for LTAR program is specific because the actual recipients of the subsidy, on an industry basis, are limited in number.

Therefore, we find that the GOC has provided no new evidence in this review that would cause us to reverse our findings from prior administrative reviews regarding the specificity of the steam coal for LTAR program.[266] Consequently, consistent with Citric Acid Fourth Review, we continue to find that this LTAR program is specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act.

---

[264] See GOC's Caustic Soda and LTAR Specificity Response at Exhibit 3.

[265] We requested that the GOC, when reporting the volume and value of steam coal purchased by each industry, "…use whatever resource or classification scheme your government normally relies upon to define industries and to classify companies within an industry. Provide the relevant classification guidelines, and ensure that the list provided reflects consistent levels of industrial classification." See the Department's supplemental questionnaire dated January 14, 2015.

[266] See Magnola, 508 F.3d at 1355.

C. Calcium Carbonate

The GOC notes that the Department concluded in the preliminary results that the GOC had failed to provide sufficient evidence to warrant a reexamination of the calcium carbonate for LTAR program.[267] However, the GOC argues that the Department failed to consider that its specificity findings for this program in Citric Acid Third Review and Citric Acid Fourth Review were based on AFA.[268] The GOC argues that there no factual basis in this administrative review for the Department to base its specificity finding for calcium carbonate on AFA. The GOC notes that, in response to the Department's questions, it provided the available statistics from the China Inorganic Salts Industry Association (CISIA) showing that the industries using calcium carbonate were diverse and demonstrating that the use of calcium carbonate is not limited.[269] While the GOC acknowledges that it did not provide data on the consumption of calcium carbonate, it claims that this should not prevent the Department from making a specificity finding. According to the GOC, the Department has analyzed specificity without consumption figures many times, including in prior segments of this proceeding. Specifically, the GOC points to Citric Acid First Review, where the Department stated it had insufficient information on the record to analyze specificity for steam coal.[270] However, on remand,[271] the Court directed the Department to make a specificity finding with regard to steam coal and the Department found that steam coal was not specific, despite lacking steam coal usage data.[272] The GOC argues that the statements it made in both this and the first review (that it does not collect volume information regarding usage) are virtually identical, but here, unlike in the remand redetermination of Citric Acid First Review, the Department has found that this response warrants the application of AFA.[273] The GOC contends that the fact that the same response in two segments of the same proceeding regarding the same issue could lead to such different outcomes demonstrates that the Department's application of AFA here was arbitrary and capricious and should be reversed.[274]

The petitioners assert that the GOC's contention that the Department inappropriately "carried forward" its AFA specificity finding for the calcium carbonate for LTAR program from the prior administrative review is incorrect. Rather, the petitioners note that in the Citric Acid Fourth Review, the Department determined that the additional information the GOC provided regarding the specificity of the calcium carbonate program in that review was insufficient for the

[267] See Preliminary Results, at "Provision of Calcium Carbonate for LTAR."

[268] See Citric Acid Third Review, at pages 8-9; and Citric Acid Fourth Review, at pages 6-7.

[269] See GOC's Caustic Soda and LTAR Specificity Response at page 8.

[270] See Citric Acid First Review, at Comment 6.

[271] See Archer Daniels Midland Co. v. United States, 917 F. Supp. 2d 1331, 1340 (CIT 2013) (Archer Daniels Midland).

[272] See Archer Daniels Midland Co. v. United States, 968 F. Supp. 2d 1269, 1273 (CIT 2014) (Archer Daniels Midland II).

[273] The GOC acknowledges that the Department did not apply AFA directly in this administrative review, but contends that this is the effective result of continuing to rely on the AFA specificity finding from Citric Acid Fourth Review.

[274] See SKF USA Inc. v. United States, 263 F.3d 1369, 1382 (CAFC 2001).

Department to reexamine its findings.[275] Thus, while the petitioners acknowledge that the Department's specificity finding in Citric Acid Third Review was based on AFA, they note that this does not preclude the Department from requiring parties challenging that determination in later segments to provide information warranting reexamination. Moreover, the petitioners take issue with the GOC's reliance on Archer Daniels Midland, where the steam coal LTAR program was challenged, as the basis for the Department to reexamine the countervailability of the calcium carbonate program in this review. The petitioners note that in the administrative review underlying the litigation (i.e., Citric Acid First Review) the Department was examining the steam coal for LTAR program for the first time and it never asked the GOC the usage questions regarding this program.[276] Thus, the petitioners assert that the GOC's responses to the Department's questions regarding the steam coal program in Citric Acid First Review and its responses to the questions regarding the calcium carbonate program in this review are not analogous. In any event, the petitioners point out that the GOC itself admits that it failed to provide the consumption data for calcium carbonate here. Consequently, the petitioners assert that the Department should determine that the GOC failed to meet its burden and decline to reexamine the specificity of this program for the final results.

Department's Position:

Regarding the specific information the GOC provided in its October 21, 2014, and February 12, 2015, submissions, we find that it does not provide sufficient evidence to warrant a reversal of our specificity determination for the provision of calcium carbonate for LTAR program. As noted above, section 771(5A)(D)(iii) of the Act provides:

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

In the Preliminary Results we found that the GOC was unable to support the POR consumption data it provided for the calcium carbonate industry.[277] Specifically, the information the GOC provided at pages 42 and 43 of its Initial LTAR Response did not relate to the documentation the GOC provided in Exhibit 22 of that submission to support those figures. Further, in response to our supplemental questionnaire regarding this issue, the GOC said that it was still in contact with CISIA to obtain this information but failed to provide it or offer further explanation.[278]

[275] See Citric Acid Fourth Review, at page 23.

[276] See Citric Acid First Review, at Comment 6.

[277] See Preliminary Results, at "Provision of Calcium Carbonate for LTAR."

[278] See GOC's Caustic Soda and LTAR Specificity Response at page 9.

Therefore, the GOC has provided no useable evidence in this administrative review regarding the specificity of the calcium carbonate for LTAR program for the Department to analyze.

We disagree with the GOC's contention that, by relying on the specificity finding for calcium carbonate from Citric Acid Fourth Review, the Department has effectively and unjustifiably based its specificity finding on AFA on this review. As an initial matter, we did not base our specificity determination for calcium carbonate in Citric Acid Fourth Review on AFA; the discussion on which the GOC relies addresses our AFA determination with respect to market distortion and our benchmark selection for measuring a benefit under the calcium carbonate for LTAR program.[279] In contrast, we based our decision here not to revisit whether the provision of calcium carbonate was specific on the fact that "no new evidence was presented { } that would cause us to reverse the Department's findings in the prior administrative reviews."[280]

Our determination in the instant review is consistent with that approach. As we stated in the Preliminary Results, "{a} previous determination of countervailability places the burden on the challenging party to present new evidence sufficient for the Department to revisit its prior finding."[281] Thus, we are not making a new specificity finding or drawing a new adverse inference in this review; rather, as explained above, the GOC has not provided sufficient evidence such that a reexamination of our original specificity finding is warranted, regardless of whether that determination was based on AFA.

Finally, we find the GOC's reliance on Archer Daniels Midland for the proposition that we can still make a specificity finding on the GOC's new information to be misplaced. In Citric Acid First Review, where the Department was examining the steam coal for LTAR program for the first time, the Department failed to ask the GOC usage questions regarding this program.[282] As a result, when the Court in Archer Daniels Midland directed the Department to analyze the specificity of the steam coal LTAR program, the Department performed its analysis at the Court's direction without usage data and consequently found that it could not find the program to be specific on the existing evidence.[283] In contrast, for calcium carbonate, we requested such data from the GOC at the outset of our investigation of the program, but it failed to provide this information.[284] Thus, the question is not whether the record of this review supports a de novo finding of specificity, but whether the information submitted by the GOC is sufficient to warrant a reexamination of our previous finding. As explained above, we find that it is not.

Therefore, we find that the GOC has provided no new evidence in this review that would cause us to reverse our findings from prior administrative reviews regarding the specificity of the

[279] See Citric Acid Fourth Review, at "GOC – Market Distorted by Government Presence."

[280] Id., at Comment 4.

[281] See Preliminary Results, at "Provision of Calcium Carbonate for LTAR." See also Magnola, 508 F.3d 1349.

[282] See Citric Acid First Review, at Comment 6.

[283] See Archer Daniels Midland II, 968 F. Supp. 2d at 1272.

[284] See Citric Acid Third Review, at "The Provision of Calcium Carbonate For LTAR Is Specific to Citric Acid and Certain Calcium Citrate Producers."

calcium carbonate for LTAR program.[285] Consequently, consistent with Citric Acid Fourth Review, we continue to find that the actual recipients of calcium carbonate, on an industry basis, are limited in number and, as a result, this LTAR program is specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act.

D. Caustic Soda

The GOC claims that the Department based its finding for caustic soda for LTAR on AFA because of actions that occurred during the verification of this program in Citric Acid Fourth Review.[286] The GOC argues that there is no legal basis for the Department to apply segment-specific facts from the previous administrative review to this one. Thus, the GOC claims that the Department cannot base its specificity finding for caustic soda on AFA for purposes of the final results. The GOC states that the Department has not only recognized, but the Courts have also held, that each segment of a proceeding is based on its own administrative record with its own facts.[287, 288] According to the GOC, the cases it cites show that specific factual circumstances from one administrative review cannot be carried over to a subsequent review. However, the GOC claims that this is precisely what the Department did here when it did not rely on the data it provided from the CCAIA. The GOC contends that the Department did not find the CCAIA unreliable as a source in Citric Acid Fourth Review; rather, it found that the CCAIA at verification could not support the GOC's reported consumption figures.[289] The GOC argues that the Department cannot claim as a result of this verification that all data from this source in every subsequent review is unreliable.[290] Moreover, the GOC notes that the data the CCAIA provided in this administrative review is 2013 consumption data,[291] not the 2012 consumption data at issue in Citric Acid Fourth Review. The GOC notes that the Department did not choose to verify the CCAIA's 2013 reported data, and thus, it claims that the Department has no factual or legal

[285] See Magnola, 508 F.3d at 1355.

[286] See Preliminary Results, at "Provision of Caustic Soda for LTAR."

[287] See Shandong Huarong Mach. Co. v. United States, 29 CIT 484, 490-1 (CIT 2005); and Pure Magnesium From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 76 FR 76945 (December 9, 2011), and accompanying Issues and Decision Memorandum at Comment 6; and Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results of the Countervailing Duty Administrative Review, 77 FR 21744 (April 11, 2012), and accompanying Issues and Decision Memorandum at Comment 5.

[288] See Peer Bearing Co. v. United States, 587 F. Supp. 2d 1319, 1324-25 (CIT 2008) (Peer Bearing) (where the Court held that a company's receipt of a separate rate in a previous administrative review was not sufficient evidence for it to receive a separate rate in a latter review, where the company had failed to provide information rebutting government control, because each administrative review is separate). See also Union Steel v. United States, 645 F. Supp. 2d 1298, 1305 (CIT 2009) (where the Department requested a voluntary remand when it relied on data from a previous review, rather than the current review, in denying a respondent's request to change the model matching methodology); and Ad Hoc Shrimp Trade Action Comm. v. United States, 828 F. Supp. 2d 1345 (CIT 2012) (Ad Hoc Shrimp) (where the Court rejected the petitioners' argument that the misclassification of entries in the third review should result in the presumption that entry data in the fourth review were also unreliable).

[289] See Citric Acid Fourth Review, at Comment 5A.

