




C-570-991

Administrative Review
POR: 2/4/14 – 12/31/14
Public Document
E&C/V: OQ, AHD

December 5, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Countervailing Duty Administrative Review of Chlorinated
Isocyanurates from the People's Republic of China: Decision
Memorandum for the Preliminary Results

I. SUMMARY

The Department of Commerce (the “Department”) is conducting an administrative review of the countervailing duty (“CVD”) order on chlorinated isocyanurates (“chloro isos”) from the People’s Republic of China (“PRC”). The period of review (“POR”) is February 4, 2014, through December 31, 2014. The mandatory respondents are Hebei Jiheng Chemical Co. Ltd. (“Hebei Jiheng”) Heze Huayi Chemical Co., Ltd. (“Huayi”) and Juancheng Kangtai Chemical Co., Ltd. (“Kangtai”). We are preliminarily rescinding the review with respect to Kangtai because Kangtai indicated that it made no shipments to the United States during the POR and there is no record evidence to the contrary. We preliminarily find that the remaining respondents received countervailable subsidies during the POR related to certain programs.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess countervailing duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”), we will issue the final results no later than 120 days after publication of these preliminary results.

II. BACKGROUND

On November 13, 2014, the Department published in the *Federal Register* a CVD order on



chloro isos from the PRC.¹ Subsequently, on November 3, 2015, the Department published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order* for the period February 4, 2014, through December 31, 2014.²

Pursuant to section 751(a)(1) of the Act and 19 CFR 351.213(b)(1), in November 2015, the Department received timely requests to conduct an administrative review of the CVD order on chloro isos from the PRC from four interested parties: 1) Hebei Jiheng, 2) Huayi; 3) Kangtai; and 4) the petitioners in this proceeding,³ which requested reviews of Hebei Jiheng, Huayi, and Kangtai.⁴ On January 7, 2016, in accordance with 19 CFR 351.221(c)(1)(i), the Department published a notice of initiation of administrative review for Hebei Jiheng, Huayi, and Kangtai.⁵

Because this review only covers three companies and available resources permitted, we selected all three as mandatory respondents. In its May 16, 2016, questionnaire response, Kangtai indicated it had no shipments of subject merchandise during the POR. Data from CBP did not provide any information to the contrary.⁶

On April 1, 2016, the Department issued the initial questionnaire to the Government of the PRC (“GOC”) and the mandatory respondents. From April 15, 2016, through May 17, 2016, the Department received full responses from all interested parties. Subsequently, the Department issued additional supplemental questionnaires between June 24, 2016, and November 14, 2016. The Department received responses to these supplemental questionnaires between July 19, 2016, and November 21, 2016.

On August 3, 2016, the Department partially extended the deadline for these preliminary results until November 3, 2016;⁷ On October 5, 2016, the Department fully extended the deadline until

¹ See *Chlorinated Isocyanurates from the People’s Republic of China: Countervailing Duty Order*, 79 FR 67424 (November 13, 2014) (“*Order*”).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 80 FR 67706 (November 3, 2015).

³ The petitioners in this proceeding are U.S. domestic producers of chloro isos: Bio-Lab, Inc., Clearon Corp., and Occidental Chemical Corporation (collectively “Petitioners”).

⁴ See Letter to the Secretary from Huayi, “Chlorinated Isocyanurates from the People’s Republic of China: Request for Administrative Review,” (November 6, 2015); Letter to the Secretary from Kangtai, “Chlorinated Isocyanurates from the People’s Republic of China: Request for Administrative Review,” (November 6, 2015); Letter to the Secretary from Hebei Jiheng, “Chlorinated Isocyanurates from the People’s Republic of China: Request for Administrative Review, 2014-2015,” (November 24, 2015); Letter to the Secretary from Petitioners, “Chlorinated Isocyanurates from the People’s Republic of China: Request for Administrative Review of Countervailing Duty Order,” (November 30, 2015).

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 736 (January 7, 2016) (“*Initiation*”).

⁶ See Memo to the File from Andrew Devine, International Trade Compliance Analyst, Office V, “First Administrative Review of Chlorinated Isocyanurates from the People’s Republic of China: Customs Data for Respondent Selection Purposes” (February 2, 2016).

⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, from Andrew Devine, International Trade Compliance Analyst, “Certain Chlorinated Isocyanurates from the People’s Republic of China: Extension of Deadline for Preliminary Results of First Countervailing Duty Administrative Review,” (August 3, 2016).

December 5, 2016.⁸

III. INTENT TO PARTIALLY RESCIND REVIEW

We preliminarily rescinded the administrative review for the company that made no shipments to the United States during this POR. As noted above, on May 16, 2016, the Department received a questionnaire response from Kangtai indicating that it did not make any shipments during the POR.⁹ Based on its questionnaire response, and the lack of information to the contrary from CBP¹⁰, we determine that Kangtai had no shipments during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3), we have preliminarily rescinded the review with respect to Kangtai.

IV. SCOPE OF THE ORDER

The products covered by the order are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) trichloroisocyanuric acid (“TCCA”) ($\text{Cl}_3(\text{NCO})_3$); (2) sodium dichloroisocyanurate (dihydrate) ($\text{NaCl}_2(\text{NCO})_3 \times 2\text{H}_2\text{O}$); and (3) sodium dichloroisocyanurate (anhydrous) ($\text{NaCl}_2(\text{NCO})_3$). Chlorinated isocyanurates are available in powder, granular and solid (*e.g.*, tablet or stick) forms.

Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.50.4000, 3808.94.5000, and 3808.99.9500 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. The tariff classifications 3808.50.4000, 3808.94.5000 and 3808.99.9500 cover disinfectants that include chlorinated isocyanurates. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

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

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.¹¹ In *CFS from the PRC*, the Department found that:

⁸ Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, from Andrew Devine, International Trade Compliance Analyst, “Certain Chlorinated Isocyanurates from the People’s Republic of China: Full Extension of Deadline for Preliminary Results of First Countervailing Duty Administrative Review,” (October 5, 2016).

⁹ See Letter to the Secretary from Kangtai, “Chlorinated Isocyanurates from the People’s Republic of China: Section III Questionnaire Response” (May 16, 2016) at 1 and Exhibit 13.

¹⁰ See Memo to the File, from Andrew Devine, International Trade Compliance Analyst, Office V, “First Administrative Review of Chlorinated Isocyanurates from the People’s Republic of China: Customs Query” (February 2, 2016).

¹¹ 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”).

... given the substantial difference 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.¹²

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.¹³ 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.¹⁴ The effective date of the enacted legislation makes clear that this provision applies to this proceeding.¹⁵

VI. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life ("AUL") of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.¹⁶ The Department notified the respondents of the AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

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

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject

¹² *Id.*, at Comment 6.

¹³ *See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) ("CWP from the PRC") and accompanying Issues and Decision Memorandum ("IDM") at Comment 1.

¹⁴ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

¹⁵ *See* Public Law 112-99, 126 Stat. 265 §1(b).

¹⁶ We determined the AUL in the investigation, which no party challenged. *See* the Department's initial CVD questionnaire, dated April 1, 2016..

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. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting interest between two corporations, or through common ownership of two (or more) corporations.¹⁷ In certain circumstances, a large minority voting interest (for example, 40 percent) may also result in cross-ownership.¹⁸ The Court of International Trade upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.¹⁹

Hebei Jiheng

Hebei Jiheng, Hebei Jiheng Group Co., Ltd. ("Jiheng Group"), and Hebei Jiheng Baikang Chemical Industry Co., Ltd. ("Baikang")²⁰ submitted responses to the Department's CVD questionnaire. Hebei Jiheng reported the following roles for each of these companies:

Hebei Jiheng – producer of subject merchandise;

Jiheng Group – a holding company and majority shareholder of Hebei Jiheng, which provides raw materials (sulfuric acid and steam) to Hebei Jiheng and other affiliated companies;

Baikang – producer of subject merchandise and a subsidiary company of Hebei Jiheng.²¹

In the investigation we found Baikang, Hebei Jiheng, and Jiheng Group to be cross owned.²² Hebei Jiheng reported that it is owned by the Jiheng Group, and that Hebei Jiheng owns Baikang.²³ Based on information on the record, in accordance with 19 CFR 351.525(b)(6)(vi), we continue to find that cross-ownership exists between Hebei Jiheng, Baikang, and Jiheng Group through Jiheng Group's ultimate ownership of Hebei Jiheng and Baikang.²⁴

¹⁷ See, e.g., *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) ("CVD Preamble").

