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Investigation
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DATE: February 1, 2017

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

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Antidumping Duty Investigation of Stainless Steel Sheet and
Strip from the People's Republic of China

I. SUMMARY

In this final determination, the Department of Commerce (the Department) finds that stainless steel sheet and strip (stainless sheet and strip) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act).¹ The period of investigation (POI) is July 1, 2015, through December 31, 2015.

We analyzed the comments submitted by interested parties in this investigation. As a result of this analysis we made changes to the margin calculations for the PRC-wide entity, and the separate rate companies. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments:

- Issue 1: Whether the Department's Investigation and Decision Not to Verify Taigang Were Lawful
- Issue 2: Whether the Department Should Apply a Double-Remedy Adjustment for Domestic Subsidies Countervailed in the Accompanying CVD Investigation
- Issue 3: Whether the Department has the Statutory Authority to Issue a "PRC-Wide Entity" AD Rate, and Whether the Department has Justification for Applying FA or AFA to Taigang
- Issue 4: Whether the Department's Presumption of PRC Government Control is Outdated

¹ A list of abbreviations and short cites for company names, case filings, administrative cases, court cases, and commonly used acronyms are attached to this notice in the Appendix.



Issue 5: Whether Taigang's Export Activities Are Controlled by the Chinese Government

II. BACKGROUND

On March 10, 2016, the Department published the initiation for the LTFV investigation of stainless sheet and strip from the PRC.² Pursuant to 19 CFR 351.204(b)(1), the Department established the POI of July 1, 2015, through December 31, 2015, the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed. On September 9, 2016, the Department published the preliminary determination in the LTFV investigation of stainless sheet and strip.³ On October 21, 2016, the Department issued a postponement of its final determination in this investigation.⁴

Shanxi Taigang Stainless Steel Co., Ltd. (Taigang) requested a hearing to be held concerning the arguments made in the instant investigation.⁵ The Department received a case brief from Taigang on November 2, 2016, and a rebuttal brief from Petitioners on November 14, 2016.⁶ On January 17, 2017, the Department held the hearing.⁷

III. SCOPE COMMENTS

With regard to the scope of the investigation as provided in the *AD Initiation*, and in accordance with the *Preamble* to our regulations,⁸ the Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments in the *AD Initiation*. In the *AD Preliminary Determination*, we did not modify the scope language as it appeared in the *AD Initiation*.⁹ No interested parties submitted scope comments after the *AD Preliminary Determination*; therefore, the scope of this investigation remains unchanged for this final determination.

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is stainless steel sheet and strip, whether in coils or straight lengths. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product with a width that is greater than 9.5 mm and with a thickness of 0.3048 mm and greater but less than 4.75 mm, and that is annealed or otherwise heat treated, and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, annealed, tempered, polished, aluminized, coated, painted, varnished, trimmed, cut, punched, or slit, *etc.*) provided that it maintains the specific dimensions of sheet and strip set forth above following such processing. The products described include products regardless of shape, and include products of either rectangular or non-rectangular cross-section where such

² See *AD Initiation*.

³ See *AD Preliminary Determination*.

⁴ See *Postponement of Final*.

⁵ See Taigang's Hearing Request.

⁶ See Taigang's Case Brief; see also Petitioners' Rebuttal Brief.

⁷ See Hearing Memorandum; see also Hearing Transcript.

⁸ See *Preamble*.

⁹ See Preliminary Scope Memorandum.

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.

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.

Subject merchandise includes stainless steel sheet and strip that has been further processed in a third country, including but not limited to cold-rolling, annealing, tempering, polishing, aluminizing, coating, 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 stainless steel sheet and strip.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and not pickled or otherwise descaled; (2) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); and (3) flat wire (*i.e.*, cold-rolled sections, with a mill edge, rectangular in shape, of a width of not more than 9.5 mm).

The products under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.13.0081, 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.23.0030, 7219.23.0060, 7219.24.0030, 7219.24.0060, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.32.0045, 7219.32.0060, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.33.0045, 7219.33.0070, 7219.33.0080, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.34.0050, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.35.0050, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

V. USE OF ADVERSE FACTS AVAILABLE

As discussed below, parties have raised issues with respect to the application of AFA to the PRC-wide entity (see Issue 3). We continue to find that necessarily information is missing from the record, that the PRC-wide entity withheld necessary information, failed to provide necessary

information, and significantly impeded this proceeding within the meaning of sections 776(a)(2)(A)-(C) of the Act, and that the PRC-wide entity failed to act to the best of its ability to comply with the Department's requests for information within the meaning of section 776(b) of the Act.¹⁰ For this final determination, the Department continues to find it appropriate to base the PRC-wide rate on AFA. Consistent with our practice,¹¹ as AFA, we have continued to assign the PRC-wide entity a dumping margin equal to the highest dumping margin alleged in the petition, which we were able to corroborate pursuant to section 776(c) of the Act.¹² Further, as discussed in Issue 2 below, pursuant to 777A(f) of the Act and consistent with our practice, we have adjusted the final antidumping duty cash deposit rates for the PRC-wide entity and the two non-selected separate rate respondents for the appropriate domestic pass-through subsidy amount.

VI. CRITICAL CIRCUMSTANCES

For the final determination, we continue to find, as we did in the *AD Preliminary Determination*, that: (1) there is a history of injurious dumping of stainless sheet and strip; (2) that the importer(s) knew or should have known that stainless sheet and strip was being sold at LTFV and that there would be material injury by reason of such sales; and (3) that there have been "massive imports" of stainless sheet and strip during a "relatively short period" of time for the period February 2016 through April 2016, compared to November 2015 through January 2015, for the PRC-wide entity and non-selected respondents eligible for a separate rate, pursuant to 19 CFR 351.206(h) and (i) and section 735(a)(3) of the Act.¹³ Interested parties did not submit comments in response to the Department's preliminary determination of critical circumstances.

For purposes of our analysis of massive imports, as explained above, the Department found that the PRC-wide entity failed to cooperate and, therefore, that the use of AFA is appropriate. Consequently, as AFA, we continue to find that there were massive imports for the PRC-wide entity in accordance with section 735(a)(3)(B) of the Act and 19 CFR 351.206(h).¹⁴ With respect to non-selected respondents eligible for a separate rate, we continue to find massive imports, in accordance with section 735(a)(3) of the Act and 19 CFR 351.206(h).

VII. SEPARATE RATES

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single AD deposit rate.¹⁵ It is the Department's policy to assign all exporters of

¹⁰ See *AD Preliminary Determination*, PDM at 14-16, an analysis which is hereby adopted for purposes of this final determination.