[290] See Taian Ziyang Food Co. v. United States, 783 F. Supp. 2d 1292, 1317 (CIT 2011) (where the Court held that the Department must ensure that each issue in each case is decided using the facts on the record of that case).

[291] See GOC's Third Supplemental Response at pages 11-12.

basis to conclude that this data is unverifiable, which it claims is a necessary finding for the application of AFA.[292] Therefore, the GOC argues that it has provided sufficient information for the Department to analyze the specificity of caustic soda. The GOC notes that it provided a list of the 15 industries that use caustic soda, including their consumption data. According to the GOC, this evidence shows that caustic soda is widely used in the PRC by a diverse set of industries, and it is not predominantly or disproportionately used by the chemical industry. As a result, the GOC contends that the Department cannot find that caustic soda is specific for purposes of the final results.

The petitioners disagree with the GOC's contention that the Department based its specificity finding for the caustic soda for LTAR program on AFA in this review. According to the petitioners, the Department instead found that the information the GOC submitted from the CCAIA did not provide sufficient evidence to warrant a reexamination of the program and, as a result, it continued to rely on its previous specificity finding. The petitioners assert that, contrary to the GOC's argument, there is no conflict between the threshold requirement for the record to contain sufficient evidence to warrant the reexamination of a program previously found countervailable and the proposition that each administrative review is a distinct proceeding. The petitioners point out that the Department made its determination on the caustic soda program in the Preliminary Results based on the record of this administrative review.

Further, the petitioners find the GOC's reliance on the cases it cited to be misplaced. Regarding Peer Bearing, the petitioners note that the issue in litigation in that case was whether a respondent had demonstrated its entitlement to a separate rate in the underlying administrative review. In Peer Bearing, the petitioners note that the Court held that the respondent did not provide sufficient evidence to rebut the presumption of state control and, thus, found that the company was not entitled to a separate rate.[293] The petitioners liken the rebuttable presumption of state control inherent in the Department's separate rate determination to its practice in CVD cases of not reexamining programs previously found to be countervailable absent new information warranting reexamination. Further, in Ad Hoc Shrimp, the petitioners point out that the issue in litigation involved misclassified entries from a previous administrative review, which the current record showed no longer existed.[294] The petitioners contrast these facts with those of the instant investigation, which it notes does not rest on data inaccuracies from a prior review.

In any event, the petitioners note that the GOC provided deficient data on the caustic soda industry in this administrative review. According to the petitioners, not only did the GOC provide a self-selected sample of the main relevant industries identified by the CCAIA which purchase caustic soda, rather than data on all industries, but it also did not provide a list of the industries purchasing caustic soda using a consistent level of industrial classification, as the Department requested. Thus, the petitioners assert that the GOC provided incomplete data on the caustic soda industry without supporting documentation. As a result, the petitioners note that there is no basis for the Department to reexamine the countervailability of this program for the final results.

---

[292] See China Kingdom Import & Exp. Co. v. United States, 31 CIT 1329, 1349 n7 (CIT 2007).

[293] See Peer Bearing, 587 F. Supp. 2d at 1325.

[294] See Ad Hoc Shrimp, 828 F. Supp. 2d at 1352.

Department's Position:

Regarding the specific information the GOC provided in its February 12, 2015, submission, we find that it does not provide sufficient evidence to warrant a reversal of our specificity determination for the provision of caustic soda for LTAR program. As noted above, section 771(5A)(D)(iii) of the Act provides:

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

We disagree with the GOC's contention that, by maintaining our specificity finding for caustic soda from Citric Acid Fourth Review, the Department based its finding on AFA in this review. As we stated in the Preliminary Results, "{a} previous determination of countervailability places the burden on the challenging party to present new evidence sufficient for the Department to revisit its prior finding."[295] While the GOC provided updated consumption data from the CCAIA for this review, the Department determined in Citric Acid Fourth Review that the CCAIA's assertions were unverifiable because the CCAIA did not maintain records of or otherwise document the data underlying its assertions.[296] In this review, the GOC provided 2013 figures obtained from the CCAIA in the narrative portion of its response, but did not provide any underlying documentation to support those figures.[297] Accordingly, those figures are unsupported and do not call into question our original determination such that we can rely on the 2013 data. As a result, we continue to conclude, based on record evidence, that the GOC has not provided sufficient evidence to warrant a reexamination of the caustic soda for LTAR program.

We also find that the GOC's reliance on Peer Bearing and Ad Hoc Shrimp is misplaced. The Court of Appeals for the Federal Circuit (CAFC) has held that Department is not required to make de novo specificity findings in each administrative review.[298] The CAFC upheld our practice of not revisiting previous specificity findings, unless new information warrants doing so.[299] Thus, our determination that the 2013 CCAIA data do not warrant such a reexamination does not require that we make a new determination that the information is unverifiable; instead, we determined that the information is insufficient to call into question our original findings in

[295] See Preliminary Results, at Provision of Caustic Soda for LTAR."

[296] See Citric Acid Fourth Review, at Comment 5A.

[297] See GOC's Fourth Supplemental Response at 11-13.

[298] See Magnola, 508 F.3d 1349.

[299] Id. See also section 751(a)(1)(A) of the Act.

Citric Acid Fourth Review because the GOC did not provide any documentation to support those data or otherwise demonstrate that the figures are reliable.

Therefore, we find that the GOC has provided no new evidence in this review that would cause us to reverse our findings from the prior administrative review regarding the specificity of the caustic soda for LTAR program.[300] Consequently, consistent with Citric Acid Fourth Review, we continue to find that the actual recipients of caustic soda, on an industry basis, are limited in number and, as a result, this LTAR program is specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Comment 2: *Whether the Department Should Continue to Apply AFA in its Market Distortion Analysis of the Sulfuric Acid, Calcium Carbonate, and Caustic Soda Industries*

In the Preliminary Results, we found that the GOC failed to completely identify and provide ownership information for the companies comprising the sulfuric acid, calcium carbonate, and caustic soda industries. Instead, the GOC provided this information for only those producers which it said accounted for more than 50 percent of the sulfuric acid and caustic soda industries, and 18.6 percent of the calcium carbonate industries, because it stated that it would be "too difficult" to obtain this information for all producers of each input. Because we have information indicating that the GOC has an electronic system available to it to gather this requested industry-specific information, we preliminarily determined that the GOC withheld necessary information and failed to cooperate to the best of its ability to comply with our request for information. Therefore, as AFA, we preliminarily found that PRC prices from actual transactions involving Chinese buyers and sellers were significantly distorted by the involvement of the GOC and, as a result, we used external benchmarks to calculate the benefit for the sulfuric acid, calcium carbonate, and caustic soda LTAR programs.[301]

The GOC argues that the Department, when applying AFA in the Preliminary Results, failed to consider the sheer breadth of its request for information and that the GOC provided a reasonable alternative for the Department to use in its analysis. The GOC notes that, in this administrative review, the Department requested that the GOC obtain the names of each of the input producers from the relevant industry associations and then identify the ownership of each company through the SAIC. According to the GOC, this request involved over a thousand companies and the information from the relevant non-governmental industry associations is not within its control. Therefore, the GOC states that, after discussions with the industry associations and the SAIC, it determined that there was insufficient manpower to obtain all of the requested information. The GOC notes that, alternatively, it provided a significant percentage of the requested information which the Department could have used in its market distortion analysis. The GOC argues that the Department failed to explain why: 1) its reported data was insufficient to analyze; or 2) the failure to obtain an insignificant amount of information from parties not within the GOC's control warrants the application of AFA.[302]

[300] See Magnola, 508 F.3d at 1355.

[301] See Preliminary Results, at "Use of Facts Otherwise Available and Adverse Inferences."

[302] See SKF USA, Inc. v. United States, 675 F. Supp.2d 1264, 1275-77 (CIT 2009) (where the Court held that it was unlawful for the Department to apply an AFA rate to a cooperative respondent in order to encourage the compliance

The GOC argues that there is no evidence on the record that it cherry picked the companies for which it provided ownership information. Instead, the GOC contends that it consistently identified the ownership of the top producers in each industry.[303] The GOC claims that the fact that so few companies represent such a large percentage of each industry demonstrates that the companies which the GOC did not identify were small producers that could not affect the percentage of SOEs in these industries meaningfully. According to the GOC, the Department cannot simply note that certain requested information is missing and, as a result, summarily apply AFA. Rather, the GOC contends that the Department must first determine whether that missing information is necessary,[304] which record evidence demonstrates is not the case here.

The GOC maintains that the Department must also recognize that the GOC is a sovereign nation and World Trade Organization (WTO) member country charged with upholding its WTO commitments. Thus, the GOC argues that the Department should recognize the comity of nations and that, when the GOC participates in a case, it always attempts to cooperate to the best of its ability. The GOC notes that it faces limitations in its ability to provide requested information (e.g., domestic laws, coordinating the cooperation of different agencies, convincing industry associations to participate, etc.), which are different from those faced by respondent companies. The GOC contends that the Department must recognize these limitations when determining what it means for a foreign government to cooperate to the best of its ability. According to the GOC, it provided the Department with the option of approaching the industry associations to obtain the requested information, an extra effort not required by law or the Department's practice. Thus, the GOC claims that the Department should respect the GOC's limitations and use the significant amount of information on the record to analyze market distortion for the sulfuric acid and caustic soda industries in the final results.

Furthermore, the GOC claims that it provided all requested information regarding the calcium carbonate industry, which the Department should have used in its market distortion analysis. The GOC contends that, contrary to the Department's assertion that the GOC only provided data for 18.6 percent of the calcium carbonate industry, in fact it provided a certification from CISIA that none of the 520 companies in the calcium carbonate industry are SOEs.[305] The GOC argues that the Department's questionnaire did not request a list of each calcium carbonate producer, including sales volume and ownership status, but merely asked for the total volume and value of domestic production of calcium carbonate accounted for by companies in which the GOC maintains a management interest. Thus, the GOC maintains that it provided a complete and

---

of an unaffiliated supplier); Tianjin Magnesium Int'l Co. v. United States, Slip Op. 11-17, at 5-10 (CIT 2011) (where the Court rejected the application of an AFA rate to a respondent because of the actions of another party); and Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (CAFC 2003) (where the Court directed the Department to examine a respondent's actions and its abilities, efforts, and cooperation before applying AFA).

[303] Specifically, the GOC notes that it provided information for: 1) the top 33 sulfuric acid producers (out of 395 companies), representing 50 percent of the industry by volume; and 2) 21 caustic soda producers (out of 176 companies), representing 50 percent of the industry by volume. See GOC's Fourth Supplemental Response at pages 5-7; and GOC's Third Supplemental Response at pages 31-32.

[304] See Zhejiang Dunan Hetian Metal Co. v. United States, 652 F.3d 1333, 1348 (CAFC 2011) (where the Court held that the Department cannot apply AFA and disregard information on the record that is not missing or otherwise deficient).

[305] See GOC's Fourth Supplemental Response at Exhibit III-1.

verifiable response to the Department's request for information. As a result, the GOC contends that the Department must find that the calcium carbonate market is not distorted and use a tier one benchmark in its calculations for the final results.

Finally, the GOC notes that the Department accepted the industry data it provided for steam coal despite the fact that this data covered only the top 50 steam coal producers out of 7,975 companies in the industry. The GOC points out that, as noted above, it provided information covering a higher percentage of companies in the sulfuric acid and caustic soda industries and yet the Department concluded it could not use this data. According to the GOC, the Department has a legal obligation to treat identical factual scenarios the same.[306] Therefore, the GOC argues that the Department must reconcile its conflicting positions on using the GOC's reported industry data to analyze market distortion in the final results.