¹⁸ See CVD Preamble.

¹⁹ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

²⁰ Collectively "Jiheng Companies."

²¹ See, e.g., Jiheng's May 16, 2016, submission at III-3.

²² See *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 2012, 79 FR 56560 (September 22, 2014) ("*Chloro Isos Investigation Final*"), and accompanying Issues and Decision Memorandum, at "Subsidies Valuation Information."

²³ See Jiheng's May 16, 2016 submission, at III-3.

²⁴ The Department's regulations at 19 CFR 351.525(b)(6)(vi) state that cross-ownership exists when one corporation can use or direct the assets of another corporation in essentially the same way it can use its own. Normally, however, "this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations."

Because the Jiheng Group is a parent company, we are attributing subsidies received by the Jiheng Group to its consolidated sales (net of intercompany sales), in accordance with 19 CFR 351.525(b)(6)(iii). The Jiheng Group combines its subsidiaries' results in its consolidated financial statements.²⁵

Hebei Jiheng and Baikang are producers of subject merchandise. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we are attributing subsidies received by Hebei Jiheng and Baikang to the combined sales of Hebei Jiheng and Baikang.²⁶ We note that Hebei Jiheng's and Baikang's sales are combined in Hebei Jiheng's consolidated financial statements, and that the only subsidiary included in these statements is Baikang.²⁷

Huayi

Huayi responded to the Department's original and supplemental questionnaires on behalf of itself, a producer and exporter of the subject merchandise during the POR. It reported no cross-owned companies. Therefore we are attributing subsidies received by Huayi to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

C. Denominators

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

²⁵ See Jiheng Group's December 23, 2013, submission at Appendix 6.

²⁶ See, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010) and accompanying Issues and Decision Memorandum at 9 and Comment 35 (where we discuss application of the attribution regulations at 19 CFR 351.525(b)(6) to a company that is both a parent company and a producer of subject merchandise).

²⁷ See Jiheng's December 23, 2013, submission at Appendix 5, Jiheng's 2012 consolidated financial statements at 26.

²⁸ See Memorandum to the File, through Paul Walker, Program Manager, from Andrew Devine, International Trade Compliance Analyst, "Countervailing Duty Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Preliminary Calculation Memorandum for Heze Huayi Chemical Co., Ltd.," dated concurrently with this memorandum ("Huayi Calculation Memo"), and Memorandum to the File, through Paul Walker, Program Manager, from Omar Qureshi, International Trade Compliance Analyst, "Countervailing Duty Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Preliminary Calculation Memo for Hebei Jiheng," dated concurrently with this memorandum ("Jiheng Group Calculation Memo").

VII. BENCHMARKS

The Department is reviewing the provision of electricity to the mandatory respondents at LTAR. This process requires the derivation of benchmark electricity rates. The derivation of these rates is discussed in the “Use of Facts Otherwise Available and Adverse Inferences” section below.

The Department is also reviewing non-recurring, allocable subsidies received by the mandatory respondents.²⁹ For a complete discussion of the methodology used in determining discount rates for these subsidies, consistent with 19 CFR 351.524(d)(3)(i)(A), *see* the Preliminary Discount Rate Memorandum.³⁰ The specific discount rates used in our preliminary calculations are provided in the respondents’ preliminary calculation memoranda.³¹

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.³²

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

²⁹ *See* 19 CFR 351.524(b)(1).

³⁰ Memorandum to the File, through Paul Walker, from Andrew Devine, International Trade Compliance Analyst, “Countervailing Duty Administrative Review of Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Discount Rate Memorandum,” dated concurrently with this memorandum (“Preliminary Discount Rate Memorandum”).

³¹ *See* Huayi Calculation Memo and Jiheng Group Calculation Memo.

³² 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 review.

timely manner.”³³ The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³⁴

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”³⁵ It is the Department’s practice to consider information to be corroborated if it has probative value.³⁶ 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.³⁷ However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.³⁸

Finally, under the new section 776(d) of the Act, the Department may use any 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 administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of 776(c), 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.³⁹

For purposes of these preliminary results, we find it necessary to apply AFA with respect to the GOC’s responses to questions on the alleged provision of electricity for LTAR, and the GOC’s responses to questions on certain self-reported grants received by Hebei Jiheng and Huayi, as described below.