¹¹ See *PVLT Tires from the PRC AD*, IDM at 6.

¹² See *AD Preliminary Determination*, PDM at 16-18.

¹³ See *AD Preliminary Determination* at 6-9.

¹⁴ See *Corrosion-Resistant Steel Products from the PRC*, IDM at 3, Note 8.

¹⁵ See e.g., *Diamond Sawblades from the PRC: AD Investigation Final Determination*; see also *Paper Products from the PRC*.

merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent to be entitled to a separate rate.¹⁶

In the *AD Preliminary Determination*, we found certain companies eligible for separate rate status because they demonstrated that they operated under an absence of *de jure* and *de facto* government control.¹⁷ Based on the information on the record of this investigation, we continue to find that the respondents that received separate rates in the *AD Preliminary Determination*, Taiyuan Ridetaixing Precision Stainless Steel Incorporated Co., Ltd. and Zhangjigang Pohang Stainless Steel Co., Ltd., are eligible for separate rates.

Neither the statute nor the Department's regulations address how we are to determine the dumping margin for separate rate companies not selected for individual examination where the Department limits its examination in a less than fair value investigation pursuant to section 777A(c)(2) of the Act. Our practice in this regard has been to look to section 735(c)(5) of the Act for guidance which provides instructions for calculating the all-others rate in an investigation,¹⁸ as a general rule, and assign this dumping margin to separate-rate companies that were not individually examined. Section 735(c)(5)(A) of the Act provides that the Department shall calculate the all-others rate equal to the weighted-average of the margins calculated for the individually examined respondents, excluding margins that are zero, *de minimis*, or based entirely on facts available. Section 735(c)(5)(B) of the Act provides that if all dumping margins for the individually examined respondents are zero, *de minimis*, or based entirely on facts available, then the Department may use any reasonable method, including averaging the dumping margins for the individually examined respondents. The SAA also provides that the expected method to apply when using any reasonable method in situations where the dumping margins for all of the exporters and producers that are individually investigated are determined entirely on the basis of the facts available or are zero or *de minimis*, is to "weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided the volume data is available." The SAA stipulates however if the method is not feasible or if it "results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers," the Department may use any other reasonable method.¹⁹

In this investigation, both exporters selected for individual examination have been found to be part of the PRC-wide entity, which is receiving an antidumping duty rate based on facts otherwise available with an adverse inference. Therefore, we are looking to section 753(c)(5)(A)-(B) of the Act for guidance and using "any reasonable method" to determine the rate for exporters that are not being individually examined and found to be entitled to a separate rate, as we did in the *AD Preliminary Determination*. As "any reasonable method," we continue to assign the simple average of the two petition rates (*i.e.*, 63.86 percent) to the separate rate

¹⁶ See *AD Initiation*

¹⁷ See *AD Preliminary Determination* at 10-13.

¹⁸ See Section 735(c)(5); see also *Frozen Warmwater Shrimp from the PRC*

¹⁹ See SAA; *Baroque Timber* at 1341; see also *Pressure Pipe from Japan Preliminary Determination*, PDM at 7-8, unchanged in *Pressure Pipe from Japan: Final Determination*.

applicants not individually examined.²⁰ No parties commented on the method we used in the *AD Preliminary Determination* for separate rate applicants. Thus, we have continued to assign the separate-rate respondents that are not being individually examined the simple average of the two petition rates, i.e., 63.86 percent.²¹

VIII. COMBINATION RATES

Consistent with the *AD Initiation*, the Department has determined combination rates for respondents that are eligible for a separate rate in this investigation. This practice is described in *Policy Bulletin 05.1*.

IX. PRC-WIDE ENTITY RATE

For the final determination, we continue to base the PRC-wide entity rate on AFA. In the *AD Preliminary Determination*, the Department selected, and corroborated, the highest petition rate to determine the AFA rate for the PRC-wide entity: 76.64 percent.²² We hereby adopt the corroboration methodology used in the *AD Preliminary Determination* to corroborate the highest petition rate for purposes of the final determination.²³ There is no information on the record that calls into question the relevance or reliability of the petition rate, or that calls into question our corroboration methodology. Therefore, we determine that that AFA rate is corroborated for purposes of this investigation.

X. ADJUSTMENT UNDER SECTION 777A(F) OF THE ACT

For the final determination, we will adjust the AD duty rate for the separate rate companies and the PRC-wide entity as appropriate,²⁴ pursuant to section 777A(f) of the Act. For discussion of these issues, see Issue 2 below and the Final Double Remedy Memo.²⁵

XI. ADJUSTMENT TO CASH DEPOSIT RATE FOR EXPORT SUBSIDIES

For this final determination, the Department will continue to adjust the AD cash deposit rates of the separate rate companies and the PRC-wide entity for countervailable export subsidies, pursuant to section 772(c)(1)(C) of the Act.

²⁰ See *AD Initiation*, $(51.07 + 76.64) / 2 = 63.86$.

²¹ See *AD Preliminary Determination*.

²² See *AD Preliminary Determination*, PDM at 14-18.

²³ *Id.*

²⁴ If the ITC makes an affirmative final determination, we will adjust the cash deposit rates by deducting applicable domestic pass-through rate from the final margins.

²⁵ See Final Double Remedy Memo.

XII. DISCUSSION OF THE ISSUES

Issue 1: Whether the Department's Investigation and Decision Not to Verify Taigang Were Lawful

Taigang Argues:

- The Department did not meet its clear legal obligation, pursuant to section 732 of the Act, to conduct a proper investigation of Taigang because it simply issued the Department's standard antidumping questionnaire at the outset of the proceeding, and did not undertake a systematic back and forth with Taigang, as is standard agency practice.²⁶
 - According to *American Lamb*, an agency may not contravene or ignore the clearly discernible legislative intent of the legislature or the guiding purpose of the statute.²⁷
 - As laid out in *Tung Fong*, the Department has a long-standing practice of how it conducts antidumping investigations. The Department failed to follow standard agency practice by not performing a systematic examination by issuing supplemental questionnaires or verifying the information from Taigang.²⁸
- The Department's final determination in this proceeding cannot be lawful because the Department failed to undertake verification of Taigang.²⁹
 - Section 782(i) of the Act sets out the Department's mandatory duty to conduct a verification in original investigations.³⁰
 - The Department's use of *Melamine from the PRC* to justify not verifying Taigang is inapposite because the mandatory respondents had withdrawn from the proceeding and had not provided complete questionnaire responses; Taigang has provided complete questionnaire responses.³¹
 - In *Jiangsu Jiasheng*, the CIT explicitly stated that the Department has the "responsibility for investigating, questioning, and verifying the respondents' submitted data and evidence...for determining the appropriate treatment for producers and exporters from NME countries."³² In addition, the CIT's reasoning that the Department had met its legal duty of performing sufficient follow-up inquiries and verification prior to reaching its conclusion in *Jiangsu Jiasheng* shows that the Department acted contrary to its legal duty in this case to verify all facts relied upon in its determination.³³
 - The Department's purported justification not to verify is irrelevant and based on faulty reasoning. Without obtaining more information, it is not possible for the Department to make a determination of whether Taigang is part of the PRC-wide entity and, thereby, not eligible for a separate rate. This is supported by the CIT's

²⁶ See Taigang's Case Brief at 5-7; see also section 732 of the Act.