The petitioners disagree, noting that the GOC's market distortion arguments are not supported by the record. Specifically, the petitioners point out that the GOC failed to respond to a number of the Department's market distortion questions in both the original and supplemental questionnaires including: 1) the value of sulfuric acid, calcium carbonate, and caustic soda produced by GOC-owned or -controlled companies during the POR; and 2) the number of producers that have government ownership in the sulfuric acid, calcium carbonate, and caustic soda industries. The petitioners assert that, while the GOC contended that it "can only identify the ownership of a particular company if the name of the company is known,"[307] the names of the producers of the inputs at issue clearly are available to the GOC. Thus, the petitioners maintain that the GOC's claims that Department's requested information was not reasonably available to it are not plausible.

Moreover, the petitioners dismiss the GOC's claim that the relevant industry associations are non-governmental organizations. According to the petitioners, the articles of association of CSAIA and CISIA, and the charter of association of CCAIA, confirm that the GOC controls the operations of each of these trade associations.[308] For example, the petitioners point out that CSAIA's articles of association state that it "shall accept the business guidance and the supervision of the supervision authority, State-owned assets Supervision and Administration Commission of the State Council, and the registration authority, Ministry of Civil Affairs of the People's Republic of China," and that the articles and charter of association of CISIA and CCAIA, respectively, contain the same language.[309] The petitioners also note that these documents mandate that these organizations will "earnestly implement the State's industrial policies," "conduct industry statistics upon the authorization" of the GOC, "provide the basis for the government on making industrial policy and service for enterprises on business determination through improving monitor {sic} and analysis of industrial economic operation," and "undertake

[306] See Dongbu Steel Co., Ltd. v. United States, 635 F.3d 1363, 1371 (CAFC 2011) (Dongbu) (where the CAFC held that an agency action is arbitrary when the agency provides insufficient reasons for treating similar situations differently); and General Agreement on Tariffs and Trade 1994 at Article X: 3(a) (explaining that a member country's obligation is to administer its laws in a reasonable manner).

[307] See GOC's Initial LTAR Response at pages 2-3.

[308] Id., at Exhibits 1 and 21; and GOC's Caustic Soda and LTAR Specificity Response at Exhibit 5.

[309] Id.

relevant work authorized by the government and concerned State departments."[310] The petitioners also argue that each of these industry associations is controlled by SASAC. Thus, the petitioners assert that record evidence clearly demonstrates that these industry associations are controlled by the GOC.

The petitioners maintain that the GOC had the means to obtain the names of the companies in the sulfuric acid, calcium carbonate, and caustic soda industries. The petitioners note that the GOC obtained information regarding the number of companies in each of these industries during the POR and, because the industry associations could quantify these producers, they could also name them.[311] In addition, the petitioners contend that it does not appear that the GOC even tried to gather ownership information for the companies in each industry from the SAIC and SASAC. According to the petitioners, the GOC's actions in this administrative review contradict its claim that "it always cooperates to the best of its ability" when participating in the Department's proceedings. As a result, the petitioners maintain that the Department should continue to: 1) find that the sulfuric acid, calcium carbonate, and caustic soda markets in the PRC are significantly distorted; and 2) use a tier two benchmark to calculate the benefit associated with these programs for purposes of the final results.

Furthermore, the petitioners take issue with the certification provided by CISIA which the GOC claims demonstrates that none of the producers of calcium carbonate are SOEs. The petitioners point out that the GOC admitted elsewhere in its response that "it would be too difficult to obtain the requested information for all 520 {calcium carbonate} companies."[312] Thus, the petitioners maintain that CISIA's certification is meaningless because the GOC, CISIA, and the SAIC admit that they failed to take the steps necessary to validate this claim. Additionally, the petitioners point to rebuttal factual information that they provided which also contradicts CISIA's certification.[313] Consequently, the petitioners assert that the GOC's claim that the calcium carbonate market in the PRC is not distorted is without merit.

Finally, the petitioners disagree with the GOC's argument that the Department acted inconsistently by analyzing the data it provided for the steam coal industry, but not doing so for the sulfuric acid, calcium carbonate, and caustic soda industries. According to the petitioners, while the GOC claims that the data it provided regarding each of these industries represent "identical factual scenarios," this is not so. The petitioners note that the data for the steam coal industry demonstrated that at least 90.46 percent of POR production came from GOC-owned or -managed companies.[314] The petitioners find it significant that the GOC did not dispute the Department's use of a tier two benchmark for the steam coal LTAR program. Further, the petitioners find the GOC's reliance on Dongbu misplaced. The petitioners note that in Dongbu,

[310] Id.

[311] See GOC's Initial LTAR Response at page 2; and GOC's Caustic Soda and LTAR Specificity Response at page 10.

[312] See GOC's Fourth Supplemental Response at page 8.

[313] See the petitioners' submission dated May 26, 2015, at pages 5-6 and Exhibit 5. Because this information is business proprietary in nature, we cannot discuss it here. Nonetheless, the petitioners find it telling that the GOC did not rebut this information.

[314] See Preliminary Results, at "Provision of Steam Coal for LTAR."

the CAFC reviewed differences in the Department's zeroing methodology in investigations and administrative reviews to determine the "reasonableness of interpreting the same statutory provision to have opposite meanings depending on the nature of the antidumping proceeding."[315] Thus, the petitioners maintain that Dongbu is irrelevant here, where the Department's market distortion analysis is based on the record evidence submitted for each input LTAR. Consequently, the petitioners state that the Department should reject the GOC's argument that its market distortion findings for these input LTARs are not consistent.

Department's Position:

We continue to rely on tier two benchmarks for sulfuric acid, calcium carbonate, and caustic soda for these final results.

As discussed in the Preliminary Results and above under "GOC – Market Distorted by Government Presence," we requested that the GOC provide information regarding each input to determine whether the GOC is the predominant provider of the input and whether its significant presence in the market distorts all transaction prices, noting that:

> The Department issued supplemental questionnaires requesting that, for each of these industries, the GOC provide the number of producers in which it maintains an ownership or management interest. In response, the GOC stated that it coordinated with: 1) the industry association responsible for each input to obtain a list of the names and production quantities for certain companies which produced the input during the POR; and 2) the State Administration of Industry and Commerce (SAIC) to determine whether the GOC maintained a management or ownership interest in any of these companies. However, the GOC failed to completely identify, and provide GOC ownership information for, the companies comprising the sulfuric acid, calcium carbonate, and caustic soda industries. Instead, the GOC provided the requested information for producers which it stated accounted for more than 50 percent of the sulfuric acid and caustic soda industries and 18.6 percent of the calcium carbonate industry. The GOC stated that it would be "too difficult" to obtain this information for all producers of each input.[316]

We disagree with the GOC's argument that we should deem the information it has provided for sulfuric acid, calcium carbonate, and caustic soda sufficient for purposes of analyzing market distortion. As noted above, the GOC only provided information accounting for 50 percent of the production of the sulfuric acid and caustic soda industries and 18.6 percent of the calcium carbonate industry. By stating that the remaining requested information is not relevant to the Department's analysis, the GOC placed itself in the position of the Department, and only the Department can determine what is relevant to this administrative review.[317] Contrary to the

[315] See Dongbu, 635 F.3d at 1371.

[316] Preliminary Results, at "GOC – Market Distorted by Government Presence."

[317] See Ansaldo Componenti, S.p.A. v. United States, 628 F. Supp. 198, 205 (CIT 1986) (Ansaldo) (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided"). The Court in Ansaldo criticized the respondent for refusing to submit information which the respondent alone had determined was not needed, for failing to submit data which the respondent decided could not be a basis for the Department's decision,

GOC's assertions and objections to our questions, it is the prerogative of the Department, not the GOC, to determine what information is relevant to our analysis.[318] In any event, we do not consider the limited data provided by the GOC a sufficient basis for our market distortion analysis of these industries because it is so incomplete that it is unusable. While the GOC deems the data that it did not provide "insignificant," it is impossible for the Department to determine that this is so because we have no way of knowing what the information the GOC failed to provide shows.

We disagree with the contention that our analysis of the data the GOC provided for steam coal is inconsistent with our decision not to analyze the GOC's data for the sulfuric acid, calcium carbonate, and caustic soda industries. The information the GOC provided for steam coal, while only covering the top 50 coal producers, covered a significant portion (approximately 72.9 percent) of the total production volume,[319] presenting a different case from the other industries. Furthermore, the steam coal data clearly shows that virtually all of this production was from GOC-owned or -managed companies, including all of the production of the 13 producers with the largest volume.[320] Therefore, we determined that this evidence was sufficient to demonstrate the GOC's substantial involvement in the steam coal market.[321] Had the data the GOC provided regarding the production in the sulfuric acid, calcium carbonate, and caustic soda markets either demonstrated an overwhelming involvement by the GOC in these markets or a clear absence of the GOC in those markets, we could have based our analysis on them.[322] However, because the data the GOC provided did not represent sufficiently large portions of the entire markets, and because the GOC failed to provide requested information necessary for our analysis, we based our market distortion analysis for sulfuric acid, calcium carbonate, and caustic soda on AFA.

Regarding the GOC's argument that the industry associations for the above inputs are not under its control, we note that each association's articles of association includes the following

---

and for claiming that submitting such information would be "an unreasonable and unnecessary burden on the company." See also Essar Steel Ltd. v. United States, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010) (stating that "{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion" and that "Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin"); NSK, Ltd. v. United States, 919 F. Supp. 442, 447 (CIT 1996) (NSK, Ltd.) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); and Nachi-Fujikoshi Corp. v. United States, 890 F. Supp. 1106, 1111 (CIT 1995) ("Respondents have the burden of creating an adequate record to assist Commerce's determinations.").

[318] See NSK, Ltd., 919 F. Supp. 442, 447 ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); see also Ansaldo, 628 F. Supp. at 205 (CIT 1986).

[319] See GOC's Initial LTAR Response at page 23; and GOC's Third Supplemental Response at pages 21-23.

[320] See GOC's Third Supplemental Response at pages 21-23.

[321] See Preliminary Results, at "GOC – Market Distorted by Government Presence."

[322] Instead, the data provided by the GOC demonstrates that: 1) 19 of the 33 sulfuric acid producers are SOEs (see GOC's Fifth Supplemental Response at page 6); none of the 10 calcium carbonate producers are SOEs (see GOC's Third Supplemental Response at page 24); and 13 of the 21 caustic soda producers are SOEs (Id., at page 31).

statement, "The Association shall accept the business guidance and the supervision of the Ministry of Civil Affairs of People's Republic of China and institutions in charge of State-owned Assets Supervision and Administration Commission of the State Council {SASAC}."[323] Therefore, record evidence demonstrates that the industry associations at issue are government controlled through SASAC.[324] Consequently, because these industry associations are controlled by the GOC, we disagree with the GOC's contention that it faced limitations in obtaining information from these associations.

Further, we disagree with the GOC that it cooperated to the best of its ability in this proceeding. The GOC by its own acknowledgement did not even try to obtain the data the Department requested;[325] however, based on the information it did provide, it is clear that this information is available to the GOC.[326] In addition, in a previous investigation, the Department was able to confirm at verification that the GOC maintains two databases at the SAIC: one is the business registration database, showing the most up-to-date company information; while a second system, "ARCHIVE," houses electronic copies of documents such as business licenses, annual reports, capital verification reports, etc. Thus, we find that the GOC has an electronic system available to it to gather industry-specific information the Department requested.[327] Therefore, we find that the GOC could have provided the complete industry information requested of it, but chose not to do so.

