C-570-030
Investigation
POI 1/1/14 – 12/31/14
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December 15, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain cold-rolled steel flat products (cold-rolled steel, or subject merchandise) from the People's Republic of China (PRC), as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On July 28, 2015, the Department received countervailing duty (CVD) and antidumping duty (AD) petitions concerning imports of cold-rolled steel from the PRC, filed in proper form by AK Steel Corporation, ArcelorMittal USA EEC, Nucor Corporation, Steel Dynamics, Inc., and the United States Steel Corporation (collectively, Petitioners).[1] Supplements to the Petitions are

[1] *See* ''Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, Netherlands, Russia, and the United Kingdom,'' dated July 28, 2015 (Petitions).

described in the Initiation Checklist.[2] On August 17, 2015, the Department initiated a CVD investigation to determine whether producers/exporters of cold-rolled steel from the PRC received countervailable subsidies during the period of investigation (POI), *i.e.*, January 1, 2014 through December 31, 2014.[3]

We stated in the *Initiation Notice* that, if appropriate, we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.[4] On August 19, 2015, we released CBP data to parties under the Administrative Protective Order (APO).[5] Section 777A(e)(1) of the Act directs the Department to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if the Department determines it is therefore not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise that can reasonably be examined.

On September 3, 2015, Petitioner U.S. Steel submitted timely comments on the CBP data in which it stated that data pertaining to Qian'an Golden Point Trading Co., Ltd. (Qian'an Golden Point) was likely mistakenly overstated. On October 6, 2015, the Department sent a letter to Qian'an Golden Point Trading Co., Ltd. to clarify that firm's shipments of the subject merchandise to the U.S. during the POI.[6] On October 20, 2015, the Department sent a second letter to Qian'an Golden Point due to the first letter being lost in transit.[7] Qian'an Golden Point did not respond to the Department's requests for clarification of shipments to the United States during the POI.

On October 1, 2015, the Department determined to individually examine Angang Group Hong Kong Co., Ltd. (Angang Hong Kong) and Benxi Iron and Steel (Group) Special Steel Co., Ltd. (Benxi Iron and Steel) in this investigation.[8] On the same day the Department issued CVD

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[2] *See* Countervailing Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from the People's Republic of China (PRC CVD Initiation Checklist), dated August 17, 2015.

[3] *See Certain Cold-Rolled Steel Flat Products From Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation: Initiation of Countervailing Duty*, 80 FR 51206 (August 24, 2015) (*Initiation Notice*); *see also* PRC CVD Investigation Initiation Checklist. On the same date, we also published a notice of initiation for the companion AD investigation of cold-rolled steel from the PRC. *See Certain Cold-Rolled Steel Flat Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom: Initiation of Less-Than-Fair Value Investigations*, 80 FR 51198 (August 24, 2015) (*AD Initiation*).

[4] *See Initiation Notice*, 80 FR at 51209.

[5] *See* Letter dated August 19, 2015, from Angelica Townshend, Program Manager, Office VI, regarding customs entry data for respondent selection.

[6] *See* Letter dated October 6, 2015, from Angelica Townshend, Program Manager, Office VI, to Qian'an Golden Point Trading Co., Ltd. requesting clarification of shipments to the United States (Letter to Qian'an).

[7] *See* Letter dated October 20, 2015, from Angelica Townshend, Program Manager, Office VI, to Qian'an Golden Point Trading Co., Ltd. requesting clarification of shipments to the United States (Second Letter to Qian'an); *see also* Memorandum to the File "Clarification of Shipments to the United States," dated October 26, 2015.

[8] *See* "Respondent Selection" section below; *see also* Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the People's Republic of China, Memorandum from Emily Maloof and John Corrigan,

questionnaires to the Government of the PRC (GOC) and instructed the GOC to forward the Primary Questionnaire to the two mandatory respondents. The Department also sent courtesy copies of the Primary Questionnaire to Angang Hong Kong and Benxi Iron and Steel and confirmed receipt of those copies by those respondents on October 16, 2015.[9] Based upon New Subsidy Allegations (NSA) from a domestic producer of the subject merchandise, USS-POSCO Industries,[10] on October 9, 2015, the Department issued NSA Questionnaires to the GOC, Angang Hong Kong, and Benxi Iron and Steel.[11]

Petitioners filed pre-preliminary comments on December 4, 2015. On December 14, 2015, Petitioners filed a request that the Department align the final determination of this CVD investigation with the companion AD investigation of cold-rolled steel from the PRC.