A. *Application of AFA: Provision of Electricity for LTAR*

As discussed below under the section “Programs Preliminarily Found to be Countervailable,” the Department is reviewing whether the GOC provided electricity for LTAR. The GOC did not provide complete responses to the Department’s questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity for LTAR constituted a financial contribution within the meaning of section

³³ 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) (“*Drill Pipe from the PRC*”); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909 (February 23, 1998).

³⁴ 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”) at 870.

³⁵ See, e.g., SAA at 870.

³⁶ See SAA at 870.

³⁷ See, e.g., SAA at 869.

³⁸ See SAA at 869-870.

³⁹ See section 776(d)(3) of the Act.

771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act. In both the Department's original questionnaire, dated April 1, 2016, and the July 13, 2016 supplemental questionnaire, for each province in which the mandatory respondents and any "cross-owned" affiliates are located, the Department asked the GOC to provide a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and how the final price increases were allocated across the province and across tariff end-user categories. The GOC provided no provincial-specific information in response to these questions in its initial questionnaire response and supplemental questionnaire response.⁴⁰

Consequently, for these preliminary results, we find that the GOC withheld necessary information that was requested of it, and thus, that the Department must rely on facts otherwise available in making our determination, pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Specifically, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates we selected are derived from information from the record of the instant review and are the highest electricity rates on this record for the applicable rate and user categories.⁴¹ As these rates are derived from information submitted during this review, they do not constitute secondary information and there is no need to corroborate the rates pursuant to section 776(c) of the Act.

B. *Self-Reported Grants*

As discussed in further detail in the "Programs Preliminarily Determined to Be Countervailable" section below, both mandatory respondents reported receiving benefits under grant programs not initiated on by the Department.⁴² The Department requested information from the GOC regarding certain of these grants on three occasions.⁴³ The GOC failed to give a complete response regarding any of these grant programs, stating that it was either unable to identify the programs expressly reported by the respondents or unable to produce certain requested

⁴⁰ See GOC's initial questionnaire response, dated May 16, 2016, at 8-13; GOC's first supplemental questionnaire response, dated July 25, 2016.

⁴¹ See Preliminary Calculation Memoranda.

⁴² See Huayi's first supplemental questionnaire response, dated July 8, 2016, at exhibit SQ1-2; Hebei Jiheng's initial questionnaire response, dated May 17, 2016, at Exhibit 21.

⁴³ See The Department's Initial CVD Questionnaire, dated April 1, 2016, at section IV (Other Programs); the Department's First Supplemental Questionnaire, dated July 13, 2016, at Other Programs; and the Department's Second Supplemental Questionnaire to the GOC, dated November, 14, 2016, at Other Programs.

information regarding identifiable programs, depending on the program.⁴⁴

In order to conduct the analysis of whether a program is specific and provides a financial contribution under sections 771(5A) and 771(5)(D) of the Act, respectively, it is essential that the government submits a complete response to the questions pertaining to specificity and financial contribution that are contained in the Standard Questions Appendix. This is because it is only the government that has access to the information required for a complete analysis of specificity and financial contribution. By failing to provide complete responses to the Standard Questions Appendices, as requested by the Department, the GOC did not provide a complete response to the specificity and financial contribution questions related to these grant programs. Furthermore, the Department finds that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests. Specifically, the GOC did not explain why it was unable to provide the requested information. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. Based on adverse facts available, we preliminarily determine that the GOC provided the subsidies listed in the Analysis of Programs, Self-Reported Grants section below, that these subsidies constitute a financial contribution under section 771(5)(D)(i) of the Act, and that these subsidies are specific under section 771(5A) of the Act.

IX. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined to Be Countervailable

1. Electricity for LTAR

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

In a CVD case, the Department requires information from both the foreign producers and exporters of the merchandise under investigation and the government of the country where those producers and exporters are located. When the government fails to provide requested and necessary information concerning alleged subsidy programs, the Department, as AFA, may find that a financial contribution exists under the alleged program and that the program is specific. However, where possible, the Department will rely on the responsive producer’s or exporter’s records to determine the existence and amount of the benefit conferred, to the extent that those records are useable and verifiable. Huayi and Hebei Jiheng both provided data on the electricity the companies consumed and the electricity rates paid during the POR.⁴⁵ Therefore, the Department was able to utilize this information in calculating the extent of benefits received

⁴⁴ See GOC’s submission, dated November 22, 2016.