²⁷ See Taigang's Case Brief at 5 citing to *American Lamb* at 994.

²⁸ *Id.* at 6 citing to *Tung Fong* at 1321.

²⁹ *Id.* at 8.

³⁰ *Id.*

³¹ See Taigang's Case Brief at 9 citing to *Melamine from the PRC*, PDM at 19.

³² See Taigang's Case Brief at 10 citing to *Jiangsu Jiasheng* at 1348-50.

³³ *Id.*

finding in *Jiangsu Jiasheng* that similar facts only showed the possibility for government control if it was likely exercised during the POI.³⁴

- o Similar to *Jiangsu Jiasheng*, where the Department ultimately found that the Chinese respondents exercised sufficient localized control over their export activities because the companies certified that they independently managed their own sales negotiations and set their own export prices, Taigang's general manager provided a sworn declaration stating that Taigang's price setting is decided independent of the Board of Directors or controlling shareholders.³⁵
- o The Department cannot conclude that Taigang is part of the PRC-wide entity without properly verifying the facts. By submitting comments on the deficiencies in Taigang's Section A response, Petitioners agreed that the Department should have made further factual inquiries to determine who actually controls the business decisions of Taigang.³⁶

Petitioner Argues:

- The Department's conduct in this investigation, and the *AD Preliminary Determination* based on that investigation, was appropriate.³⁷
 - o The Department has broad discretion in establishing procedures to conduct an antidumping investigation outlined under section 732 of the Act, permitting it to commence an investigation "whenever {it} determines, from the information available to it, that a formal investigation is warranted" and case law.³⁸
 - o As it is the Department's practice that majority government ownership means that a government "exercises, or has the potential to exercise, control over the company's operations generally," as affirmed in *Advanced Tech. II*, the Department received all of the information necessary from Taigang's questionnaire response to conclude that Taigang was majority owned and ineligible for a separate rate.³⁹ It did not need to gather further information.
 - o Taigang remained silent when given the opportunity to rebut, clarify, or correct information, as allowed by 19 CFR 351.301(c)(1)(v), when Petitioners filed new factual information on the record concerning Taigang's eligibility for a separate rate.⁴⁰
- The Department's determination not to verify Taigang during this investigation is appropriate.⁴¹
 - o As a matter of practice and logic, "'all' information relied on in making a determination is rarely, if ever, verified" according to the decision in *Micron*.⁴²

³⁴ *Id.* at 11 citing to *Jiangsu Jiasheng* at 1348.

³⁵ See Taigang's Case Brief at 12 citing to *Jiangsu Jiasheng* at 1350.

³⁶ *Id.*

³⁷ See Petitioners' Rebuttal Brief at 20.

³⁸ See section 733(a)(1) of the Act citing to *Micron* at 1394-1395 and *Yantai* at 1356, 1369.

³⁹ See Petitioners' Rebuttal Brief at 21 citing to *Advanced Tech. II* at 1347-60; see also *AD Preliminary Determination*, PDM at 10.

⁴⁰ See Petitioners' Rebuttal Brief at 21.

⁴¹ *Id.* at 16-19.

⁴² See Petitioners' Rebuttal Brief at 16 citing to *Micron* at 1386, 1396.

This is because verification “is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness.”⁴³

- o The statute grants the Department leeway.⁴⁴ For example, the Department is required to use “facts otherwise available” where a respondent provides information “but the information cannot be verified.”⁴⁵ If the Department takes the additional step of making an adverse inference, it may use information derived from “the petition,” or “any other information placed on the record.”⁴⁶
- o The Department’s explanation of its decision not to conduct verification in this investigation is consistent with its practice explained in *Galvanized Steel Wire from the PRC*.⁴⁷ In this proceeding, the Department’s decision not to verify was based on the failure of the PRC-wide entity, not a specific company in the PRC-wide entity, to cooperate. Similar to *Galvanized Steel Wire from the PRC*, because the Department preliminarily determined that the mandatory respondent was a part of the PRC-wide entity, and preliminarily determined to rely on adverse facts available in assigning a margin to the PRC-wide entity, there was no need to conduct verification.⁴⁸

Department’s Position:

The Department does not dispute that section 782(i) of the Act instructs the Department to verify information relied upon in an investigation. However, we disagree with Taigang’s argument that the Department was required to conduct a verification where the Department found that Taigang was part of the PRC-wide entity and the Department applied adverse facts available to the PRC-wide entity because it failed to cooperate by refusing to provide information requested by the Department.

Section 732(a)(1) of the Act directs the Department, in general, to conduct an investigation:

whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under Section 731 exist.⁴⁹

The Department complied with the statutory requirements to investigate stainless sheet and strip from the PRC and analyzed the information Taigang submitted by reviewing Taigang’s response to our initial antidumping questionnaire. The examination of Taigang’s section A response led us to the preliminary conclusion that Taigang was ineligible for a separate rate because a government entity holds a majority ownership share in it. Government majority ownership entitles the government entity the ability to control, and an interest in controlling, the operations of the company, including, but not limited to, the ability to select certain board members, who in

⁴³ See Petitioners’ Rebuttal Brief at 17 citing to *Bomont* at 1507-1508.

⁴⁴ See Petitioners’ Rebuttal Brief at 17.

⁴⁵ See section 777(a)(2)(D) of the Act; see also Petitioners Rebuttal Brief at 17.

⁴⁶ See section 777 (b)(2)(A), (D); see also Petitioners Rebuttal Brief at 17.

⁴⁷ See Petitioners’ Rebuttal Brief at 18-19 citing to *Galvanized Steel Wire from the PRC*, IDM at 10-11.