B. Postponement of Preliminary Determination

On October 1, 2015, the Department postponed the deadline for the preliminary determination until no later than 130 days after the initiation of the investigation, based on a request from Petitioners.[12] The Department postponed the preliminary determination until December 15, 2015, in accordance with sections 703(c)(1)(A) and (2) of the Act and 19 CFR 351.205(f)(1).[13]

C. Period of Investigation

The POI is January 1, 2014, through December 31, 2014.

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.[14]

International Trade Compliance Analysts, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, dated October 1, 2015, at 8 (Respondent Selection Memo).

[9] *See* Memorandum to the File "Countervailing Duty Questionnaire Delivery to Mandatory Respondents," dated October 16, 2015.

[10] *See* Letter from USS-POSCO Industries to the Department, "Certain Cold-Rolled Steel Flat Products from the People's Republic of China – UPI's New Subsidy Allegations," dated September 11, 2015; *see also* Memorandum to Scot Fullerton, Director, AD/CVD Enforcement, Office VI, "New Subsidy Allegations" (October 9, 2015).

[11] *See* New Subsidy Allegations.

[12] *See* Letters from Petitioners, titled "Cold-Rolled Steel Flat Products from Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation: Petitioners' Request to Extend the Countervailing Duty Preliminary Determination," dated September 23, 2015.

[13] *See Certain Cold-Rolled Steel Flat Products From Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 80 FR 60881 (October 8, 2015).

[14] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); *see also Initiation Notice*, 80 FR at 51207.

We received several comments concerning the scope of the AD and CVD investigations of cold-rolled steel from, *inter alia*, the PRC. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigations, the deadlines of which are February 23, 2016. We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determinations after considering any relevant comments submitted by interested parties in case and rebuttal briefs.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc*.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or

- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Ball bearing steels;[15]
- Tool steels;[16]
- Silico-manganese steel;[17]

[15] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[16] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland*.[18]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.[19]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6075, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8015, 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

The products subject to this investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000,and 7229.90.1000.

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[17] Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[18] *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 Fed. Reg. 42,501, 42,503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[19] *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 Fed. Reg. 71,741, 71,741-42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

V. INJURY TEST

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On September 10, 2015, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of cold-rolled steel from the PRC.[20]

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

On October 25, 2007, the Department published its final determination in *CFS from the PRC*.[21] In *CFS from the PRC*, the Department found that:

> . . . given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.[22]

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.[23] Furthermore, on March 13, 2012, Public Law 112-99 was enacted which confirms that the Department has the authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.[24] The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[25]

Additionally, for the reasons stated in *CWP from the PRC*, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of this CVD investigation.[26]

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[20] *See* Cold-Rolled Steel Flat Products From Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom: Investigation Nos. 701–TA–540-544 and 731–TA–1283–1290 (September 2015) (Preliminary); *Cold-Rolled Steel Flat Products From Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom*, 80 FR 55872 (September 17, 2015).

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

[22] *Id*.

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

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

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

[26] *See, e.g.*, CWP IDM at Comment 2.

VII. ALIGNMENT

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the Petitioners' request,[27] we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of cold-rolled steel from the PRC. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than May 8, 2016, unless postponed.[28]

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" if 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.[29]

Section 776(b) of the Act further provides that the Department may use an adverse inference in selecting from among 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. 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 investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, the Department's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[30] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperating fully."[31]

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[27] *See* Letter from Petitioners dated December 14, 2015.
[28] We note that the current deadline for the final AD determination is May 8, 2016, which is a Sunday. Pursuant to Department practice, the signature date will be the next business day, which is Monday, May 9, 2016. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).
[29] On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 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 the 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 ITC. *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). Therefore, the amendments apply to this investigation.
[30] *See, e.g., Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011), and accompanying Issues and Decision Memorandum at "V. Use of Facts Otherwise Available and Adverse Inferences;" *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63

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 an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[32] It is the Department's practice to consider information to be corroborated if it has probative value.[33] In analyzing whether information has probative value, it is the Department's practice to examine the reliability and relevance of the information to be used.[34] However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.[35]

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 CVD rate for a subsidy program from a proceeding that the Department considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[36]

For purposes of this preliminary determination, we are applying AFA with respect to Angang Hong Kong, Benxi Iron and Steel, Qian'an Golden Point and the GOC as outlined below.