⁴⁵ See, e.g., Huayi’s initial questionnaire response, dated May 17, 2016, at Exhibit 10; Hebei Jiheng’s initial questionnaire response, dated May 17, 2016, at Exhibit 12.

under the Electricity for LTAR program.

As noted above, the GOC did not provide the information requested by the Department as it pertains to the provision of Electricity for LTAR program, despite multiple requests for such information. We find that, in light of the GOC's non-response, the GOC withheld information requested by the Department as described in section 776(a)(2)(A) of the Act, and also did not act to the best of its ability, as described in section 776(b) of the Act. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC, and determine that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D) and 771(5A)(D) of the Act. To determine the existence and amount of any benefit from this program, we relied on the respondents' reported information on the amounts of electricity used, and the rates the respondents paid for that electricity, during the POR. We compared the rates paid by the respondents for their electricity to the highest rates that they could have paid in the PRC during the POR.⁴⁶

To calculate the benchmark, we selected the highest rates in the PRC for the type of user (*e.g.*, "General Industry," "Heavy Industry," "Base Charge/Maximum Demand") for the general, high peak, peak, normal, and valley ranges, as provided by the GOC.⁴⁷ The electricity rate benchmark chart is included in the Preliminary Benchmark Memo. This benchmark reflects an adverse inference, which we drew as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this review.⁴⁸

To measure whether the mandatory respondents received a benefit under this program, the Department first calculated the electricity prices the respondents paid by multiplying the monthly kilowatt hours or kilovolt amperes consumed for each price category by the corresponding electricity rates charged for each price category. Next, we calculated the benchmark electricity cost by multiplying the monthly consumption reported by the respondents for each price category by the highest electricity rate charged for each price category, as reflected in the electricity rate benchmark chart. To calculate the benefit for each month, we subtracted the amount paid by the respondents for electricity during each month of the POR from the monthly benchmark electricity price. We then calculated the total benefit for each company during the POR by summing the monthly benefits for each company.⁴⁹

To calculate the subsidy rate pertaining to the GOC's provision of electricity for LTAR, we

⁴⁶ See Memorandum to the File, through Paul Walker, Program Manager, "Countervailing Duty Review of Chlorinated Isocyanurates from the People's Republic of China: Preliminary Selection of Electricity Benchmarks," dated concurrently with this memorandum ("Preliminary Benchmark Memo").

⁴⁷ See the GOC's initial questionnaire response, dated May 16, 2017, at Exhibit E2-3.

⁴⁸ See, *e.g.*, *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences" section; *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences" section; *Chloro Isos Investigation Final*, and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences" section.

⁴⁹ See Preliminary Calculation Memoranda.

divided the benefit amount calculated for each respondent by the appropriate total sales denominator, as discussed in the “Subsidies Valuation” section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable subsidy of 0.91 percent *ad valorem* for Huayi, and 18.65 percent *ad valorem* for Hebei Jiheng.⁵⁰

2. *Grants for Export Credit Insurance*

Huayi reported that it did not use this program. Hebei Jiheng and Jiheng Group reported receiving a grant for this program in 2013 and 2014.⁵¹ According to the GOC, Hebei Jiheng and Jiheng Group applied for, and received benefits from this program.⁵² This program is a grant from the Hengshui Finance Bureau which provides a subsidy for 30 percent of the insurance premium if an export company’s exports are valued at less than five million USD, and 20 percent for exports valued above five million USD.⁵³ There are no restrictions on the types of goods covered by this program, and the eligibility criteria for Hebei Jiheng and Jiheng Group to receive benefits was contingent on the fact that it purchased export credit insurance from the China Export and Credit Insurance Corporation.⁵⁴

We preliminarily find that these reimbursements are grants that constitute a financial contribution, and confer a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Because receipt of the grants were contingent upon export performance, as explained in the previous paragraph, we preliminarily determine that they are specific under section 771(5A)(A) and (B) of the Act. The Department found this program countervailable in the countervailing duty investigation of chloro isos.⁵⁵