⁴⁸ *Id.*

⁴⁹ See section 732(a)(1) of the Act.

turn, have the ability to appoint certain managers, and deputy managers.⁵⁰ We continue to find that evidence on the record demonstrates that the 100 percent SASAC-owned majority owner of Taigang, TISCO, exerts influence over the board of directors (and, thus, the management and operations of the company). Moreover, the factual record does not provide sufficient information to rebut the presumption of government control. As a result, Taigang is ineligible for a separate rate and is part of the PRC-wide entity, pursuant to the Department's practice, as discussed below in Issues 3 and 5. Because we found that Taigang is ineligible for a separate rate, the Department's practice is to include Taigang as part of the PRC-wide entity.⁵¹

Section 782(i) of the Act directs the Department to verify:

all information relied upon in making (1) a final determination in an investigation, (2) a revocation under section 751(d), and (3) a final determination in a review under section 751 (a), if (A) verification is timely requested by an interested party as defined in section 771 (9)(C), (D), (E), (F), or (O), and (B) no verification was made under this subparagraph during the 2 immediately preceding reviews and determinations under section 751(a) of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown.⁵²

However, in this investigation, certain constituent parts of the PRC-wide entity failed to cooperate. Daming did not respond to the AD Questionnaire issued by the Department and withdrew from participation in this investigation. Moreover, 143 companies within the PRC-wide entity failed to respond to the Department's request for Q&V information. Similar to *Galvanized Steel Wire from the PRC*, the Department has determined that both mandatory respondents were part of the PRC-wide entity, which has failed to cooperate to the best of its ability.⁵³ The Department did not verify, and is not required to verify, Taigang's data, because Taigang has been found to be a part of the PRC-wide entity, and the PRC-wide entity has been determined to be an uncooperative party whose rate is based on total AFA.⁵⁴

Following the CIT's reasoning in *Advanced Tech. II*, it is the Department's practice that majority government ownership means that a government "exercises, or has the potential to exercise, control over the company's operations generally."⁵⁵ Parties to this investigation submitted all of the necessary information for the Department to conclude that Taigang was majority government owned and ineligible for a separate rate. As noted above, we applied AFA to the PRC-wide entity because Daming did not respond to our AD questionnaire and 143 other producers of subject merchandise failed to respond to the Department's Q&V questionnaire.⁵⁶ Constituent

⁵⁰ See *AD Preliminary Determination* at 13; see also Taigang's SAQR.

⁵¹ See *Advanced Tech. I* at 1343 (in recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the respondent is not eligible for a separate rate), see also *Truck and Bus Tires from the PRC*.

⁵² See section 782(i) of the Act.

⁵³ See, e.g. *Truck and Bus Tires from the PRC*, IDM at 12-13; see also *Galvanized Steel Wire from the PRC*, IDM at 10.

⁵⁴ *Id.*

⁵⁵ See *AD Preliminary Determination*; see also *Advanced Tech. II* at 1347-50.

⁵⁶ For further discussion of this issues, please see Issue 3 below.

parts of the PRC-wide entity were unresponsive to the Department's request for information, or withdrew participation from the proceeding. As such, the PRC-wide entity did not cooperate to the best of its ability in this investigation. The Department is not required to verify the limited amount of information provided by one company within the PRC-wide entity where failure of other companies within the PRC-wide entity to provide requested information renders the PRC-wide entity's response substantially deficient.⁵⁷

The prerequisite to verification in an investigation is that the interested party submit information on the record that "is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination."⁵⁸ As noted above, information on the record shows that Taigang is part of the PRC-wide entity and that other parts of the PRC-wide entity had failed to cooperate to the best of their ability. The information Taigang submitted in response to our request for information represents only a portion of the information requested from the PRC-wide entity. The lack of a response by the rest of the PRC-wide entity means the entity's response is substantially deficient. Thus, in this case, verification of responses submitted by Taigang, which represent only a portion of the information required from the PRC-wide entity, would be "meaningless."⁵⁹ The Department, accordingly, is not required to verify when a respondent (in this case the PRC-wide entity) provides only a portion of the information requested. Doing so would allow the PRC-wide entity to manipulate AD results by selectively providing data on the record and dictating what data can be verified. Finally, Taigang did not provide sufficient evidence to rebut the presumption of government control, even considering it had ample opportunity during the course of the proceeding. Instead, it provided written arguments that there was no government control of Taigang, without submitting evidence to support those arguments. In accordance with longstanding Department practice,⁶⁰ verification would not have been the appropriate time for Taigang to submit new information to support its arguments.⁶¹

Moreover, Taigang's argument that *Jiangsu Jiasheng* mandates the Department verify Taigang is incorrect. Rather, the court found that we had "reasonably exercised our responsibility for investigating, questioning, and verifying the respondents' submitted data and evidence" in that case. Acknowledging our "expertise and relevant first-hand knowledge" and the various tools available to us – such as, "sending follow-up questionnaires and conducting on-sight {sic} verification *as needed*" in order to exercise this responsibility for investigating, questioning and verifying data, the court accordingly deferred to the Department's decision for the particular facts of that case, declined to reweigh the evidence and upheld the Department's decision in that instance to send follow up inquiries.⁶² In this investigation, we determined that information on the record, including Taigang's section A response, demonstrated that "through TISCO, the PRC government can exercise the rights inherent in majority ownership as would be expected."⁶³ We concluded that it was not necessary follow up with supplemental questionnaires to Taigang or conduct verification of Taigang because Taigang's section A response provided clear and

⁵⁷ See, e.g. *Galvanized Steel Wire from the PRC; Cut-to-Length Plate from the PRC Final CVD Determination*

⁵⁸ See, e.g., section 782(e)(3) of the Act.

⁵⁹ See *Galvanized Steel Wire from the PRC*, IDM at 11; see also *Truck and Bus Tires*, IDM at 12-13.

⁶⁰ See, e.g. *Biaxial Geogrid Products from the PRC*, IDM at 28.

⁶¹ See 19 CFR 351.301(c) on the type of factual information determines the time limit for submission to the Department.

⁶² See *Jiangsu Jiasheng* at 1349-50 (emphasis added).

⁶³ See *AD Preliminary Determination*, PDM at 13.

sufficient information for us to make a determination regarding Taigang's eligibility for a separate rate.