A. Application of AFA: Angang Hong Kong, Benxi Iron and Steel, Qian'an Golden Point and the GOC

As discussed in the "Initiation and Case History" section above, Angang Hong Kong and Benxi Iron and Steel were selected as mandatory respondents in this investigation but are not participating. Specifically, neither company responded to the Department's primary questionnaire, nor the NSA questionnaire. Qian'an Golden Point, a non-selected exporter, also did not respond to the Department's request for clarification with respect to its POR shipments of subject merchandise to the United States. Also, the GOC has not participated in this investigation, having neither responded to the Department's primary questionnaire, nor the NSA

FR 8909, 8932 (February 23, 1998).
[31] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA).
[32] *See, e.g.*, SAA at 870.
[33] *See* SAA at 870.
[34] *See, e.g.*, SAA at 869.
[35] *See* SAA at 869-870.
[36] *See* section 776(d)(3) of the Act.

questionnaire. Therefore, we preliminarily find that each of these companies and the GOC withheld information that had been requested and failed to provide information within the deadlines established. By not responding to the questionnaire or, in the case of Qian'an Golden Point, the Department's request for clarification of its U.S. shipments of subject merchandise, each of these companies significantly impeded this proceeding. Thus, in reaching a preliminary determination, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act, we based the CVD rates for these companies and our findings regarding specificity and financial contribution by the GOC on facts otherwise available.

Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by Angang Hong Kong, Benxi Iron and Steel, and the GOC not responding to the primary questionnaire, and Qian'an Golden Point not responding to the Department's request for clarification, each of these companies and the GOC did not cooperate to the best of their ability to comply with the requests for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted.

The Department is, therefore, finding all programs in this proceeding to be countervailable—that is, they provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act, confer a benefit within the meaning of section 771(5)(B) of the Act, and are specific within the meaning of section 771(5A) of the Act. We are, therefore, including these programs in the determination of the AFA rate.[37] Therefore, we selected an AFA rate for each of these programs and included them in the determination of the AFA rate applied to Angang Hong Kong, Benxi Iron and Steel, and Qian'an Golden Point. The Department has previously countervailed these programs.[38] Additionally, we find that current record information provides additional bases to infer, as AFA, that these programs constitute financial contributions and meet the specificity requirements of the Act.[39]

When selecting AFA rates, section 776(d) of the Act provides that the Department may use any countervailable subsidy rate applied for the same or similar program in a countervailing duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Where Angang Hong Kong, Benxi Iron and Steel and Qian'an Golden Point have failed to participate in this investigation, consistent with section 776(d) of the Act and our established practice, we selected the highest calculated rate for the same or similar program as AFA.[40] When selecting rates, if we have a cooperating mandatory respondent in the investigation, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. However, we do not have a cooperating mandatory respondent in this investigation. If there is no identical program above zero calculated for a cooperating respondent in the

[37] *See* Appendix I.
[38] *See infra* notes 51-86.
[39] *See* CVD Initiation Checklist; *see also* New Subsidy Allegations.
[40] *See, e.g., Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from the PRC*), and accompanying Issues and Decision Memorandum (Shrimp IDM) at 13-14; *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).[41] If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any program that could conceivably be used by the non-cooperating companies.[42]

In determining the AFA rate we will apply to Angang Hong Kong, Benxi Iron and Steel, and Qian'an Golden Point, we are guided by the Department's methodology detailed above. We begin by calculating the program rate for the following income tax reduction programs on which the Department initiated an investigation; we applied an adverse inference that each of the three companies referenced above paid no income tax during the POI.

- Preferential Income Tax Program for High-and New-Technology Enterprises (HNTEs)
- Preferential Income Tax Program for HNTEs in Designated Zones
- Preferential Deduction of Research and Development (R&D) Expenses for HNTEs
- Preferential Income Tax Subsidies for FIEs – 'Productive' FIEs
- Preferential Income Tax Subsidies for FIEs – High or New Technology FIEs
- Preferential Income Tax Subsidies for FIEs – Export Oriented FIEs

The standard income tax rate for corporations in the PRC in effect during the POI was 25 percent.[43] Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the six programs, combined, provide a 25 percent benefit). Consistent with past practice, the 25 percent AFA rate does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs because such programs may not affect the tax rate.[44]

For all other programs not mentioned above, we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or similar/comparable programs in a PRC CVD investigation or administrative review. For this preliminary determination, we are able to match, based on program names, descriptions, and benefit treatments, the following programs to the same programs from other PRC CVD proceedings:

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[41] For purposes of selecting AFA program rates, we normally treat rates less than 0.5% to be *de minimis*. *See, e.g., Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."
[42] *See* Shrimp IDM at 13-14.
[43] *See* CVD Initiation Checklist, at 18.
[44] *See, e.g., Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Extrusions from the PRC*), and accompanying Issues and Decision Memorandum (Extrusions IDM) at "Application of Adverse Inferences: Non-Cooperative Companies."