Under 19 CFR 351.520(a)(2) benefits from export insurance are expensed in the year of in which they are received; and, thus are considered to be recurring benefits under 19 CFR 351.524. Because the benefits from this program reimburse exporters for costs incurred in purchasing export insurance, grants under this program will be expensed in the year of receipt. Therefore, we divided the amount of the grants received by Hebei Jiheng under this program during the POR by the Jiheng Companies’ free-on-board (“FOB”) value of total exports. Based on this methodology, we calculated a total net subsidy rate of 0.09 percent *ad valorem* for the Jiheng Companies.⁵⁶

3. *Special Fund for Energy Saving Technology*

Huayi reported that it did not use this program. Hebei Jiheng reported receiving grants under this program in 2010, 2012, and 2013, while the Jiheng Group reported receiving a grant under

⁵⁰ *Id.*

⁵¹ See Hebei Jiheng’s initial questionnaire response, dated May 17, 2016, at Exhibit 21.

⁵² See the GOC’s December 20, 2013, submission at 9.

⁵³ See Jiheng’s December 23, 2013, submission at 16 and Appendices 10 & 11.

⁵⁴ *Id.*

⁵⁵ See *Chloro Isos Investigation Final* and accompanying Issues and Decision Memorandum, at “Analysis of Programs.”

⁵⁶ See Jiheng Preliminary Calculation Memo.

this program in 2013.⁵⁷ According to the GOC, Hebei Jiheng and the Jiheng Group applied for, and received benefits from, this program. In order to popularize energy saving technology and equipment and improve energy efficiency, *i.e.*, reduce the amount of coal consumption, the GOC provides grants to companies for renovations which improve energy efficiency.⁵⁸ Hebei Jiheng and the Jiheng Group applied for and received grants from the Hengshui Finance Bureau for their energy saving technology renovations.

We preliminarily determine that these grants were provided by the GOC, and that they are specific and constitute financial contributions under section 771(5)(D)(i) of the Act. We further preliminarily determine that these grants confer a benefit equal to the amount of the funds provided under 19 CFR 351.504. The Department found this program countervailable in the countervailing duty investigation of chloro isos.⁵⁹

To calculate the benefit for the grants that Hebei Jiheng received in 2010, 2012 and 2013, we divided the benefit by Hebei Jiheng's sales in 2010, 2012 and 2013, respectively, pursuant to 19 CFR 351.524(b)(2). Because the result was greater than 0.5 percent, we allocated the benefit over the AUL, using the discount rate described in the "Benchmarks and Discount Rates" section above, and divided the allocated amount by Hebei Jiheng's total sales during the POR.

On this basis, we preliminarily determine that the Jiheng Companies received a net countervailable subsidy of 0.65 percent *ad valorem*.⁶⁰

4. *Self-Reported Grant Programs*

Both respondents reported receiving various non-recurring grants during the POR and throughout the AUL period. On July 8, 2016, Huayi self-reported receiving grants under the following programs⁶¹:

- a. Basic Construction Cost of National Debt Special Fund in 2006
- b. Industrial Technology Research and Development Fund in 2006
- c. Fund for Eco-compensation Pilot Projects in Regions South of the Yellow River and Provincial Region of Huaihe River under South-to-north Water Transfer
- d. Special Fund for Constructional Adjustment of Key Products in 2007
- e. Financial Special Subsidy Fund and Local Supporting Fund for Prevention and Control of Water Pollution Project in "Three Rivers and Three Lakes" (Environmental Protection Part)
- f. Heze Municipal Key Special Project Fund for Promotion of Technology Creation in 2011
- g. State Subsidy on Evaluation Award Fund for Prevention and Control of Water Pollution

⁵⁷ See Hebei Jiheng's initial questionnaire response, dated May 17, 2016, at Exhibit 21 *see also* Jiheng Group's initial questionnaire response, dated March 17, 2016 at Exhibit 17. *see also* Jiheng's December 23, 2013, submission at 17 and Appendix 12; *see also* Jiheng Group's December 23, 2013, submission at 13 and Appendix 11.

⁵⁸ See, *e.g.*, Hebei Jiheng's initial questionnaire response, dated May 17, 2016, at Exhibit 21; *see also* Jiheng Group's initial questionnaire response, dated March 17, 2016 at Exhibit 17

⁵⁹ See *Chloro Isos Investigation Final* at 13.