Issue 2: Whether the Department Should Apply a Double-Remedy Adjustment for Domestic Subsidies Countervailed in the Accompanying CVD Investigation

Taigang Argues:

- Because the Department selected Taigang as a mandatory respondent in both the antidumping and countervailing duty investigations, and because the Department has on the record clear evidence that countervailable subsidies reduced Taigang's export price, the Department is compelled to reduce the AD rate by the amount that the countervailable subsidies have increased the AD duties, pursuant to section 777A(f) of the Act and its practice.⁶⁴

Petitioner Argues:

- The Department properly declined to provide an offset for domestic subsidies for the separate rate companies or the PRC-wide entity, and the two decisions cited by Taigang for the proposition that "the Department has consistently applied {a} double remedy adjustment to the PRC-wide rate," are inapposite.⁶⁵
 - In *PVLT Tires from the PRC AD* and *Truck and Bus Tires from the PRC*, the Department provided an offset to the PRC-wide entity by the "lowest estimated domestic subsidy-pass through determined for any party" in the respective investigations and calculated antidumping margins (and domestic subsidy-pass through offsets) for the mandatory respondents.⁶⁶
- The fact pattern in this case is more akin to the decision in *Cut-to-Length Plate from the PRC: AD Preliminary Determination*, where the only responding party was found to be part of the PRC-wide entity, which was also found to be uncooperative.⁶⁷
- Because the PRC-wide entity, which includes Taigang, has not demonstrated that countervailable subsidies reduced the entity's export price, the Department should continue to not grant an adjustment in the final determination.⁶⁸

Department's Position:

Pursuant to section 777A(f) of the Act, we have adjusted the final antidumping duty cash deposit rates for the PRC-wide entity and the separate rate respondents by the appropriate domestic pass-through subsidy rate, where the particular facts of this investigation provide a basis for making an adjustment.

⁶⁴ See section 777A (f); see also Taigang Case Brief at 59-60; *PVLT Tires from the PRC AD*, Double Remedies Final Calculation Memorandum (June 11, 2015) at 3; *Truck and Bus Tires from the PRC*, Post Preliminary Double Remedy Memo (October 13, 2016) at 2.

⁶⁵ See Petitioners' Rebuttal Brief at 39.

⁶⁶ See Petitioners' Rebuttal Brief at 39-40 citing to *PVLT Tires from the PRC AD*, Double Remedies Final Calculation Memorandum at 3 (June 11, 2015) and to *Truck and Bus Tires from the PRC*, Post-Preliminary Double Remedy Memorandum, at 1-2 (October 13, 2016).

⁶⁷ See Petitioners' Rebuttal Brief at 40 citing to *Cut-to-Length Plate from the PRC: AD Preliminary Determination*, PDM at 7-10.

⁶⁸ *Id.*

As an initial matter, we note that Petitioner’s reliance on *Cut-to-Length Plate from the PRC: AD Preliminary Determination* is misplaced. Specifically, unlike the instant investigation, the Department had no basis to adjust the PRC-wide entity’s rate in *Cut-to-Length Plate from the PRC: AD Preliminary Determination*, as no double-remedy response was submitted on the record of that proceeding. By contrast, in this proceeding, Taigang submitted a double-remedy questionnaire response that provides a basis for the Department to determine a domestic subsidy pass-through rate.⁶⁹

In the companion CVD investigation, the Department calculated an estimated individual countervailable subsidy rate for Taigang, the only cooperating, individually-examined exporter/producer in that investigation.⁷⁰ In accordance with section 705(c)(5)(A)(i) of the Act, Taigang’s rate was preliminarily assigned as the “all-others” rate. Taigang submitted a double-remedy response in this AD investigation. As explained above, the PRC-wide entity has received an adverse facts available rate based on information contained in the petition. As an extension of the adverse inference, the Department has adjusted the PRC-wide entity’s AD cash deposit rate by the lowest estimated domestic subsidy pass-through determined in this investigation. With respect to the non-selected separate rate respondents, we adjusted the AD cash deposit by the “all others” estimated domestic subsidy pass-through amount in the CVD case.⁷¹

For further discussion of these issues, see the Final Double Remedy Memorandum.

Issue 3: Whether the Department has the Statutory Authority to Issue a Country-Wide “PRC-Wide Entity” AD Rate, and Whether the Department has Justification for Applying FA or AFA to Taigang

Taigang Argues:

- The Department has the authority to determine two types of antidumping rates: (1) “the weighted average dumping margin for each exporter and producer individually investigated;” and (2) “the estimated all others rate for all exporters and producers not individually investigated.”⁷²
- The two possible antidumping rates created by Congress was not an oversight, as at the same time, Congress created three possible rates for countervailing duties.⁷³
- “As this court has repeatedly recognized, when Congress explicitly grants some authority in one part of a statute, that is a clear indication that Congress knows how to grant that authority and that its failure to provide that authority elsewhere in the same statute is

⁶⁹ See *Cut to Length Plate from the PRC: Preliminary Determination*.

⁷⁰ See *SSSS from the PRC: CVD Preliminary Determination*.

⁷¹ It is the Department’s normal practice to apply the lowest domestic subsidy pass-through determined for any party in the CVD proceeding to the PRC-wide entity and an average domestic subsidy pass-through to the separate rate respondents. See, e.g., *PVLT Tires from the PRC AD* and *Truck and Bus Tires from the PRC*. As discussed below, Taigang is the only party to submit a double-remedy response in this investigation. As such, the only domestic subsidy pass-through rate on this record is based on Taigang’s information.

⁷² See Taigang’s Case Brief at 13 citing to sections 736(c)(1)(B)(i)(I) and 736(c)(1)(B)(i)(II) of the Act.

⁷³ See Taigang’s Case Brief at 14, citing to sections 736(c), 706(c)(1)(B)(i)(I), and 706(c)(1)(B)(i)(II) of the Act.

deliberate.”⁷⁴ Because there is no equivalent “country-wide” rate provision for AD proceedings while there is one for the CVD proceedings, it is clear that Congress intended to withhold from the Department the ability to determine a “country-wide” rate in dumping proceedings.

- The Department’s country-wide PRC-entity rate does not fall into either of the antidumping margins authorized by statute. When creating this new category, the Department failed to cite a statutory or regulatory justification and created for itself a legal authority that Congress expressly withheld.⁷⁵ When the Department formalized this new rate, the Department again failed to cite a statutory authority, and that rate has never been directly challenged in court.⁷⁶
- By definition, the Department’s PRC-wide entity rate applies to the residual companies that do not receive a separate rate. Therefore, this rate cannot be applied to an individually-investigated company, pursuant to section 736(c)(1)(B)(i)(I) of the Act.⁷⁷
- As per its current practice, “the Department never seeks to obtain any information whatsoever about a China-wide PRC-entity. A rate cannot be deemed ‘individually investigated’ if, in fact, there is no investigation.”⁷⁸
- Also, the PRC-entity rate cannot be an all-others rate, because that rate can only be applied to entities that are not investigated.⁷⁹ Note that the all-others rate specified in the statute must be constructed from the rates of the individually investigated companies. The Department has referred to the PRC-wide rate as an “all others” rate based on “best available information, and later an “all others” rate.⁸⁰
- The statute makes it clear that the standard dumping rules apply to PRC entities, except in certain limited issues, such as the determination of the normal value.⁸¹
- “Nothing in the statute allows the Department to use ‘facts available’ to create a wholly new general rate – the ‘country-wide PRC-entity’ rate – when that rate is not part of an ‘applicable determination’ permitted by the statute.”⁸²
- There is no ambiguous statutory language concerning this rate, only silence, and no deference under *Chevron* should be afforded to the Department to create the rate.⁸³ No court has found that the Department has the statutory authority to issue a general country-wide PRC-entity rate.
- “Like *Sigma*, *Transcom* focused on the presumption of state control, not the Department’s legal authority – if any – to impose a separate PRC country-wide rate. *Transcom* held that section 777 of the Act did not preclude the use of particular dumping margins in that case . . . but did not address the significance of the statutory limitation on the type of rates the Department may issue.”⁸⁴