- Provision of Land-Use Rights for Less than Adequate Remuneration (LTAR)[45]
- Provision of Electricity for LTAR[46]
- Import Tariff and Value-Added Tax (VAT) Exemptions for Foreign Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries[47]
- Provision of Steam Coal for LTAR[48]
- Provision of Coking Coal for LTAR[49]
- Export Seller's Credits from State-Owned Banks[50]
- Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment[51]

We are able to match, based on program type and benefit treatment, the following programs to similar/comparable programs from other PRC CVD proceedings:

- Policy Loans to the Cold-Rolled Steel Industry (Government Policy Lending)[52]

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[45] *See Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009), and accompanying Issues and Decision Memorandum at 22.

[46] *See 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), and accompanying Issues and Decision Memorandum at 19.

[47] *See New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010) (*Tires from the PRC Preliminary Results*) ("C: VAT and Import Duty Exemptions on Imported Material"), unchanged in *New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011) (*Tires from the PRC Final Results*).

[48] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum (Citric Acid IDM) at 15.

[49] *See Certain Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 57444 (September 21, 2010), and accompanying IDM at 32.

[50] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011), and accompanying IDM at 12; *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper Investigation Amended Final*), and accompanying Ministerial Error Memorandum (MEM) at "Revised Net Subsidy Rate for the Gold Companies" (discussing revised subsidy rate for "Preferential Lending to the Coated Paper Industry"). This document is proprietary in nature. However, the public version, which has been placed on the record of this investigation, identifies the revised subsidy rate on which we are relying.

[51] *See Certain Steel Grating from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32362 (June 8, 2010), and accompanying Issues and Decision Memorandum at 14.

[52] Consistent with recent investigations, we are using a single AFA rate for "Government Policy Lending" and "Preferential Loans to SOEs," because an analysis of these two allegations in this investigation reveals that they would apply to the same loans provided by state-owned commercial banks (SOCBs). *See, e.g., Grain-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 59221 (October 1, 2014), and accompanying Issues and Decision Memorandum (GOES IDM) at 7; *see also Coated Paper Investigation Amended Final* and accompanying MEM at "Revised Net Subsidy Rate for the Gold Companies" (regarding "Preferential Lending to the Coated Paper Industry").

- Preferential Loans to State-Owned Enterprises[53]
- Export Loans[54]
- Treasury Bond Loans[55]
- Preferential Loans for Key Projects and Technologies[56]
- Preferential Lending to Cold-Rolled Steel Producers and Exporters Classified as "Honorable Enterprises"[57]
- Loans and Interest Subsidies Provided Pursuant to Northeast Revitalization Program[58]
- Debt-to-Equity Swaps[59]
- Equity Infusions[60]
- Exemptions for State-Owned Enterprises (SOEs) from Distributing Dividends to the State[61]
- Loans and Interest Forgiveness for SOEs[62]
- Provision of Land to SOEs for LTAR[63]
- Provision of Hot-Rolled Steel (HRS) for LTAR[64]
- Provision of Iron Ore for LTAR[65]
- Preferential Income Tax Policy for Enterprises in the Northeast Region[66]

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[53] *Id.*
[54] *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 IDM (Citric Acid AR IDM) at 18 ("Export Seller's Credit for High-and New-Technology Products").
[55]*See Coated Paper Investigation Amended Final* and accompanying MEM at "Revised Net Subsidy Rate for the Gold Companies"; *see also Non-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 79 FR 61607 (October 1, 2014), and accompanying IDM at 6.
[56] *See Coated Paper Investigation Amended Final* and accompanying MEM at "Revised Net Subsidy Rate for the Gold Companies" (regarding "Preferential Lending to the Coated Paper Industry"); *see also Certain Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010), and accompanying IDM (Bricks IDM) at 8 ("Preferential Loans and Directed Credit to the Magnesia Carbon Bricks Industry").
[57] *Id.*
[58] *Id.*
[59] *See Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 56560 (September 22, 2014), and accompanying Issues and Decision Memorandum (Isos IDM) at 13-14 ("Special Fund for Energy Saving Technology").
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *See 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) (*Sacks from the PRC*), and accompanying Issues and Decision Memorandum at "2. Government Provision of Land for Less Than Adequate Remuneration."
[64] *See Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014), and accompanying IDM at "C. Provision of Steel Rounds for LTAR."
[65] *See* Citric Acid AR IDM at 24-27 ("Provision of Calcium Carbonate for LTAR").
[66] *See New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010) (*OTR Tires Preliminary AR*) ("C. VAT and Import Duty Exemptions on Imported Material"), unchanged in *New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011) (*OTR Tires Final AR*). Consistent with past practice, we are assigning this program an individual

- Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China[67]
- Reduction in or Exception from Fixed Assets Investment Orientation Regulatory Tax[68]
- Income Tax Benefits for Domestically-Owned Enterprises Engaged in R&D[69]
- Stamp Exemption on Share Transfer Under Non-Tradeable Share Reform[70]
- VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund[71]
- Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring[72]
- State Key Technology Renovation Project Fund[73]
- Programs to Rebate Antidumping Legal Fees[74]
- Foreign Trade Development Grants[75]
- Export Assistance Grants[76]
- Subsidies for Development of Famous Export Brands and China World Top Brands[77]
- Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands[78]
- Grants to Loss Making SOEs[79]
- Export Interest Subsidies[80]
- Grants for Energy Conservation and Emission Reduction[81]
- Grants for Retirement of Capacity[82]
- Grants for Relocating Production Facilities[83]
- Export Buyer's Credits[84]

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rate for this preliminary determination. *See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 68858 (November 19, 2014), and accompanying Issues and Decision Memorandum (Wire Rod IDM) at 4 n.14.

[67] *See* Bricks IDM at 10 ("VAT Rebates on Purchases of Domestically Produced Equipment").

[68] *See* OTR Tires Preliminary AR, 75 FR at 64275 ("C. VAT and Import Duty Exemptions on Imported Material"), unchanged in OTR Tires Final AR, 76 FR at 23286.

[69] *Id*.; *see also* Wire Rod IDM at 6.

[70] *See* OTR Tires Preliminary AR, 75 FR at 64275 ("C. VAT and Import Duty Exemptions on Imported Material"), unchanged in OTR Tires Final AR, 76 FR at 23286; *see also* Wire Rod IDM at 6.

[71] *See* OTR Tires Preliminary AR, 75 FR at 64275 ("C. VAT and Import Duty Exemptions on Imported Material"), unchanged in OTR Tires Final AR, 76 FR at 23286.

[72] *Id*.

[73] *See* Isos IDM at 13-14 ("Special Fund for Energy Saving Technology").

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] *Id*.

[80] *Id*.

[81] *Id.*

[82] *Id.*

[83] *Id*.

[84] *See Coated Paper Investigation Amended Final* and accompanying MEM at "Revised Net Subsidy Rate for the Gold Companies" (regarding "Preferential Lending to the Coated Paper Industry"); *see also Countervailing Duty*

- Export Credit Insurance Subsidies[85]
- Export Credit Guarantees[86]

Based on the methodology described above, we preliminarily determine the countervailable subsidy rate for each of the AFA companies to be 227.29 percent *ad valorem*.[87]

B. Corroboration

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 an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[88] The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[89]

The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[90] Furthermore, 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.[91]

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. We find the AFA rates applied here to be reliable based on their calculation and application in previous CVD proceedings pertaining to the PRC, and because no information on the record calls their reliability into question. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable

Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part, 80 FR 34888 (June 18, 2015) (*Passenger Tires from the PRC*), and accompanying IDM (Passenger Tires IDM) at 17 ("Export Buyer's Credit from State-Owned Banks Program").

[85] *See* Isos IDM at 13-14 ("Special Fund for Energy Saving Technology").

[86] *See Coated Paper Investigation Amended Final* and accompanying MEM at "Revised Net Subsidy Rate for the Gold Companies" ("Preferential Lending to the Coated Paper Industry"); *see also* Passenger Tires IDM at 17 ("Export Buyer's Credit from State-Owned Banks Program").

[87] *See* Appendix I.

[88] *See* SAA at 870.

[89] *Id*.

[90] *Id.* at 869-870.

[91] *See* section 776(d) of the Act.

subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.[92]

In the absence of record evidence concerning Angang Hong Kong's and Benxi Iron and Steel's usage of the subsidy programs at issue due to their decision not to participate in the investigation, the Department has reviewed the information concerning PRC subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this case. The relevance of these rates is that they are actual calculated CVD rates for PRC programs, from which Angang Hong Kong, Benxi Iron and Steel, and Qian'an Golden Point could actually receive a benefit. Due to the lack of participation by these companies and the resulting lack of record information concerning these programs, the Department has corroborated the rates it selected to use as AFA to the extent practicable for this preliminary determination.

IX. CALCULATION OF THE ALL-OTHERS RATE

Section 703(d)(1)(A)(ii) of the Act states that if the Department limits its investigation to particular respondents in accordance with 777A(e)(2)(B) of the Act, the Department will determine a single estimated country-wide subsidy rate applicable to all exporters and producers. Section 705(c)(5)(A)(i) of the Act states that the all-others rate shall be an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any rates that are zero or *de minimis* or any rates determined entirely on facts available. However, section 705(c)(5)(A)(ii) of the Act states that if the countervailable subsidy rates for all exporters and producers individually investigated are zero or *de minimis* rates, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated, including averaging the weighted-average countervailable subsidy rates determined for the exporters and producers individually investigated.