Moreover, we disagree with the GOC's contention that the certification it provided from CISIA is a complete response to the Department's request for information regarding the calcium carbonate industry.[328] As an initial matter, we note that the certification simply states, "We certificate {sic} that among our members, none of our calcium carbonate producers are SOEs." This document does not state how many companies are members of CISIA, or the time period

[323] See GOC's Initial LTAR Response at Exhibits 1 and 21; and GOC's Caustic Soda and LTAR Specificity Response at Exhibit 5.

[324] The Public Body Memorandum describes the establishment of SASAC as follows: "Under the Tentative Measures for the Supervision and Administration of State-Owned Assets of Enterprises (2003), SASAC was established for the purposes of meeting 'the demand{s} of the socialist market economy, to further activate the state-owned enterprises, to promote the strategic adjustment of the layout and structure of the state-owned economy, to develop and strengthen the state-owned economy, and to try to maintain and increase the value of the state-owned assets.'" See Public Body Memorandum at page 26. Thus, SASAC is an "authority" as defined under section 771(5)(B) of the Act.

[325] In its response, the GOC stated for sulfuric acid, "Upon review of the procedures for identifying the information requested, it was determined to be too difficult and time-consuming to obtain the requested information for all 395 companies." See GOC's Fifth Supplemental Response at page 5. Similarly for calcium carbonate, the GOC stated, "Upon review of the procedures for identifying the information requested, it was determined to be too difficult to obtain the requested information for all 520 companies." Id., at page 8. Finally for caustic soda, the GOC stated, "Upon review of the procedures for identifying the information requested, it was determined to be too difficult to obtain the requested information for all 176 companies." Id., at page 9.

[326] Id., at page 6 (providing the requested data for the top 30 sulfuric acid producers); GOC's Third Supplemental Response at page 24 (providing the requested data for the top ten calcium carbonate producers); and Id., at page 31 (providing the requested data for the top 21 caustic soda producers).

[327] See Additional Documents Memorandum at Attachment II.

[328] See GOC's Fourth Supplemental Response at Exhibit III-1.

which it covers. The certification is also contradicted by the GOC's statement in the same response that "it was deemed to be too difficult to obtain the requested information for all 520 companies."[329] The petitioners also placed information on the record which contradicts the GOC's assertions regarding state ownership in the industry.[330] Therefore, we continue to find that the GOC has not provided information sufficient to demonstrate that the calcium carbonate market in the PRC is not distorted by government presence.

Finally, we find the GOC's reliance on Dongbu misplaced. In Dongbu, the issue before the Court was the Department's interpretation of the Act in different contexts. In this case, the Department's market distortion analysis for each of the input LTAR programs is based on the evidence on the record of this proceeding. Therefore, we did not revise our analysis of market distortion for the sulfuric acid, calcium carbonate, and caustic soda industries for the final results.

Comment 3: *Whether to Reverse the Department's "Authorities" Determination for Certain Input Suppliers*

In the Preliminary Results, we found that the companies which supplied Taihe with sulfuric acid, steam coal, calcium carbonate, and caustic soda are "authorities" within the meaning of section 771(5)(B) of the Act. As a result, we found that Taihe received a financial contribution in the form of the provision of a good from each of these suppliers of these inputs, pursuant to section 771(5)(D)(iii) of the Act.[331]

Taihe and the GOC disagree with the Department's preliminary finding that certain of its input suppliers are "authorities." Taihe points out that certain of its suppliers (i.e., Companies A, B, and C) submitted certifications attesting that none of their staff holds positions at any level of the CCP.[332] According to Taihe, the record also contains evidence demonstrating that each of these suppliers is a private company. While Taihe acknowledges that Company A does have a CCP primary organization, Taihe argues that Company A certified that this organization does not interfere in its business operations and decisions.[333] Moreover, Taihe notes that the GOC provided the internal rules of Company A's CCP primary organization, which confirm that it is not involved in Company A's business operations.[334] According to Taihe, this evidence shows that Company A's CCP primary organization neither controls it nor interferes in its business operations. Therefore, Taihe contends that insufficient evidence exists for the Department to determine that Company A is an "authority" in the final results.

---

[329] Id., at page 8.

[330] See the petitioners' May 26 submission at pages 5-6 and Exhibit 5. Because this information is business proprietary in nature, we cannot discuss it here.

[331] See Preliminary Results, at "Provision of Sulfuric Acid for LTAR," "Provision of Steam Coal for LTAR," "Provision of Calcium Carbonate for LTAR," and "Provision of Caustic Soda for LTAR."

[332] See GOC's First Supplemental Response at Exhibits IV-23, IV-25, and IV-26.

[333] See GOC's First Supplemental Response at Exhibit IV-23.

[334] See GOC's Third Supplemental Response at page 48 (where the GOC notes that there are many joint venture and foreign-owned companies in the PRC with CCP primary organizations) and Exhibit X-1.

The GOC also argues that it is unreasonable for the Department to require that the GOC provide "official" documentation to support its statements that Companies B and C did not have either: 1) CCP primary organizations; or 2) owners, directors, or managers that were officials or representatives at any level of the CCP.[335] As an initial matter, the GOC notes that in most instances the Department is requiring the GOC to provide documentation proving the negative. According to the GOC, the Department has never explained what evidence of an individual's non-participation at any level of the CCP would look like.[336] The GOC claims that, in the absence of official documentation to prove the negative, there is no legal basis for the Department to conclude that it cannot accept either the GOC's certifications or statements from the suppliers themselves that company officials were not part of any level of the CCP. The GOC contends that there are many instances when the Department accepts such certified statements, such as when examining a company's affiliations, and in such instances the Department does not require "official" documentation to prove the negative. The GOC claims that, not only has it made it clear in its responses to the Department whether or not the company individuals in question were involved in any level of the CCP, but it has also been forthcoming when, for specific individuals, it has been unable determine this. According to the GOC, the only reason the Department would require this documentation is because it is does not believe the GOC,[337] despite the fact that there is no reason to suspect that the GOC is trying to deceive the Department. Therefore, the GOC contends that the Department should conclude that the GOC cooperated to the best of its ability when it stated that individuals at Companies B and C were not involved at any level of the CCP. Consequently, the GOC and Taihe claim that insufficient evidence exists for the Department to determine that Companies B and C are "authorities" for purposes of the final results.

Furthermore, the GOC contends that there is insufficient evidence for the Department to conclude, as it did in the Preliminary Results, that Companies F and G are public bodies. The GOC notes that the Department cited the Public Body Memorandum at pages 35 and 36 as support for its position. However, the GOC argues that the Public Body Memorandum does not support the conclusion that the CCP exerts control over private companies through CCP primary organizations, but rather expresses uncertainty regarding the role of CCP primary organizations in private companies.[338] Further, the GOC contends that, while the Economist article quoted in the Public Body Memorandum mentions CCP primary organizations in private companies and SOEs, it is unlikely that the statements in the article were intended to apply equally to CCP

[335] Taihe notes that Company C's local CCP organization provided a certification attesting that Company C does not have a CCP primary organization. See GOC's Third Supplemental Response at Exhibit IX-1.

[336] The GOC points out that, in the prior administrative review, it provided evidence of an individual's election to the local CCP and his term only because that individual held his position prior to the POR. See Citric Acid Fourth Review, at Comment 4. However, the GOC argues that in most cases it is not able to provide such documentation because the individuals in question were never part of any level of the CCP and, thus, no CCP documentation naming these individuals exists.

[337] See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 77 FR 53856 (September 4, 2012), and accompanying Issues and Decision Memorandum (Shrimp from the PRC) at pages 4-8 (where the Department requested documentation regarding an individual owner's interest in a third country affiliate only after allegations were made regarding an undisclosed affiliate).

[338] See Public Body Memorandum at page 36.

primary organizations in both types of entities.[339] The GOC points out that the vast majority of the Economist article focuses on CCP primary organizations in SOEs, not private companies. According to the GOC, there is no support to conclude that the statement from the Economist that CCP primary organizations "hold meetings that shadow formal board meetings and often trump their decisions" applies to private companies.[340] The GOC argues that there are no other statements within the Public Body Memorandum to indicate that CCP primary organizations exert control over private businesses such that the mere presence of a CCP primary organization is sufficient to vest a private company with government authority. In any event, the GOC contends that the CCP constitution demonstrates that this is not so, noting that, while CCP primary organizations exercise oversight over CCP members, they "do not direct the work of their units."[341]

According to the GOC, the CCP constitution also makes clear that a CCP primary organization must maintain the tenets of the CCP set forth in Article 31 of the constitution; however, these obligations do not overlap or conflict with a company's decision making process.[342] Moreover, the GOC claims that the Department has not pointed to any evidence that CCP primary organization obligations invalidate provisions of the PRC Company Law (i.e., the law regulating a company's organization and conduct). According to the GOC, articles 37, 38, 47, 50, and 148 of the PRC Company Law demonstrate that a company's shareholders, directors, and managers are responsible for a company's internal operations, and it is unlawful for external organizations and authorities to interfere with these operations.[343] Thus, the GOC argues that it would be unlawful for the CCP, or a CCP primary organization, to interfere in the control of a private company. Finally, the GOC notes that, regarding Companies F and G, it stated that the responsibilities of the CCP primary organizations of these companies are limited to "party issues/philosophies, not government policies."[344] The GOC and Taihe claim that, in determining that the mere existence of a CCP primary organization in a company constitutes evidence that a company is an "authority," the Department failed to analyze the specific facts and statements on the record of this case regarding the specific CCP primary organizations at issue. However, the GOC argues that the law requires that the Department base its determinations on substantial evidence.[345] Thus, the GOC and Taihe argue that the Department cannot conclude in the final results that the mere presence of a CCP primary organization in a private company is sufficient to transform that company into a government authority.

---

[339] Id., at page 73.

[340] Id.

[341] See GOC's Caustic Soda and LTAR Specificity Response at Exhibit 19.

[342] Id. See also GOC's Third Supplemental Response at page 49 and Exhibit XI-23, where the GOC provided a narrative description of the types of activities it said were the typical functions of a CCP primary organization; and Id., at page 48 and Exhibit XI-22, where the GOC explained that while CCP primary organizations exist in private companies, joint ventures, and wholly-owned foreign companies, the CCP cannot project direct authority over the operations of these companies.

[343] See GOC's Third Supplemental Response at Exhibit XI-24.

[344] Id., at page 30.

[345] See Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1335 (CAFC 2002).

Finally, Taihe notes that the Department requires detailed evidence about the political affiliations of a company's shareholders, managers, and directors to overcome the rebuttable presumption of state control. According to Taihe, the Department's assumption regarding the control that the CCP exerts over economic activities in the PRC undermines its rationale for applying CVD law to the PRC.[346] Taihe argues that, because the Department's use of surrogate values in its non-market economy antidumping methodology offsets the PRC government's interference with input prices, the Department is thereby double counting by remedying subsidized input prices again through countervailing duties.[347] Taihe claims that the Department's primary justification in applying CVD law to the PRC was its finding that market forces now determine the prices of more than 90 percent of products traded in the PRC.[348] Thus, Taihe argues that this justification should logically lead to the conclusion that the PRC government does not interfere with the business activities of private companies unless proven otherwise. Consequently, Taihe contends that the Department's preliminary finding that each of Taihe's suppliers of sulfuric acid, steam coal, calcium carbonate, and caustic soda is an "authority" is unreasonable.