⁷⁴ *Id.* at 15, citing to, e.g. *Heinzelman* at 1374, 1382; *Heartland By-Products, Inc.* 1360, 1366.

⁷⁵ *Id.* at 16 citing to *Iron Castings from the PRC* and *Policy Bulletin 05.1*.

⁷⁶ See Taigang’s Case Brief at 16-17.

⁷⁷ *Id.* at 17.

⁷⁸ *Id.* at 18.

⁷⁹ *Id.* at 19 citing to sections 736(c)(1)(B)(i)(II) and 736(c)(5) of the Act.

⁸⁰ See *Hand Tools from the PRC*; see also *Silicon Carbide from the PRC*; *UCF* at 435, 438.

⁸¹ See Taigang’s Case Brief at 20 citing to sections 771A(18) and 771A(c) of the Act.

⁸² *Id.* at 21 citing to sections 777(a), 736(c)(1)(B)(i)(I), and 736(c)(1)(B)(i)(I) of the Act

⁸³ *Id.* citing to *Chevron* at 843-844, *Elkem Metals* at 801, and *FAG Italia* at 806, 817.

⁸⁴ See Taigang’s Case Brief at 23 citing to *Sigma* at 1401, 1405, 1407; *Transcom II* at 1371-1382.

- Also, the specific provision that limits the Department to two types of antidumping rates was not in existence during either *Sigma* or *Transcom*.⁸⁵
- The Department applied the PRC-wide entity AD rate to Taigang in the *AD Preliminary Determination*. The PRC-wide entity rate was based on adverse facts available. Therefore, there is no doubt that the AD rate assigned to Taigang was based on adverse facts available.⁸⁶
- According to the statute, before the Department can adopt adverse inferences, it must find that an interested party failed to cooperate by not acting to the best of its ability. In this proceeding, Taigang timely submitted complete and accurate responses to each of the Department's questionnaires.⁸⁷
- The CAFC found in *Nippon Steel* that, before applying adverse inferences, the Department must make a separate finding that the respondent has failed to cooperate by not acting to the best of its ability to comply.⁸⁸
- The Department found that other Chinese exporters failed to provide information requested, then assumes that such failure should be attributed to Taigang.
- There is no basis in law or regulation for the Department to apply AFA to a company based on other companies' failure to provide information.

Petitioner's Rebuttal:

- The Department's methodology regarding the investigation of imports from NME countries has been affirmed by the CAFC.⁸⁹ This includes a presumption of government control of exporters in the NME country which the exporter must rebut, something Taigang did not do here.⁹⁰
- Taigang's arguments fail to address the Department 19 CFR 351.107(d) which states, "In an antidumping proceeding involving imports from a nonmarket economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers."⁹¹
- The Department explains that this language "provides the Department with the authority to apply a single margin to all producers and exporters from an NME country."⁹²
- Therefore, the gap in the statute with respect to the identification and establishment of a country-wide rate in proceedings involving imports from an NME country claimed by Taigang has been adequately addressed by the Department.
- Taigang has not only failed to submit evidence that it does not operate under the control of the Chinese government, it has submitted information that affirmatively establishes that the GOC holds a majority share in Taigang. Thus, Taigang is not entitled to receive a company-specific antidumping margin.⁹³

⁸⁵ *Id.* citing to section 736(c)(1)(B) of the Act.

⁸⁶ See Taigang's Case Brief at 35.

⁸⁷ *Id.* at 37-38 citing to *Zhejiang Dunan Hetian* at 1333, 1345-6 and *Shandong Huarong Machinery* at 1261, 1289.

⁸⁸ *Id.* at 37 citing to *Nippon Steel* at 1373, 1381.

⁸⁹ See Petitioners' Rebuttal Brief at 22, citing to *Transcom II* at 1371-1382.

⁹⁰ *Id.* citing to *Sigma* at 1401.

⁹¹ *Id.* at 23.

⁹² *Id.* citing to 19 CFR.351.107(d).

⁹³ *Id.* at 22.

- The Department’s application of the PRC-wide rate to an entity under similar circumstances as Taigang has been affirmed by the CIT.⁹⁴ In that case, the CIT found that the Department did not apply adverse facts available to the respondent, it found that the respondent had not rebutted the presumption of state control, and assigned it the PRC-wide entity rate – making a distinction about the application of these two different types of rates.
- The CIT also found that “a determination by the Department that a respondent is part of the PRC-wide entity, ‘means that inquiring into the respondent’s separate rate sales behavior ceases to be meaningful.’”⁹⁵
- Therefore, the information submitted by Taigang establishes that it is controlled by the GOC and, thus, it is not eligible for a separate rate in this proceeding.⁹⁶
- It is also clear from record evidence that the PRC-wide entity failed to cooperate to the best of its ability: “In particular...Baosteel and 142 other producers/exporters of subject merchandise failed to respond to the Department’s Q&V questionnaire; and Daming, which is affiliated with Taigang, failed to respond to the Department’s antidumping questionnaire.”⁹⁷
- Hence, the Department appropriately placed those companies in the PRC-wide entity, and relied on facts available with an adverse inference in selecting an antidumping margin for the entity, which properly includes Taigang.⁹⁸

Department’s Position

The Department disagrees with Taigang’s claims that we have no statutory or regulatory authority to issue a rate for the NME entity. While Taigang argues that it is clear that Congress intended to withhold the Department’s authority to determine a “country-wide” rate, it provided no information on the record of this investigation that speaks to Congress’ express intent in drafting the relevant statutory provisions that would support its contentions. Rather, the Department has the authority.⁹⁹ The Department’s practice of assigning a specific rate to all NME exporters that do not establish their eligibility for a separate rate is well-established,¹⁰⁰ and has been upheld by the courts.¹⁰¹ In contrast to Taigang’s argument, *Sigma* upholds the Department’s presumption of government control, and under this presumption all exporters receive one NME country rate.¹⁰² Our presumption has been upheld by the courts, and the CAFC has stated that sections 771(18)(B)(iv)-(v) of the Act recognize a close correlation between an NME economy and government control of prices, output decisions, and allocation of resources.¹⁰³ *Transcom* upheld the application of a PRC-wide entity rate to all parties not

⁹⁴ *Id.* at 24 citing to *Advanced Tech. II* 1350-1351

⁹⁵ *Id.* at 26, referencing *Advanced Tech. II* at 1351.