In this investigation, all rates for individually investigated respondents are based entirely on facts available. Accordingly, we are using "any reasonable method" to establish the all- others rate. We find that it is reasonable to use an average of the weighted average countervailable subsidy rates established for mandatory respondents Angang Hong Kong and Benxi Iron and Steel, which are the same as the rate applied to non-selected exporter Qian'an Golden Point, as the all-others rate. The statute expressly states that when the rates for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may average the weighted average countervailable subsidy rates for the individually investigated exporters and producers. The Department has taken this approach to calculating the all-others rate in other CVD investigations.[93]

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

[93] *See, e.g., Grain-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 59221 (October 1, 2014), and accompanying Issues and Decision Memorandum at Comment 1.

X. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

On October 30, 2015, Petitioners timely filed a critical circumstances allegation, pursuant to section 703(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of cold-rolled steel from the PRC, Japan and the Russian Federation.[94] Petitioners submitted U.S. International Trade Commission (ITC) Trade Dataweb import data in support of its allegation.[95]

In their critical circumstances allegation, Petitioners argue that there is a reasonable basis to believe that there are subsidies in this investigation which are inconsistent with the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement), including export subsidies and domestic substitution subsidies.[96] In particular, Petitioners cite to allegations that PRC cold-rolled steel producers and exporters likely benefitted from various prohibited subsidies, including preferential export loans; export interest subsidies; preferential lending to cold-rolled steel producers and exporters classified as "honorable enterprises;" income tax credits for domestically-owned companies purchasing domestically produced equipment; provision of land use rights for less than adequate remuneration; foreign trade development fund grants; programs to rebate antidumping legal fees; subsidies for development of famous export brands and China world top brands; and sub-central government programs to promote famous export brands and China world top brands, for which the Department initiated an investigation as evidence that this criteria is met.[97] Petitioners also claim that there have been massive imports of cold-rolled steel from the PRC over a relatively short period.[98] Petitioners provide ITC data which demonstrates that imports of cold-rolled steel from the PRC between April and June 2015 increased by 24 percent relative to the preceding January through March 2015 three-month period. Petitioners contend that this increase in imports is greater than 15 percent and may therefore be considered "massive" under 19 CFR 351.206(h)(2).[99] Petitioners also requested that the Department base the comparison period on a date prior to the filing of the Petitions pursuant to 19 CFR 351.206(i), and specifically argued that the Department should find that subject producers and importers were aware that a trade remedy proceeding was likely to be filed in March 2015.[100]

Section 703(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and (B) there have been massive imports of the subject merchandise over a relatively short period. When determining whether an alleged countervailable subsidy is inconsistent with the Subsidies Agreement, the

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[94] *See* Letter from Petitioners, "Certain Cold-Rolled Steel Flat Products from the People's Republic of China, Japan, and the Russian Federation – Petitioners' Critical Circumstances Allegation," dated October 30, 2015 (Critical Circumstances Allegation).
[95] *Id.* at 15.
[96] *See* section 703(e)(1)(A) of the Act. *See also* Critical Circumstances Allegation at 9.
[97] *See* Critical Circumstances Allegation at 10.
[98] *See* section 703(e)(1)(B) of the Act. *See also* Critical Circumstances Allegation at 15 to 16.
[99] *See* Critical Circumstances Allegation at 15 to 16.
[100] *Id.* at 12-14.

Department limits its findings to those subsidies contingent on export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the Subsidies Agreement).[101] In determining whether imports of the subject merchandise have been "massive," 19 CFR 351.206(h)(1) provides that the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, the Department will not consider imports to be massive unless imports during the "relatively short period" (comparison period) have increased by at least 15 percent compared to imports during an "immediately preceding period of comparable duration" (base period).[102] 19 CFR 351.206(i) defines "relatively short period" as normally being the period beginning on the date the proceeding commences (*i.e.*, the date the petition is filed) and ending at least three months later. However, 19 CFR 351.206(i) also provides that if the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the {Department} may consider a period of not less than three months from that earlier time" as the comparison period.