The petitioners disagree with both Taihe's and the GOC's arguments. The petitioners assert that it is of no consequence that Companies A, B, and C submitted certifications that none of their staff hold positions with the CCP at any level. The petitioners note that statements by input suppliers themselves are not sufficient to demonstrate the absence of CCP primary organizations or that the owners, directors, or managers are not acting as representatives of the CCP at any level. Specifically regarding Company A, the petitioners maintain that the record does not support Taihe's argument that Company A's CCP primary organization does not affect the business operations and decisions of the company. The petitioners point to a document entitled "Opinions Regarding Strengthening and Improvement of Party Construction in Non-State Enterprises (Interim)," which demonstrates that CCP primary organizations are not mere observers, but active participants in the development of strategic and operational objectives to expand the CCP's presence within an enterprise.[349] Further, the petitioners assert that CCP primary organizations participate in decision making and production and operation activities, citing as support documents entitled, "Notice of Issuing and Printing the Speech of Comrade Zhezhu Quan at the National Non-state Economic Organization's Campaign for Excellence Typical Experience Communication and Guidance Work Symposium," Fei Gong Chuang Zu Fa (2012) No. 1;[350] and "'Red Brand' in Enterprises – Overview of Ningxia Non-State Economic

[346] See Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Shauna Lee-Alaia and Lawrence Norton, Office of Policy, Import Administration, re: "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 (Georgetown Steel Memorandum).

[347] See, e.g., 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), and accompanying Issues and Decision Memorandum at Comment 1.

[348] See Georgetown Steel Memorandum at page 5.

[349] See Petitioners' LTAR Rebuttal Submission at page 6 and Exhibit 7. See also Citric Acid Fourth Review, at pages 39-40 (where the Department found that CCP primary organizations in non-SOEs are to carry out the CCP's policies and ensure that non-SOEs possess and/or exercise government functions and government authority).

[350] See the petitioners' submission dated April 14, 2015 (Petitioners' April 15 Submission), at pages 2-3.

Organizations' Party Construction Work."[351] The petitioners note that the GOC never rebutted this factual information. Thus, the petitioners assert that the Department should continue to find that the presence of a CCP primary organization in Company A means that this company is an "authority" within the meaning of section 771(5)(B) of the Act.[352]

The petitioners also take issue with the GOC's arguments relating to Companies B and C. As an initial matter, the petitioners point to record evidence contradicting the GOC's statement that no majority government-owned enterprise produced the steam coal purchased by Taihe during the POR.[353,354] The petitioners note that the GOC has never addressed the record evidence identifying Company B as an SOE. According to the petitioners, the Department in previous segments of this case has held that majority government-owned entities in the PRC "possess, exercise, or are vested with government authority" and the GOC exercises meaningful control of these entities.[355] Thus, the petitioners state that this constitutes an additional basis for the Department to find that Company B is an authority. Further, the petitioners disagree with the GOC's contention that the Department in prior segments of this case has relied on statements from input suppliers themselves as confirmation that they had no owners, directors, or managers that were officials or representatives at any level of the CCP.[356] Rather, the petitioners note that the Department has applied AFA in situations where the GOC has failed to provide requested information regarding government ownership, such as official government documentation or party membership lists. As a result, the petitioners dismiss as irrelevant the GOC's contention that the Department readily accepts certified statements from respondents regarding their affiliations. Moreover, the petitioners point out that, for Company B, the GOC was unable to obtain the full lists of members or representatives of the various CCP entities, except for entities at the national and provincial levels and, as a result, it instead sought the relevant information directly from Company B.[357] According to the petitioners, the GOC did not explain: 1) why the GOC did not provide the member lists for the CCP entities at the national and provincial levels;[358] 2) why the requested information for Company B is not available to the GOC; and 3) what efforts the GOC undertook (if any) to access such lists for the remaining CCP entities.

---

[351] Id. According to the petitioners, this document details the CCP's priority to establish CCP primary organizations in non-state enterprises to affect decisions on production and operation activities.

[352] The petitioners discuss additional information in Petitioners' Rebuttal Brief which contradicts the GOC's contention that none of the owners, directors, or managers of Company A was an official or representative at any level of the CCP during the POR. However, because this information is business proprietary in nature, we cannot discuss it here. See Petitioners' Rebuttal Brief at pages 36-39.

[353] See GOC's Initial LTAR Response at page 46.

[354] See Petitioners' LTAR Rebuttal Submission at page 6 and Exhibit 7. This information is business proprietary in nature, and therefore its particulars cannot be discussed here.

[355] See Citric Acid Fourth Review, at page 21.

[356] See GOC's Fifth Supplemental Response at pages 13-14.

[357] Id., at D.3.b.

[358] We note that the Department's inquiries are concerned with the presence of CCP officials, and not CCP members.

The petitioners note that the GOC's actions in this review are strikingly similar to those in the prior administrative review related to certain calcium carbonate and caustic soda suppliers. Specifically, in Citric Acid Fourth Review, the petitioners note that the GOC informed the Department that it could not obtain any information regarding CCP membership for certain suppliers, while at the same time providing party membership lists for other suppliers that the GOC "obtained on its own and not from the input producers themselves."[359] The petitioners assert that in the prior review the Department did not accept the GOC's attempt to provide information for some, but not all, input suppliers, finding that the GOC failed to provide the requested information, which the record demonstrated it could have obtained.[360] In this review, the petitioners point out that the GOC only contacted Company B directly to provide the requested information; however, for Company C, the GOC provided official documentation from the CCP itself.[361] Consequently, the petitioners assert that the record demonstrates that the GOC could have obtained the requested information for Company B, but it failed to do so. Finally, regarding Company C, the petitioners state that, while the GOC provided an official certification related to this company in response to the Department's supplemental questionnaire, this certification did not provide any information regarding the owners of Company C.[362] Thus, the record does not support the GOC's argument that it acted to the best of its ability when it stated that Companies B and C did not have any owners, directors, or managers involved at any level of the CCP. As a result, the petitioners maintain that the Department should continue to find that Companies B and C are "authorities" within the meaning of section 771(5)(B) of the Act in the final results.

Additionally, the petitioners find meritless the GOC's specific arguments regarding Companies F and G, and general arguments regarding private companies with CCP primary organizations. The petitioners maintain that the GOC has misinterpreted the CCP constitution. The petitioners point out that, while the GOC argues that the CCP constitution states that CCP primary organizations "do not direct the work of their units," the excerpt to which the GOC cites does not relate to private companies, but to CCP primary organizations in offices of the CCP or the state.[363] Further, the petitioners note that the GOC, in citing Article 31 of the CCP constitution which it claims directs CCP primary organizations in private companies not to "conflict with the producer entity's decision making process," has ignored other key constitutional provisions. According to the petitioners, Article 32 of the CCP constitution explicitly instructs CCP primary organizations in "non-public economic institution{s}" to, among other tasks: 1) carry out "the Party's principles and policies"; 2) provide "guidance to and oversee{} the enterprise in observing the laws and regulations of the state"; and 3) "stimulate{} the healthy development of the enterprise."[364] The petitioners also point out that this article of the constitution calls for CCP

[359] See Preliminary Results, at page 5.

[360] Id.

[361] See GOC's Initial LTAR Response at page 36; see also GOC's Fifth Supplemental Questionnaire at page 25 and Exhibit IX-1.

[362] See Preliminary Results, at page 7. The details of this certification are business proprietary information and, thus, we cannot discuss them here. See GOC's Third Supplemental Response at page 25 and Exhibit IX-1 for additional information.

[363] See GOC's Caustic Soda and LTAR Specificity Response at Exhibit 19 (Article 32).

[364] Id.

primary organizations to have direct oversight and control of business decisions in "non-public economic institutions,"[365] thereby placing the CCP primary organization in a position of authority over decisions made by the leaders of the company. Thus, the petitioners assert that the CCP's own constitution disproves the GOC's claim that the CCP cannot project direct authority over the operations of private companies in the PRC. Moreover, the petitioners assert that the GOC's arguments regarding the PRC Company Law are similarly unavailing. The petitioners cite Article 19 of the PRC Company Law, which provides that an organization of the CCP shall be established in a company to carry out the activities of the CCP pursuant to the CCP constitution and the company shall provide the necessary conditions for the activities of this CCP organization.[366] The petitioners maintain that this provision of the PRC Company Law proves that, contrary to the GOC's contention, it is not unlawful for CCP primary organizations to "interfere in the control of the company." The petitioners also disagree with the GOC's contentions regarding the Public Body Memorandum, pointing out that the Department in that memorandum under "Party Presence beyond the State Sector" discusses the presence of CCP primary organizations in private entities and the impact of Article 19 of the PRC Company Law.[367] Therefore, the petitioners assert that the Public Body Memorandum supports the Department's determination that the CCP exerts control over private companies through CCP primary organizations.[368] Consequently, the petitioners maintain that the Department should reject the GOC's arguments and continue to find that Companies F and G are "authorities" in the final results.

Finally, the petitioners take issue with Taihe's contention that the Department's "presumption of state control" conflicts with its determination that there have been sufficient changes in the PRC economy to apply the CVD law to the PRC. According to the petitioners, Taihe's arguments ignore the record evidence, discussed above, which supports the Department's determination that Companies A, B, and C are "authorities." Further, the petitioners point out that GOC failed to provide information requested by the Department regarding the CCP's role in the ownership and management of Companies B and C.[369] The petitioners note that in Archer Daniels Midland, the Court upheld the Department's application of AFA to the GOC, which adversely impacted a cooperating party, where the GOC failed to provide information relevant to determining whether import producers were "authorities."[370] The petitioners assert that the GOC's failure to provide requested information in this administrative review is identical to the scenario presented in Archer Daniels Midland.

---

[365] Id.

[366] See GOC's Third Supplemental Response at Exhibit XI-24 (Article 19).

[367] See Public Body Memorandum at page 35.

[368] In Petitioners' Rebuttal Brief at pages 43-44, the petitioners discuss additional information which they state contradicts the GOC's claim that Companies F and G are not government-controlled. However, because the petitioners' arguments contain business proprietary information, we cannot discuss them here. See Petitioners' April 15 Submission at pages 3 and 4 for further discussion. In any event, the petitioners note that the GOC never submitted anything to rebut this information.

[369] See Preliminary Results, at page 21.

[370] See Archer Daniels Midland, 917 F. Supp. 2d at 1342.

Department's Position:

We continue to find that each of the companies which supplied Taihe with sulfuric acid, steam coal, calcium carbonate, and caustic soda is an "authority" within the meaning of section 771(5)(B) of the Act.

As explained in the Preliminary Results, in order to do a complete analysis of whether producers of sulfuric acid, steam coal, calcium carbonate, and caustic soda are "authorities" within the meaning of section 771(5)(B) of the Act, we sought information regarding whether any individual owners, board members, or senior managers were government or CCP officials and the role of any CCP primary organization within the companies.[371] Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or otherwise influenced by certain entities, the Department requested information regarding the means by which the GOC may exercise control over company operations and other CCP-related information.[372] The Department explained its understanding of the CCP's involvement in the PRC's economic and political structure in the current and past PRC CVD proceedings,[373] including why it considers the information regarding the CCP's involvement in the PRC's economic and political structure to be relevant.

In this review, the GOC reported that neither Company B nor Company C had either: 1) CCP primary organizations; or 2) any owners, executive directors, or senior managers which were officials or representatives of any of the nine entities at any level.[374] Therefore, in supplemental questionnaires, we requested that the GOC provide official documentation from the GOC or CCP to support these claims. In response to our requests, for Companies B and C, the GOC provided statements from these companies, rather than official documentation from the GOC or CCP.[375,376]

We disagree with the GOC's argument that the Department should accept the statements of Companies B and C in lieu of official documentation merely because the Department accepts a company's own certified statements in certain instances, like affiliation.[377] When examining a company's affiliations, the party possessing the information relevant to the Department's analysis is the company itself. However, when examining whether a company has owners,

---

[371] See Preliminary Results, at page 7.