⁹⁶ *Id.* at 26.

⁹⁷ *Id.* at 27.

⁹⁸ *Id.*

⁹⁹ See *Sigma*.

¹⁰⁰ See, e.g., *Galvanized Steel from the PRC*, IDM at 8, *Tetrafluoroethane from the PRC*, IDM at Comment 1.

¹⁰¹ See, e.g., *Sigma* at 1405.

¹⁰² See *Brake Drum and Rotor Mfrs.* at 243 citing to *Sigma* at 1405.

¹⁰³ *Id.* 229, 243 quoting *Sigma* at 1405 (“Under the broad authority delegated to it from Congress, Commerce has employed ‘a presumption of state control for exporters in a non-market economy’.... Under this presumption, all

eligible for a separate rate, and the use of a rate based on BIA, the precursor to AFA, as non-punitive.¹⁰⁴ The courts have continued to uphold our authority to apply a presumption of state control in antidumping proceedings involving NME countries and to apply a single rate to exporters that fail to rebut the presumption.¹⁰⁵

The Department considers the PRC to be an NME under section 771(18) of the Act. In this AD proceeding, which involves an NME country, the Department has a rebuttable presumption that the export activities of all firms within the country are subject to government control and influence and applies a rate established for the PRC-wide entity to all imports from an exporter that has not established its eligibility for a separate rate.¹⁰⁶ The Department's practice of assigning a PRC-wide entity rate has been upheld by the CAFC. In *Sigma*, the CAFC affirmed that it was within the Department's authority to employ a presumption for state control in an NME country, and place the burden on the exporters to demonstrate an absence of central government control.¹⁰⁷ Both the CAFC in *Sigma*, and the CIT in *Brake Drum & Rotor Mfrs*, recognized that sections 771(18)(B)(iv)-(v) of the Act recognized a close correlation between an NME economy and government control of prices, output decisions, and allocation of resources and, therefore, these courts found that the Department's presumption was reasonable.¹⁰⁸ The

exporters receive one non-market economy country ('NME') rate, or country-wide rate, unless an exporter can 'affirmatively demonstrate' its entitlement to a separate, company-specific margin by showing 'an absence of central government control, both in law and in fact, with respect to exports.'). See also *Michaels Stores, Inc. CIT* at 1308, 1315, quoting *SKF USA Inc.* at 1022, 1030, quoting *Chevron* at 694 ("The regulations clarify, however, that for non-market economies, 'rates may consist of a single dumping margin applicable to all exporters and producers.' Moreover, whenever the statute is silent on a particular issue, it is well-settled that Commerce may 'formulate policy' and make rules 'to fill any gap left, implicitly or explicitly, by Congress.'") (internal citations omitted).

¹⁰⁴ See *Transcom* at 1381-83. The PRC-wide rate, and its adverse inference are applicable to all companies which were initiated on yet failed to show their entitlement to a separate rate. "Accordingly, while section 1677e provides that Commerce may not assign a BIA-based rate to a particular party unless that party has failed to provide information to Commerce or otherwise failed to cooperate, the statute says nothing about whether Commerce may presume that parties are entitled to independent treatment under 1677e in the first place." *Id.* at 1376. ("Instead, the objective of BIA is to aid Commerce in determining dumping margins as accurately as possible."). *Id.* The litigation in *Transcom* covered three periods of review between June 1990 and May 1993. See *Transcom II* at 1374-75 and *Roller Bearings from the PRC 1990-1991, 1991-1992, and 1992-1993 ARs*. BIA is the precursor to facts available and AFA under the current statute. See, e.g., *Transcom II* at 1376, and *PVL Tires from the PRC AD*, IDM at Comment 39, n.219.

¹⁰⁵ See e.g., *Advanced Tech. I*; *Advanced Tech. II*; *aff'd by Advanced Tech. III*.

¹⁰⁶ See *Tetrafluoroethane from the PRC* IDM at Comment 1 (explaining the Department's practice with respect to separate rates as upheld by the CAFC in *Sigma* at 1405-06, and describing the Department's practice with respect to the rate assigned to the PRC-wide entity).

¹⁰⁷ See *Sigma* at 1405-1406 ("We agree with the government that it was within Commerce's authority to employ a presumption of state control for exporters in a nonmarket economy, and to place the burden on the exporters to demonstrate an absence of central government control. The antidumping statute recognizes a close correlation between a nonmarket economy and government control of prices, output decisions, and the allocation of resources. Moreover, because exporters have the best access to information pertinent to the 'state control' issue, Commerce is justified in placing on them the burden of showing a lack of state control.") (internal citations omitted).

¹⁰⁸ *Id.* See also *Brake Drum & Rotor Mfrs*, quoting *Sigma* at 1405 ("Under the broad authority delegated to it from Congress, Commerce has employed 'a presumption of state control for exporters in a non-market economy' ... Under this presumption, all exporters receive one non-market economy country ('NME') rate, or country-wide rate, unless an exporter can 'affirmatively demonstrate' its entitlement to a separate, company-specific margin by showing 'an absence of central government control, both in law and in fact, with respect to exports.')."; *Michaels Stores, Inc. CIT* at 1315, quoting *SKF USA Inc.* at 1030 ("The regulations clarify, however, that for non-market

application of a PRC-wide entity rate to all parties which were not eligible for a separate rate was also affirmed by the CAFC in *Transcom II* in 2002.¹⁰⁹ In *Transcom II*, the CAFC also found that a rate based on “best information available” (the precursor to facts available and AFA under the current statute) is not punitive.¹¹⁰ Thus, contrary to Taigang’s assertions, the courts have consistently upheld the Department’s authority to apply a presumption of state control in NME countries, and to apply a single rate to all exporters that fail to rebut that presumption. The courts have agreed that, once a respondent has been held to be part of the NME-wide entity, inquiring into said respondent’s separate sales behavior ceases to be meaningful.¹¹¹ Therefore, because Taigang failed to rebut the presumption of government control, as discussed further below, the Department is no longer required to base the margin assigned to the PRC-wide entity, of which Taigang is a part, solely on Taigang’s individual behavior.