For consideration of this allegation, we relied on a seven-month comparison period (*i.e.*, March 2015 through September 2015) and a seven-month base period (*i.e.*, August 2014 through February 2015), pursuant to 19 CFR 351.206(h)(2).[103] Petitioners state in their critical circumstances allegation that producers/exports and U.S. importers "had reason to believe that proceedings were likely" as early as March 2015 and Petitioners provide a series of six newspaper articles dated between February 26, 2015 and March 26, 2015 which indicate the potential filing of a petition pertaining to cold-rolled steel.[104] Among the documents Petitioners provided to support their claim, the Department finds the following particularly relevant:

- On February 26, 2015, *The Wall Street Journal* reported that U.S. steel producers had recently reduced prices due to an increasing flow of cheaper imports and spoken publicly of injury caused by those imports.[105]
- On March 10, 2015, Steel Market Update specifically addressed cold-rolled steel from the PRC in noting that the publication received inquiries about the potential for an upcoming trade case.[106]
- On March 26, 2015, American Metal Market issued a press release stating that nearly 70 percent of industry participants expected cold-rolled and CORE steel cases to be filed in 2015.[107]

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[101] *See, e.g., Notice of Preliminary Negative Determination of Critical Circumstances: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China*, 73 FR 21588, 21590 (April 22, 2008), unchanged in *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008).
[102] *See* 19 CFR 351.206(h)(2).
[103] *See* Appendix II.
[104] *See* Critical Circumstances Allegation at 14.
[105] *Id*. at Exhibit 8.
[106] *Id*. at Exhibit 9.
[107] *Id*. at Exhibit 13.

Based on this information, we preliminarily find that importers, producers, or exporters of cold-rolled steel from the PRC had reason to believe that proceedings were likely and therefore choose to begin our comparison period with the first full month following the first of those articles, *i.e.*, March 2015, and to analyze shipment data from Global Trade Services (GTS) up until the most recent month for which data are available. Data for all months from March 2015 up to and including September 2015 are currently available.

Angang Hong Kong, Benxi Iron and Steel and Qian'an Golden Point

Because Angang Hong Kong, Benxi Iron and Steel and Qian'an Golden Point are not cooperating in this investigation,[108] and consistent with Department practice, we have based our critical circumstances determination for these companies on AFA, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308(c).[109] As described in more detail above in Section "VIII. Use Of Facts Otherwise Available and Adverse Inferences", the Department is preliminarily determining, as AFA, that all three companies received countervailable benefits under programs that are contingent upon export performance.[110] Also, as AFA, we preliminarily determine that Angang Hong Kong, Benxi Iron and Steel and Qian'an Golden Point made massive imports of subject merchandise over a relatively short period of time.[111] Thus, we preliminarily determine that critical circumstances exist with regard to Angang Hong Kong, Benxi Iron and Steel and Qian'an Golden Point.

All-Other Producers/Exporters

With regard to whether imports of subject merchandise by the "all-other" producers/exporters of cold-rolled steel from the PRC were massive, we preliminarily determine that because there is evidence of the existence of countervailable subsidies that are inconsistent with the Subsidies Agreement, an analysis is warranted as to whether there was a massive increase in shipments by the "all-other" companies, in accordance with section 703(e)(1)(B) of the Act and 19 CFR 351.206(h).[112] Therefore, we analyzed, in accordance with 19 CFR 351.206(i), monthly shipment data from GTS for the period March 2014 through September 2015.[113] The resulting

[108] Angang Hong Kong and Benxi Iron and Steel did not respond to the Department's Primary Questionnaire; therefore we preliminarily based both companies' subsidy rate upon facts otherwise available and made an adverse inference in selecting from among the facts available. Moreover, Qian'an Golden Point did not respond to our request for information regarding its exports to the United States. *See* section VIII above.

[109] *See, e.g.*, *Steel Threaded Rod from India: Preliminary Affirmative Determination of Critical Circumstances for the Countervailing Duty Investigation*, 79 FR 9162 (February 18, 2014) (finding affirmative critical circumstances for Babu based on Babu's non-cooperation in investigation), unchanged in *Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712, 40712 (July 14, 2014).

[110] *See* also section 703(e)(1)(A) of the Act.

[111] *See* section 703(e)(1)(B) of the Act; 19 CFR 351.206(h).

[112] *See, e.g., Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances*, 77 FR 73430, 73432 (December 10, 2012), unchanged in *Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 75973, 75974 (December 26, 2012).

[113] We rely on GTS data in accordance with the Department's standard practice. *See, e.g.*, Passenger Tires from the PRC and accompanying IDM at 81.

data indicate a 29.17 percent decline in imports of the subject merchandise between March and September 2015 relative to the preceding seven months. The Department therefore finds that there was not a massive increase in imports by all-other producers/exporters, as defined by 19 CFR 351.206(h).[114] Accordingly, the Department does not find that critical circumstances exist with regard to imports of subject merchandise from "all-other" exporters or producers of cold-rolled steel from the PRC.

As a result of an affirmative preliminary determination of critical circumstances, in part, in accordance with section 703(e)(2)(A) of the Act, we are directing CBP to suspend liquidation, with regard to Angang Hong Kong, Benxi Iron and Steel, and Qian'an Golden Point of any unliquidated entries of subject merchandise from the PRC entered, or withdrawn from warehouse for consumption 90 days prior to the date of publication of the preliminary determination in the *Federal Register*.