[372] See Department's Initial Questionnaire at the Input Producer Appendix.

[373] See Citric Acid Third Review, at Comment 6. See also Additional Documents Memorandum, which includes Public Body Memorandum, and its attachment CCP Memorandum.

[374] See Preliminary Results, at page 7.

[375] See GOC's First Supplemental Response at page 26 and Exhibits IV-25 and IV-26.

[376] In addition, because Company C's articles of association indicated that its ownership changed during the POR, we asked the GOC to provide official documentation demonstrating that none of the new owners served as officials or representatives of any of the nine CCP entities. In response, the GOC provided a certification from the CCP; however, the CCP's certification did not provide any information regarding the owners of Company C. See GOC's Third Supplemental Response at page 25 and Exhibit IX-1.

[377] See, e.g., Shrimp from the PRC, at pages 4-8.

senior managers, or directors which are CCP officials or has a CCP primary organization, the party possessing direct knowledge of these facts is the CCP (or GOC) itself.[378] Contrary to the GOC's contention, it is the prerogative of the Department, not the GOC, to determine what information is relevant to our analysis. The Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be essential because public information suggests that the CCP exerts significant control over activities in the PRC.[379] 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."[380] 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.[381] Because the GOC did not provide the information we requested regarding this issue, we have no basis for reevaluating the Department's prior factual findings on the role of the CCP.

As a result of the GOC's withholding of information and failure to cooperate by not acting to the best of its ability, we find that CCP officials are present in Companies B and C as individual owners, board members, or senior managers, and that this gives the CCP, as the government, meaningful control over the companies and their resources. Companies that are meaningfully controlled by the GOC/CCP possess, exercise or are vested with governmental authority because the government uses them to fulfill its policy objectives, as described in the Public Body Memorandum. Thus, we find that Companies B and C are "authorities" within the meaning of section 771(5)(B) of the Act.[382]

Regarding Companies A, F, and G, we disagree with the GOC's and Taihe's contentions regarding CCP primary organizations. The Public Body Memorandum notes that, according to the Xinhua News Agency, there were a total of "178,000 party organs in private firms in 2006, a rise of 79.8 percent over 2002."[383] The GOC fails to acknowledge or address that CCP primary organizations are present in private enterprises in growing numbers and that expert, third-party sources have indicated that these organizations may be imbued with significant power such that they are properly considered to be "authorities" for the purpose of U.S. CVD law.[384] Included in the Public Body Memorandum and CCP Memorandum, for example, is a report that notes:

---

[378] See, e.g., Citric Acid Fourth Review, and at pages 4-6.

[379] See Additional Documents Memorandum, which includes Public Body Memorandum, and its attachment CCP Memorandum.

[380] Id., at CCP Memorandum at 33.

[381] Id., at Public Body Memorandum at 35-36, and sources cited therein.

[382] See Archer Daniels Midland, 917 F. Supp. 2d at 1341-42.

[383] See Public Body Memorandum at 36, citing "Brief Introduction of the Communist Party of China," ChinaToday.com, current as of April 2012 at http://www.chinatoday.com/org/cpc/.

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

> The party has cells in most big companies – in the private as well as the state-owned sector – complete with their own offices and files on employees. It controls the appointment of captains of industry and, in the SOEs, even corporate bodies. It holds meetings that shadow formal board meetings and often trump their decisions, particularly on staff appointments. It often gets involved in business planning and works with management to control pay.[385]

The information provided by the GOC in this administrative review does not change this information, but instead further supports the information in the Department's Public Body Memorandum because it demonstrates that the CCP's focus in establishing a CCP primary organization within private enterprises goes beyond the mere "education" of members in Party affairs. Rather, the information on the record and provided by the GOC instead indicates that the primary focus of the CCP organizations and its members in private companies is the implementation of the Party's line, principles, policies, and resolutions.[386]

Specifically, the CCP constitution provides the following:

> In a non-public economic institution, the primary Party organization carries out the Party's principles and policies, provides guidance to and oversees the enterprise in observing the laws and regulations of the state, exercises leadership over the trade union, the Communist Youth League organization and other mass organizations, rallies the workers and office staff around it, safeguards the legitimate rights and interests of all quarters and stimulates the healthy development of the enterprise.[387]

We also disagree with the GOC's contention that the PRC Company Law makes it illegal for a CCP primary organization to interfere in the internal operations of a company. Article 19 of the PRC Company Law provides that, "{a}n organization of the Communist Party of China (CPC) shall be established in a company to carry out activities of the CPC pursuant to the Constitution of the Communist Party of China. The company shall provide necessary conditions for the activities of the organization of the CPC."[388]

Moreover, we note that information on the record in a document entitled "Opinions regarding Strengthening and Improvement of Party Construction in Non-State Enterprises (Interim)" (Party Construction in Non-SOEs) provides further support to the Public Body Memorandum.[389] According to Party Construction in Non-SOEs, "Non-state enterprises are an important force for developing the socialist market economy."[390] To that end, this document provides that "Party organizations in non-state enterprises are fortresses of the party in enterprises, which play a core

---

[385] Id.

[386] See GOC's Caustic Soda and LTAR Specificity Response at Exhibit 19.

[387] Id.

[388] See GOC's Third Supplemental Response at Exhibit XI-24.

[389] See Petitioners' LTAR Rebuttal Submission at Exhibit 1.

[390] Id.

political role among employee masses of the enterprises, and play a political guidance role in the development of the enterprises."[391] Listed as some of the main responsibilities of party organizations are to "…propagate and implement the party's direction, principle, and policy…and guide and supervise the enterprise to conduct lawful operation and fulfill social responsibilities," "…unite all the employee messes {sic} around the party organization," "…promote a steady enterprise and society," "{o}rganize and lead party members and employee masses to endeavor to be excellent for enterprise development, exert the advanced model function of party organizations and party members, and promote production and operation," and "…adequately exert the function of discipline inspection organizations in maintaining and implementing party disciplines…"[392] According to Party Construction in Non-SOEs, "Party organizations in large-scale enterprises with big influence in the society and {a} large number of party members, can change the affiliation relationship and be managed directly by party organizations above the county level."[393] Further, this document states that these organizations "…firmly connect party organization activities with enterprise production, operation, and management, to promote and improve together with same goals…{e}stablish a joint study mechanism of the party organization and the enterprise management, to get familiar with party and state policies and regulations, understand upper-level decisions and deployments, and communicate on enterprise production and operation."[394] These guidelines for CCP primary organizations in non-SOEs indicate that the CCP primary organizations are not mere observers within these enterprises but active participants in the development of strategic and operational objectives of the enterprises with the intent on expanding the CCP's presence within the enterprise.

We, therefore, find that this information confirms the Department's understanding of the CCP and demonstrates that the CCP meets the definition of the term "government" for the limited purpose of applying the U.S. CVD law to the PRC. The GOC has tried to draw a distinction between CCP primary organizations in SOEs and non-SOEs. However, as discussed above, the Party Construction in Non-SOEs explicitly states that CCP primary organizations in non-SOEs are to carry out the Party's line and policies and guide and monitor the enterprise to comply with the nation's laws and regulations. The GOC argues that CCP primary organizations are not involved in the business operations or day-to-day operations of non-SOEs, but that is not the relevant question. The relevant question is whether an entity possesses, exercises or is vested with government authority. The information outlined above demonstrates that CCP primary organizations are placed in non-SOEs to ensure those entities "fulfill social responsibilities," maintain and implement the CCP's (i.e., the GOC's) line and principles, and ensure social development, among other things. In other words, the CCP primary organizations ensure that non-SOEs possess and/or exercise government functions and government authority.

Therefore, we find that the GOC did not provide evidence to counter record information describing the function of the CCP primary organizations within private companies. Moreover,

[391] Id.

[392] Id.

[393] Id.

[394] Id.

regarding Company A, we disagree with Taihe that the internal rules of Company A's "party branch" confirm that it is not involved in Company A's business operations. These internal rules make no such statement, but rather provide, "The party branch shall carry out criticism and self-criticism, disclose and correct the defects and errors in work, educate and examine the member leaders to stay in close compliance with the national laws, party disciplines and political disciplines, prevent the interests of the state, community and the people from being infringed."[395] In addition, while Taihe points to a certification from Company A that its primary organization is not involved in its business operations, we note that the party possessing direct knowledge of these facts is the CCP (or GOC) itself, and information from the CCP (and Company A's internal rules) supports the Department's finding that CCP primary organizations, including the one present in Company A, ensure that non-SOEs possess and/or exercise government functions and government authority. As a result, we continue to find that Companies A, F, and G are "authorities" within the meaning of section 771(5)(B) of the Act and are capable of providing a financial contribution.

Finally, we disagree with Taihe's contention that the Department acts inconsistently by: 1) applying CVD law to the PRC (because market forces determine the prices of most traded goods); but not also 2) recognizing that the GOC does not interfere in the business activities of private companies, as a rebuttable presumption. As we stated in Tetra from the PRC, the case-specific facts, or lack thereof, in this proceeding cannot be the basis for negating our Georgetown Steel Memorandum findings, which were based on a broad, systemic analysis of the overall Chinese market.[396] In any case, Taihe mischaracterizes our Georgetown Steel Memorandum findings. The main thrust of those findings was that, notwithstanding a few exceptional instances of de jure market-oriented reforms, the state continues to exercise effective control overall.[397] For example, the Georgetown Steel Memorandum states that, while the PRC's non-market economy today is more flexible than Soviet-style economies of the past, it nevertheless remains "riddled with the distortions attendant to the extensive intervention of the PRC Government," and that, while private enterprises may generally be free to pursue entrepreneurial activities, they "still conduct all businesses within the broader, distorted economic environment over which the PRC Government has not ceded fundamental control."[398] More to the point, our findings in this proceeding rely on AFA for Companies B and C 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. Further, as discussed above, information on the record demonstrates that Companies A, F, and G are "authorities" because they each have a CCP primary organization. Thus, based on this evidence, we disagree with

[395] See GOC's Third Supplemental Response at Exhibit X-1.

[396] See Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 79 FR 62594 (October 20, 2014), and accompanying Issues and Decision Memorandum (Tetra from the PRC) at pages 14 and 27. See also Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 79 FR 76962 (December 23, 2014), and accompanying Issues and Decision Memorandum at Comment 3.

[397] See Tetra from the PRC, at page 47.

[398] Id.

Taihe that our finding that each of Taihe's suppliers of sulfuric acid, steam coal, calcium carbonate, and caustic soda is an "authority" is unreasonable.

Comment 4: *Including Ocean Freight and Import Duties in the International Freight Benchmark for Input LTAR Programs*

In the Preliminary Results, we included international freight expenses and customs duties in the benchmark prices for sulfuric acid, steam coal, calcium carbonate, and caustic soda in accordance with 19 CFR 351.511(a)(2)(iv), which directs the Department to adjust the benchmark price to reflect the price that a firm would pay if it imported the product.[399]

According to Taihe, the Department's inclusion of international freight expenses and customs duties in the benchmark is incorrect. Taihe notes that section 771(5)(E)(iv) of the Act requires that the benchmark comport with market reality in the country under investigation. Further, Taihe states that the purpose of a benchmark is to measure the difference between the price of a raw material supplied by a state authority and the prevailing market price for that raw material. Therefore, Taihe argues that adjusting the benchmark to add international freight expenses and customs duties that were not incurred by the respondent simply inflates this difference, resulting in a benefit that is not consistent with the respondent's economic reality. Taihe contends that the courts have directed the Department to ensure that its determinations reflect economic reality.[400] Thus, Taihe claims that the Department cannot lawfully countervail international freight expenses and customs duties because they are neither programs under review, nor were they incurred by Taihe in the acquisition of the inputs for LTAR under review. As a result, Taihe argues that the Department should modify its benchmark calculations for the final results to measure only the market value of each input and the transportation Taihe would have incurred to move the input from its suppliers to the factory.