⁶⁰ See Jiheng Preliminary Calculation Memo.

⁶¹ See Huayi first supplemental questionnaire response, dated July 8, 2016, at Exhibit SQ1-2.

- (Comprehensive Improvement Project of Water Environment) in Regions of “Three Rivers and Three Lakes” and the Songhua River in 2011
- h. Heze Municipal Intellectual Property Technology Award in 2014

On July 15, 2016, Hebei Jiheng self-reported the following programs⁶²:

- a. Subsidy Fund
- b. Rebate for Land Use Fee
- c. Financial Fund
- d. Market Development Funds
- e. Government Subsidy
- f. Patent Awards
- g. Model Enterprise Fund
- h. County Magistrate Awards
- i. International Market Development Funds
- j. Awards for Patent Application
- k. Technological Innovation Funds
- l. Science and Technology Fund
- m. Boiler Improvement Fund
- n. Technical Innovation Funds Intellectual Property Reward
- o. Awards for Star Enterprises 2014

As discussed in the “Use of Facts Available and Adverse Inferences” section above, the Department preliminarily determines that the GOC provided the subsidies listed above, that these subsidies constitute a financial contribution under section 771(5)(D)(i) of the Act, and that these programs are specific under section 771(5A) of the Act. The Department further preliminarily determines that these grants each confer a benefit equal to the amount of the grant reported by the respondents in accordance with 19 CFR 351.504(a).

To calculate the benefit received under these programs, the Department followed the methodology described in 19 CFR 351.524. Grants under the programs listed above were received by the mandatory respondents during the POR and throughout the AUL period. To calculate the *ad valorem* subsidy rate for these grants, the Department divided the benefit conferred under each of these programs by the appropriate sales denominator – total sales or total export sales for the year in which the grant was received – and allocated the benefit as described in “Subsidies Valuation” section, above.⁶³ Further discussion on the methodology used to calculate the *ad valorem* subsidy rate under these programs is included in the Preliminary Calculation Memoranda.

The Department preliminarily determines that certain grants under the following programs conferred a measurable benefit upon Huayi during the POR:

- a. Basic Construction Cost of National Debt Special Fund in 2006

⁶² See Jiheng’s May, 16, 2016 submission, at Part I Exhibit 21, and Part II Exhibit 17.

⁶³ See Preliminary Calculation Memoranda.

- b. Special Fund for Constructional Adjustment of Key Products in 2007
- c. Financial Special Subsidy Fund and Local Supporting Fund for Prevention and Control of Water Pollution Project in “Three Rivers and Three Lakes” (Environmental Protection Part)
- d. State Subsidy on Evaluation Award Fund for Prevention and Control of Water Pollution (Comprehensive Improvement Project of Water Environment) in Regions of “Three Rivers and Three Lakes” and the Songhua River in 2011

Based on the methodology outlined above, the combined countervailing subsidy rate for these programs is 0.55 percent.

The Department preliminarily determines that certain grants under the following programs conferred a measurable benefit upon Hebei Jiheng during the POR:

- a. Rebate for Land Use Fee
- b. Model Enterprise Fund
- c. County Magistrate Awards
- d. International Market Development Funds
- e. Science and Technology Fund
- f. Technological Innovation Funds
- g. Boiler Improvement Fund
- h. Awards for Star Enterprises 2014

Based on the methodology outlined above, the combined countervailing subsidy rate for these programs is 1.54 percent.

4. *Programs Preliminarily Determined Not to Have Conferred a Measureable Benefit or Not to Have Conferred a Benefit during the POR*

Based on the methodology outlined above, the Department finds that the following self-reported grant programs by Huayi had benefits that we either expensed prior to the POR, or the calculated benefit resulted in a subsidy rate during the POR which is not measureable (less than 0.005 percent):

- a. Industrial Technology Research and Development Fund in 2006
- b. Fund for Eco-compensation Pilot Projects in Regions South of the Yellow River and Provincial Region of Huaihe River under South-to-North Water Transfer
- c. Heze Municipal Key Special Project Fund for Promotion of Technology Creation in 2011
- d. Heze Municipal Intellectual Property Technology Award in 2014