XI. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

XII. PUBLIC COMMENT

Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than 50 days after the publication of this preliminary determination in the *Federal Register*, and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.[115]

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[116] This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.[117] Requests should contain

[114] *See* Appendix II.
[115] *See* 19 CFR 351.309(c)(1)(i) and (d)(1).
[116] *See* 19 CFR 351.309(c)(2) and (d)(2).
[117] *See* 19 CFR 351.310(c).

the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing. Issues raised in the hearing will be limited to those raised in the respective case briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS. Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,[118] on the due dates established above.

XIII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓

Agree   Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

15 DECEMBER 2015
Date

[118] *See* 19 CFR 351.303(b)(1).

Appendix I

AFA Rate Calculation

	Program Name	AFA Rate
1	Policy Loans to the Cold-Rolled Steel Industry	10.54%
2	Preferential Loans for SOEs	
3	Export Loans	1.10%
4	Treasury Bond Loans	10.54%
5	Preferential Loans for Key Projects and Technologies	10.54%
6	Preferential Lending to Cold-Rolled Steel Producers and Exporters Classified as "Honorable Enterprises"	10.54%
7	Loans and Interest Subsidies Provided Pursuant to Northeast Revitalization Program	10.54%
8	Debt-to-Equity Swaps	0.58%
9	Equity Infusions	0.58%
10	Exemptions for SOEs from Distributing Dividends to the State	0.58%
11	Loans and Interest Forgiveness for SOEs	2.32%
12	Provision of Land-Use Rights for LTAR	2.55%
13	Provision of Land-Use Rights to SOEs for LTAR	13.36%
14	Provision of Hot-Rolled Steel for LTAR	3.64%
15	Provision of Iron Ore for LTAR	22.32%
16	Provision of Steam Coal for LTAR	3.17%
17	Provision of Coking Coal for LTAR	5.51%
18	Provision of Electricity for LTAR	0.58%
19	Preferential Income Tax Program for HNTEs	25.00%
20	Preferential Income Tax Program for HNTEs in Designated Zones	
21	Preferential Deduction of R&D Expenses for HNTEs	
22	Preferential Income Tax Subsidies for FIEs – “Productive” FIEs	
23	Preferential Income Tax Subsidies for FIEs – High or New Technology FIEs	
24	Preferential Income Tax Subsidies for FIEs – Export Oriented FIEs	
25	Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment	1.68%
26	Preferential Income Tax Policy for Enterprises in the Northeast Region	9.71%
27	Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China	0.51%
28	Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax	9.71%

29	Income Tax Benefits for Domestically-Owned Enterprises Engaging in R&D	9.71%
30	Stamp Exemption on Share Transfer Under Non-Tradable Share Reform	9.71%
31	VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund	9.71%
32	Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries	0.56%
33	Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring	9.71%
34	State Key Technology Renovation Project Fund	0.58%
35	Foreign Trade Development Fund Grants	0.58%
36	Export Assistance Grants	0.58%
37	Programs to Rebate Antidumping Legal Fees	0.58%
38	Subsidies for Development of Famous Export Brands and China World Top Brands	0.58%
39	Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands	0.58%
40	Grants to Loss Making SOEs	0.58%
41	Export Interest Subsidies	0.58%
42	Grants for Energy Conservation and Emission Reduction	0.58%
43	Grants for Retirement of Capacity	0.58%
44	Grants for Relocating Production Facilities	0.58%
45	Export Buyer's Credits	10.54%
46	Export Seller's Credits from State-Owned Banks	4.25%
47	Export Credit Insurance Subsidies	0.58%
48	Export Credit Guarantees	10.54%
Total AFA Rate:		**227.29%**

Appendix II

Imports of Certain Cold-Rolled Steel Flat Products from the People's Republic of China to the United States[119]

YEAR	MONTH	IMPORTS (*kg*)
2014	March	28,859,022
2014	April	96,053,377
2014	May	44,099,081
2014	June	76,607,432
2014	July	54,674,818
2014	August	54,259,246
2014	September	132,833,858
2014	October	107,281,038
2014	November	105,068,884
2014	December	43,827,454
2015	January	44,488,704
2015	February	53,747,867
2015	March	52,498,631
2015	April	78,425,274
2015	May	55,928,748
2015	June	52,580,585
2015	July	63,603,715
2015	August	28,188,529
2015	September	52,300,721

Source: Global Trade Services

(Comparison period of March 2015 – September 2015
relative to base period of August 2014 – February 2015):
- 29.17percent

[119] Data address the following products as currently classified in the HTSUS: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6075, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8015, 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.