The petitioners disagree, noting that Taihe's argument is contradicted by the Act, the Department's regulations, and decisions by the CAFC and the CIT.[401] The petitioners point out that Taihe has not cited any administrative decision or ruling by the CAFC or CIT to support its challenge to the Department's benchmark calculation. Consequently, the petitioners assert that the Department should continue to include international freight expenses and customs duties in the input for LTAR benchmarks used for purposes of the final results.

---

[399] See Preliminary Results, at "Provision of Sulfuric Acid for LTAR," "Provision of Steam Coal for LTAR," "Provision of Calcium Carbonate for LTAR," and "Provision of Caustic Soda for LTAR."

[400] See, e.g., United States v. Eurodif S.A., 555 U.S. 305, 318 (2008) (holding that, when reading regulatory statutes, the emphasis should be on economic reality); Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States, 716 F.3d 1370, 1378 (CAFC 2013) (holding that the rates the Department applies must be reasonable, supported by substantial evidence, and reflect economic reality); and Rhone Poulenc v. United States, 899 F.2d 1185, 1191 (CAFC 1990) (directing the Department to calculate margins accurately).

[401] See Essar Steel Ltd. v. United States, 678 F.3d 1268 (CAFC 2012) (Essar Steel) (where the Court held that the Department's inclusion of delivery charges and import duties in the benchmark was both consistent with the statute and the Department's regulations and supported by substantial evidence); and Zhaoqing New Zhongya Aluminum Co. v. United States, 929 F. Supp. 2d 1324 (CIT 2013) (Zhaoqing Aluminum) (where the Court held that the Department's inclusion of import duties in the benchmark was reasonable and in accordance with law).

Department's Position:

We continued to include international freight expenses and customs duties in the benchmarks for sulfuric acid, steam coal, calcium carbonate, and caustic soda. The Department's regulations at 19 CFR 351.511(a)(2)(iv) state:

> In measuring the adequacy of remuneration under paragraph (a)(2)(i) or (a)(2)(ii) of this section, the Secretary will adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product. This adjustment will include delivery charges and import duties. (emphasis added)

Furthermore, the CAFC has upheld the Department's inclusion of freight expenses and import duties in the calculation of a tier two benchmark. Specifically, in Essar Steel, the Court stated:

> Essar further argues that Commerce and the trial court erred by adding freight and import costs to the world market price. Both the statute and the regulation, however, require that these costs be added to the benchmark prices. 19 U.S.C. § 1677(5)(E) ("{T}he adequacy of remuneration shall be determined in relation to prevailing market conditions . . . includ{ing} price, quality, availability, marketability, transportation, and other conditions of sale." (emphasis added)); 19 C.F.R. § 351.511(a)(2)(iv) (stating that the benchmark price "will include delivery charges and import duties" (emphasis added)). Commerce's decision to add these charges to the benchmark prices is consistent with the relevant statute and regulation and is supported by substantial evidence.[402]

Therefore, we find that the inclusion of international freight expenses and customs duties in the benchmarks for the inputs for LTAR at issue in this case is in accordance with law.

Comment 5: *The Selection of Ports in the International Freight Benchmark for Input for LTAR Programs*

In the Preliminary Results, we relied on the international freight rates submitted by the petitioners in the calculation of the benchmarks for sulfuric acid, caustic soda, and calcium carbonate.[403] These rates were for international freight expenses from ten cities to Shanghai.[404]

Taihe argues that the ports used by the petitioners to obtain their reported international freight rates do not reasonably measure the prevailing market conditions for transportation, in accordance with section 771(5)(E)(iv) of the Act. According to Taihe, the benchmarks used by

---

[402] See Essar Steel, 678 F.3d 1268. See also Zhaoqing Aluminum, 929 F. Supp. 2d 1324 ("Accordingly, because the world market price by regulation must include import duties, Commerce's decision to include such import duties in its calculation of the benchmark is reasonable and in accordance with law.")

[403] See Preliminary Results, at "Provision of Sulfuric Acid for LTAR," "Provision of Calcium Carbonate for LTAR," and "Provision of Caustic Soda for LTAR."

[404] These cities are Buenos Aires, Sydney, Santos, Vancouver, Mombasa, Auckland, St. Petersburg, Rotterdam, and Los Angeles. See Petitioners' Benchmark Submission at Exhibits 9 and 10.

the Department are supposed to represent world market prices, but these ports do not represent a fair geographic spread of world ports. Taihe argues that there are regions of the world which have been completely left out of this data (i.e., Asia), while certain of the ports used (i.e., Buenos Aires and Santos) are close together, giving additional weight to the pricing conditions in a small region of the world. Taihe contends that the majority of the chemicals at issue are shipped to the PRC from other Asian cities. As a result, Taihe claims that, to reasonably reflect world market prices, the international freight rates should be based more on Asian cities than other regions of the world.

Moreover, Taihe argues that the petitioners' international freight rates are based on several insignificant, non-commercial ports. According to Taihe, half of the ports used to calculate international ocean freight (i.e., Buenos Aires, Sydney, Mombasa, Auckland, and St. Petersburg) are not among the top 50 container ports in the world, while two of the ports used (i.e., Mombasa and Auckland) are not even among the top 100.[405] Taihe contends that many of these small ports have higher international freight rates, even though they are closer to Shanghai (and the freight rate should be less expensive). Therefore, Taihe claims that the freight rates from the smaller ports are not representative of prevailing transportation conditions around the world. As a result, Taihe argues that the Department should rely on international freight rates that reasonably reflect world freight rates, considering both the geographic location and the commercial use of the ports. According to Taihe, the freight rates it submitted represent the cost of shipping from the major commercial ports of each region of the world to Shanghai.[406] Thus, Taihe contends that the freight rates it provided reasonably reflect world freight rates and the Department should rely on its submitted data for its calculations for the final results.

The petitioners disagree, noting that 19 CFR 351.511(a)(2)(ii) requires that the Department average world market prices when multiple prices are available, which is what was done here. According to the petitioners, Taihe is suggesting that the geographic location and commercial use of the port must be accounted for when calculating benchmark international freight rates. The petitioners point out that this is analogous to arguments that the Department should calculate a world market price using only prices from significant producers, which the Department has previously rejected.[407] The petitioners note that Taihe does not dispute that the international freight rates used in the Preliminary Results are contemporaneous with the POR and relate to the inputs at issue here. The petitioners assert that discarding them as Taihe argues would inhibit the Department's ability to calculate a robust benchmark. As a result, the petitioners maintain that the Department should reject Taihe's argument and continue to rely on the international freight rates used in the Preliminary Results.

[405] See Taihe's Rebuttal Benchmark Submission, dated May 11, 2015 (Taihe's Rebuttal Benchmark Submission), at Exhibit 1.

[406] See Taihe's Benchmark Submission at Exhibits 7 and 8.

[407] See Citric Acid Third Review, at Comment 13B. See also Magnesia Carbon Bricks from the PRC, at Comment 7.

Department's Position:

We did not exclude the international freight rates for any ports for the final results. However, we modified our calculation of the international freight benchmarks for sulfuric acid and caustic soda (discussed in Comment 7, below) to average the data provided by the petitioners and Taihe, including hazardous shipping charges.

We disagree that it would be appropriate to exclude international freight rates from the freight benchmark for ports which Taihe deems to be insignificant or non-commercial. The Department addressed a similar argument in Containers from the PRC, where a respondent argued that the ports on which certain ocean freight rates were based did not match the source of the steel benchmarks used, stating:

> We disagree with Singamas that the Department should exclude ocean freight values from North America (*i.e.*, Long Beach and Vancouver) because the Department did not rely on any steel benchmarks specifically from North America in calculating the steel benchmarks used in the Preliminary Determination. We would disregard freight quotes from North America only if there was evidence that North American HRS is not available for purchase/import by Chinese companies or if we used data sources which would allow the Department to match the freight sources with the sources for the steel benchmarks. We do not have that evidence on the record, so we are retaining all the *Steel Wire Rod from China* ocean freight benchmarks in our calculation of the ocean freight benchmark.[408]

Similar to Containers from the PRC, there is no evidence on the record of this case that sulfuric acid, calcium carbonate, and caustic soda shipped from the ports Taihe deems "insignificant" are not available for purchase/import by companies in the PRC. Moreover, we did not use data sources for the benchmarks for these inputs which would allow us to match the freight rate sources with the sources of these benchmarks. Therefore, we continued to include ocean freight rates for all ports in our freight benchmark calculations for the final results.[409] This approach is consistent with our practice in other cases where we determined that "so long as the ocean freight costs are reflective of market rates for ocean freight, and representative of the rates an importer – and not necessarily the respondent specifically – would have paid, then the prices are appropriate to include in our benchmark."[410]

---

[408] See 53-Foot Domestic Dry Containers From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 80 FR 21209 (April 17, 2015), and accompanying Issues and Decision Memorandum (Containers from the PRC) at Comment 6D.

[409] As noted above, we have modified our calculation of the freight benchmarks for sulfuric acid and caustic soda to average the data submitted by the petitioners and Taihe, including hazardous shipping charges. See Comment 7 for further discussion.

[410] 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 Comment 9C.

Comment 6: *Whether to Use Freight Rates for Flat Rack Containers in the International Freight Benchmark for the Calcium Carbonate for LTAR Program*

In the Preliminary Results, as noted above, we relied on the international freight rates submitted by the petitioners in the calculation of the benchmark for calcium carbonate, which included flat rack container and special equipment fees.[411]

Taihe argues that the Department should not include these additional fees in the calculation of the international freight benchmark for calcium carbonate. Taihe notes that the special equipment fee component is high, often representing over 50 percent of the total freight expense.[412] Taihe claims that, while the Department included these fees in Citric Acid Third Review and Citric Acid Fourth Review,[413] Taihe has placed information on the record showing that calcium carbonate can be shipped in a normal container, not a flat rack, and thus the special equipment fee is not needed.[414] Taihe contends that it is illogical that a flat rack container would be used to transport a chemical long distances. Taihe notes that the Department itself has recognized that it is expensive to use a flat rack container and has excluded such additional costs from its benchmark calculations in other cases.[415] Taihe points to Maersk's description of a flat rack container as special equipment for heavy cargo that requires special attention, or does not fit into a standard container.[416] Further, Taihe claims that, while the petitioners provided information that shows that calcium carbonate can be packed into big bags for ocean shipment, it has not shown that this is either: 1) the normal way to ship calcium carbonate; or 2) that big bags are normally shipped in flat rack containers.[417]

In any event, Taihe contends that the Department improperly shifted the burden of proof in the Preliminary Results and Citric Acid Fourth Review, from requiring the party that submitted the flat rack costs to establish that these containers should be used, to requiring that Taihe prove that such a container should not be used. According to Taihe, there is no reason for the Department

[411] See Preliminary Results, at "Provision of Calcium Carbonate for LTAR."

[412] See the Petitioners' Benchmark Submission at Exhibit 4.

[413] See Citric Acid Third Review, at Comment 13H; and Citric Acid Fourth Review, at Comment 8.