Similarly, the Department finds that the following self-reported grant programs by Hebei Jiheng had benefits that we either expensed prior to the POR, or the calculated benefit resulted in a subsidy rate during the POR which is not measureable (less than 0.005 percent):

- a. Subsidy Fund
- b. Financial Fund

- c. Market Development Funds
- d. Government Subsidy
- e. Patent Awards
- f. Awards for Patent Application
- g. Technological Innovation Funds

B. *Programs Preliminarily Not Used During the POR*

The Department preliminarily determines that the following programs were not used by the mandatory respondents during the POR:

1. Grants under the Haixing County Science and Technology Research & Development Plan Project
2. Special National Bond Fund for Energy Conservation and Waste Recycling Projects
3. Export Buyer's Credits from the Export-Import Bank of China (China ExIm), Special National Bond Fund for Energy Conservation and Waste Recycling Projects
4. Export Seller's Credits from China ExIm
5. Shandong Industrial Structure Adjustment Entrusted Loan
6. Corporate Income Tax Law Article 33: Reduction of Taxable Income for the Revenue Derived from the Manufacture of Products that are in Line with State Industrial Policy and Involve Synergistic Utilization of Resources
7. Enterprise Income Tax Reduction for High and New Technology Enterprises
8. Land and Land Usage for Foreign Invested Enterprises ("FIEs") in National Economic and Technological Zones at Preferential Rates
9. "Two Free/Three Half" Program for FIEs
10. Income Tax Benefits for FIEs Based on Geographic Location
11. Value Added Tax and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
12. VAT refunds for FIEs on purchases of Chinese-made equipment
13. Preferential direct tax treatment on purchases of domestically produced equipment for FIEs
14. Policy Loans under the Chlor-alkali Industry Second Five Year Plan
15. Stamp Tax exemption on share transfers under Non-Tradable Share Reform
16. State Key Technology Renovation Project Fund
17. Shareholder loans (debt forgiveness)
18. Discounted Loans for Export-Oriented Enterprises
19. VAT rebate on domestically produced equipment
20. VAT exemption on imports by encouraged industries
21. Preferential lending for industrial readjustment
22. Export credit insurance from Sinosure
23. Preferential loans provided by China ExIm "Going-out" for Outbound Investments
24. Foreign Trade Development Fund
25. "Famous Brands" program
26. Preferential policies to attract foreign investment in Jiangsu Province
27. Outline of light industry restructuring and revitalization plan in Jiangsu Province
28. Jiangsu province grants for legal fees in foreign trade remedy proceedings

29. Shandong Province: grants to enterprises exporting key product
30. The Clean Production Technology Fund
31. Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies
32. VAT Tax Rebate for Comprehensive Utilization of Resources

C. *Program the Department Intends to Address in a Post-Preliminary Results*

Because the Department is currently seeking additional information from the GOC on the Export Buyers Credit program, the Department intends to address the use of this program in a post-preliminary results analysis.

X. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the publication of these preliminary results.⁶⁴ The Department also intends to issue a post-preliminary results. Interested parties may submit written comments (case briefs)⁶⁵ within 30 days of the issuance of the post-preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.⁶⁶ Rebuttal briefs must be limited to issues raised in the case briefs.⁶⁷ Parties who submit case ore rebuttal briefs are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.⁶⁸

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system.⁶⁹ Requests should contain 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, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.⁷⁰ Parties should confirm by telephone the date, time, and location of the hearing. Issues addressed at the hearing will be limited to those raised in the briefs.⁷¹ All briefs and hearing requests must be filed electronically and received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department intends to issues the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of

⁶⁴ See 19 CFR 351.224(b).

⁶⁵ See generally 19 CFR 351.303 (for general filing requirements).

⁶⁶ See 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

⁶⁷ See 19 CFR 351.309(d)(2).

⁶⁸ See 19 CFR 351.309(c)(2) and (d)(2).

⁶⁹ See 19 CFR 351.310(c).

⁷⁰ See 19 CFR 351.310.

⁷¹ See 19 CFR 351.310(c).

these preliminary results.

XI. CONCLUSION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

12/5/2016

X  _____

Signed by: PAUL PIQUADO

Paul Piquado

Assistant Secretary

for Enforcement and Compliance