[414] See Taihe's Benchmark Submission at Exhibit 7.

[415] 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 (Seamless Pipe from the PRC) at Comment 9C (where the Department excluded a "special equipment service" surcharge because there was no evidence that a firm would pay this fee to import the product); and Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2011, 78 FR 3868 (February 3, 2013) (OCTG from the PRC Prelim), and accompanying Preliminary Decision Memorandum at "Provision of Steel Rounds," and unchanged in Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011, 78 FR 49475 (August 14, 2013) (OCTG from the PRC Final) (where the Department did not include flat rack charges because it found that these charges were not necessarily reflective of what a firm would pay to import the product).

[416] See the Petitioners' Benchmark Submission at Exhibit 5.

[417] Id.

to assume that a flat rack container is used and require that parties prove the negative. Taihe points out that flat rack containers are more expensive and no reasonable company would pay more for using such containers unless it were necessary. Taihe argues that there is no evidence that flat rack container and special equipment fees are reflective of what a firm would pay to import the product, in accordance with 19 CFR 351.511(a)(2)(iv), or that the resulting benchmark including these fees comports with market reality, in accordance with section 771(5)(E)(iv) of the Act. Thus, Taihe claims that the burden should be placed on the petitioners to show that the flat rack container and special equipment fees are necessary for the shipment of calcium carbonate.[418] Consequently, Taihe contends that, for purposes of the Final Results, the Department must use the international freight rates it provided for shipping calcium carbonate in a standard container, rather than the international freight rates provided by the petitioners.

Nonetheless, Taihe maintains that, if the Department continues to rely on benchmark international freight rates based on flat rack containers for calcium carbonate, it must adjust its calculation to properly reflect the payload of a flat rack container (i.e., 34,500 kilograms).[419] Taihe stated that doing so would be consistent with the Department's practice of using the maximum payload of a container when calculating benchmark freight rates.

The petitioners disagree with Taihe, noting that the Department has recognized in prior segments of this proceeding that limestone flux, a form of calcium carbonate, is a heavy material and that specialized "flat racks" are used to ship such heavy materials.[420] Further, the petitioners point to record evidence showing that limestone flux, as a heavy material, is packed in jumbo bags, which are top loaded into containers.[421] As a result, the petitioners assert that flat racks are the appropriate containers in which to ship limestone flux. The petitioners note that special equipment fees are incurred when cargo is shipped using flat racks. According to the petitioners, when faced with this issue in prior segments of this proceeding, the Department determined that it was appropriate to use international freight rates for flat rack containers in the benchmark for calcium carbonate.[422]

Finally, the petitioners disagree with Taihe's suggestion that the Department's methodology has inappropriately reversed the burden of proof. Specifically, the petitioners maintain that Taihe has misstated the Department's findings in OCTG from the PRC Prelim and Seamless Pipe from the PRC. According to the petitioners, in each of those cases the respondent obtained a price quotation from its freight forwarder for the specific input at issue, which did not include a flat-rack surcharge.[423] The petitioners note that there is no similar evidence on the record of this administrative review. Thus, the petitioners assert that the Department should reject Taihe's arguments for the final results.

---

[418] See QVD Food Co., Ltd. v. United States, 658 F.3d 1318, 1324 (CAFC 2011)

[419] See the Petitioners' Benchmark Submission at Exhibit 5.

[420] See, e.g., Citric Acid Fourth Review, at Comment 8.

[421] See the Petitioners' Benchmark Submission at Exhibit 5.

[422] See Citric Acid Third Review, at Comment 13H; and Citric Acid Fourth Review, at Comment 8.

[423] See OCTG from the PRC Prelim, at "Provision of Steel Rounds," unchanged in OCTG from the PRC Final; and Seamless Pipe from the PRC, at Comment 9C.

Department's Position:

We continued to include flat rack and special container fees in the calculation of the international freight benchmark for calcium carbonate. As explained in 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration using a tier one or tier two benchmark, pursuant to 19 CFR 351.511(a)(2)(i) or (ii), respectively, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. We disagree with Taihe that it has provided information which shows that calcium carbonate is not shipped in flat rack containers; rather, we find that the evidence the petitioners provided leads to the reasonable conclusion that calcium carbonate may be shipped using flat rack containers.[424] Further, we find Taihe's reliance on OCTG from the PRC Prelim and Seamless Pipe from the PRC misplaced, given that in those cases there was information on the record to demonstrate that the respondents did not incur the flat rack and special equipment fees when shipping the products at issue.[425] However, in the instant review, there is no evidence on the record demonstrating that such fees are not incurred in the shipment of calcium carbonate. As a result, consistent with Citric Acid Third Review and Citric Acid Fourth Review, we continued to include the flat rack and special equipment fees in the calculation of the international freight benchmark for calcium carbonate.[426]

We agree with Taihe that it is appropriate to base our calculations on the payload of a flat rack container. Accordingly, we have adjusted our calculation of the international freight benchmark for calcium carbonate to reflect that payload, i.e., 34,500 kilograms.[427]

Comment 7: *Whether to Include the Costs for Hazardous Shipping Charges in the International Freight Benchmark for the Sulfuric Acid and Caustic Soda for LTAR Programs*

In the Preliminary Results, as noted above, we relied on the international freight rates submitted by the petitioners in the calculation of the benchmarks for sulfuric acid and caustic soda, using data for 40-foot containers which included hazardous shipping charges.[428]

Taihe argues that the Department has not supported with substantial evidence the hazardous shipping charges included in the international freight rates used in the Preliminary Results. Taihe claims that the record of this administrative review lacks evidence that such charges are required to ship these chemicals. According to Taihe, the Department based its decision to include these charges in the Preliminary Results on its practice of including these charges in prior citric acid reviews. However, Taihe contends that a history of including such charges does

[424] See Petitioners' Benchmark Submission at Exhibit 5 (providing shipping data for "Salt, sulphur, earths and stone, plastering materials, lime, cement, marble, granite").

[425] See OCTG from the PRC Prelim, at "Provision of Steel Rounds," unchanged in OCTG from the PRC Final; and Seamless Pipe from the PRC at Comment 9C. See also RZBC Group Shareholding Co. v. United States, CIT No. 14-00041, Slip Op. 15-83, at 39 n.7 (CIT 2015).

[426] See Citric Acid Third Review, at Comment 13H; and Citric Acid Fourth Review, at Comment 8.

[427] See Taihe Final Calc Memorandum for the revised calculation.

[428] See Preliminary Results, at "Provision of Sulfuric Acid for LTAR" and "Provision of Caustic Soda for LTAR."

not mean that this decision is supported by substantial evidence. Specifically, Taihe claims that: 1) the Department has pointed to no facts on this record to support that shipments of these chemicals include these charges; 2) the petitioners did not explain how the information they provided regarding the safety and hazard class of sulfuric acid and caustic soda relate to the hazardous shipping charges in the Maersk freight rates; and 3) Taihe itself does not incur these charges when it purchases these chemicals domestically and, thus, they do not reflect its commercial reality.

In addition, Taihe takes issue with the Department's decision to use the international freight rates for 40-foot containers submitted by the petitioners, rather than the 20-foot containers it submitted, for sulfuric acid.[429] According to Taihe, the Department made an assumption without evidence that this chemical is shipped in 40-foot containers and placed the burden on Taihe to prove that this is not so. However, Taihe states that, because it did not import this chemical, it cannot submit information regarding how it is shipped based on its own experience. Taihe notes that neither it nor the petitioners submitted data showing that either 20- or 40-foot containers are more commonly used to import this chemical. Therefore, Taihe contends that the Department has no basis to view the petitioners' submitted data as more reliable than Taihe's. As a result, at a minimum, Taihe argues that the Department should determine that both the 20- and 40-foot container freight rates are reasonable and use both for purposes of the final results.[430]

The petitioners disagree, noting that evidence on the record of this and prior segments of this proceeding demonstrates that: 1) sulfuric acid and caustic soda are volatile chemicals that must be shipped in special tanks and handled with caution; and 2) certain fees apply for such shipments. [431,432] The petitioners note that the data they submitted on the record of this review regarding sulfuric acid and caustic soda is the same information they have provided in prior segments of this proceeding, where the Department included hazardous shipping charges as part of the international freight rate benchmark for these chemicals. According to the petitioners, this data contradicts Taihe's contention that the hazardous shipping charges are not supported by record evidence. Further, the petitioners note that Taihe's claim that it does not incur hazardous shipping charges when purchasing these chemicals domestically is irrelevant to the Department's calculation of a tier two benchmark. Therefore, the petitioners maintain that the Department should continue to include the hazardous shipping charges in its calculation of the benchmark international freight rates for these chemicals.

Department's Position:

In the Preliminary Results, we used the petitioners' submitted international freight rates to calculate the sulfuric acid and caustic soda benchmarks. According to the source documents

[429] We used the same international freight rates in the benchmark calculations for sulfuric acid and caustic soda in the Preliminary Results. See Taihe Prelim Calc Memo at Exhibits 10 and 15. Thus, while Taihe only made this argument for sulfuric acid, it equally applies to caustic soda.

[430] According to Taihe, the Department can rely on its data even if it decides it is appropriate to include the hazardous shipping charge because this charge is simply a flat fee added to the international freight rate.

[431] See Citric Acid Third Review at Comment 13G; and Citric Acid Fourth Review at Comment 12.

[432] See Petitioners' Benchmark Submission at Exhibits 10 and 11.

provided, these rates were obtained from Maersk's website, covering 10 international routes to Shanghai, for the shipment of inorganic chemicals in 40-foot containers and included hazardous shipping charges (i.e., "dangerous cargo service" charges).[433] Taihe also submitted international freight data obtained from Maersk's website, covering five international routes to Shanghai; these data are for the shipment of chemical products in 20-foot containers.[434] Because there is no information on the record demonstrating which size container is commonly used to ship either sulfuric acid or caustic soda, we averaged the international freight data submitted by both the petitioners and Taihe for purposes of the final results.[435]

We disagree with Taihe's contention that the record lacks evidence that shipments of sulfuric acid and caustic soda incur hazardous shipping charges. Although Taihe submitted information that chemical products can be shipped without incurring a hazardous shipping fee, the petitioners provided information demonstrating that these are hazardous chemicals.[436] Further, the benchmark information for inorganic chemicals which the petitioners submitted includes this hazardous shipping fee.[437] Therefore, because it is clear from the information on the record that sulfuric acid and caustic soda are hazardous chemicals, we continued to include hazardous shipping charges in our calculation of the freight benchmark for sulfuric acid and caustic soda.

IX. RECOMMENDATION

We recommend applying the above methodology for these final results.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

7 December 2015
Date

[433] See the Petitioners' Benchmark Submission at Exhibits 9 and 10.

[434] See Taihe Benchmark Submission at Exhibit 8. These data were exclusive of hazardous shipping charges. However, the data Taihe included in Exhibit 3 of its case brief included hazardous shipping charges (using data for inorganic chemicals in 20-foot containers) and came from the petitioners' rebuttal benchmark submission. See Petitioners' Rebuttal Benchmark Submission at Exhibits 2 and 4.

[435] See Taihe Final Calc Memorandum for the revised freight benchmark calculations. We relied on the data included in Taihe's Case Brief at Exhibit 3.

[436] See the Petitioners' Benchmark Submission at Exhibits 10 and 11.

[437] Inorganic chemicals do not contain carbon. The chemical formulas of sulfuric acid (H_2SO_4) and caustic soda (NaOH) make it clear that these are inorganic chemicals. See Petitioners' Benchmark Submission at Exhibits 7 and 11.