We also disagree with Taigang’s contention that the statutory requirements for the application of AFA have not been met, and that we have inappropriately assigned AFA to Taigang, a respondent who was found to be part of the PRC-wide entity. We note that in *Advanced Tech. II*, the CIT addressed and rejected a similar argument stating “Commerce did not apply adverse facts available to AT&M, Commerce rather found that AT&M had not rebutted the presumption of state control and assigned it the PRC-wide entity rate. These are two distinct legal concepts: a separate AFA rate applies to a respondent who has received a separate rate but has otherwise failed to cooperate fully whereas the PRC-wide rate applies to a respondent who has not received a separate rate.”¹¹² As in that case, here, the Department is not applying AFA to Taigang individually, but rather has found that Taigang failed to rebut the presumption of government control and, as such, it received the rate applied to the PRC-wide entity.

Further, Taigang’s reliance on *Nippon Steel* to support its contention that the Department has no basis to apply the PRC-wide entity rate to it based on other parties’ inability to cooperate, or the

economies, ‘rates may consist of a single dumping margin applicable to all exporters and producers.’ Moreover, whenever the statute is silent on a particular issue, it is well-settled that Commerce may ‘formulate policy’ and make rules ‘to fill any gap left, implicitly or explicitly, by Congress.’”) (internal citations omitted).

¹⁰⁹ See *Transcom II* at 1381-83. (The PRC-wide rate, and its adverse inference are applicable to all companies which were initiated on yet failed to show their entitlement to a separate rate. “Accordingly, while section 1677e provides that Commerce may not assign a {best information available}-based rate to a particular party unless that party has failed to provide information to Commerce or has otherwise failed to cooperate, the statute says nothing about whether Commerce may presume that parties are entitled to *independent* treatment under 1677e in the first place” {emphasis added}). *Id.* at 1376 citing *Rhone Poulenc, Inc.* at 1191 (“Instead, the objective of best information available (“BIA”) is to aid Commerce in determining dumping margins as accurately as possible”). The litigation in *Transcom II* covered three periods of review between June 1990 and May 1993. See *Transcom II* at 1374-75 and *Roller Bearings from the PRC 1990-1991, 1991-1992, and 1992-1993 ARs* at 61 FR 65527. The term “BIA” is now referred to under the statute as facts available or AFA.

¹¹⁰ See *Transcom II* at 1376.

¹¹¹ See *Advanced Tech. II*. at 1351, citing *Watanabe Group Slip-Op* 10-139 at 8 (“Commerce’s permissible determination that {a respondent} is part of the PRC-wide entity means that inquiring into {that respondent}’s separate sales behavior ceases to be meaningful.”) and *Jiangsu Changbao* at 1312 (referencing *Watanabe* at 8) (“losing all entitlement to an individualized inquiry appears to be a necessary consequence of the way in which Commerce applies the presumption of government control... applying a countrywide AFA rate without individualized findings of failure to cooperate is no different from applying such a countrywide AFA rate without individualized corroboration.”).

¹¹² See *Advanced Tech. II* at 1351.

failure of a party to provide information with respect to the PRC-wide entity, is misplaced. The Department found that the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply; therefore, the Department's decision is in line with *Nippon Steel*. The PRC-wide entity failed to cooperate by not acting to the best of its ability: "Daming did not respond to the AD Questionnaire issued by the Department and withdrew from participation in this investigation. Moreover, some 143 companies within the PRC-wide entity failed to respond to the Department's request for Q&V information."¹¹³ As mentioned above, in *Sigma*, the CAFC affirmed that it was within the Department's authority to employ a presumption of state control in an NME country and found the presumption reasonable, noting that sections 771(18)(B)(iv)-(v) of the Act recognized a close correlation between an NME economy and government control of prices, output decisions, and allocation of resources.¹¹⁴ Having not demonstrated the absence of *de facto* control from the government over its operations, Taigang is treated as part of the PRC-wide entity, and received the rate assigned to that entity, which was based on AFA.

Issue 4: Whether the Department's Presumption of PRC Government Control is Outdated

Taigang Argues:

- The Department's decision to apply the countervailing duty law to China based on significant changes in the Chinese economy and the decrease of all-encompassing state control cannot be reconciled with the Department's continued reliance on an outdated presumption in the antidumping context.¹¹⁵
- The presumption of government control is contradicted by the Department's own factual findings in the *Georgetown Memorandum*.¹¹⁶
- In the *Georgetown Memorandum*, the Department found that some 90 percent of prices in China are set by market forces.¹¹⁷ These facts refute the Department's ongoing presumption of state control.
- The Department has attempted to argue that factual findings about China made in countervailing duty proceedings are irrelevant in the context of antidumping proceedings.¹¹⁸
- It no longer makes sense to presume government control of pricing when the Department has found that 90 percent of prices are not controlled by the government. Also, "China's 1994 Company Law (as amended in 2006) requires that all companies make all export decisions independent from Chinese government control."¹¹⁹
- In *NME Methodological Change*, the Department stated that the economies of China and Vietnam are sufficiently dissimilar from their Soviet-style economies of the past, and decided that it could now adjust U.S. prices for certain export taxes.¹²⁰

¹¹³ See *AD Preliminary Determination* at 15.

¹¹⁴ See *Sigma* at 1405-1406.

¹¹⁵ See Taigang's Case Brief at 25.

¹¹⁶ *Id.* at 26-27, citing *Georgetown Memorandum*.

¹¹⁷ *Id.* at 27 citing *Georgetown Memorandum* at 5.

¹¹⁸ See Taigang's Case Brief at 27 citing to OTR Tires from the PRC.

¹¹⁹ *Id.* at 29.

¹²⁰ *Id.* at 30 citing to *NME Methodological Change*.

- The Department’s presumption that the export activities of all firms within China are subject to government control and, thus, should all be assigned a single, country-wide rate in antidumping proceedings, is just the opposite of the findings that the Department now uses to justify bringing countervailing duty cases against Chinese entities.¹²¹
- Taigang is not challenging China’s status as an NME; instead, Taigang is challenging the Department’s overall approach that every company in China is controlled by the government and is a part of the entity.¹²²
- The Department has justified this outdated presumption based on decisions like *Sigma*. But *Sigma* was judicially approved in 1997, for a decision made by the Department in 1991 concerning a period of the late 1980s.¹²³
- Importantly, “*Sigma* expressly recognized that the presumption was not a final decision, but merely a step in the analysis that still must rest on the facts of a particular case.”¹²⁴
- Therefore, as the material facts have changed, the findings in *Sigma* are no longer applicable. The CIT confirmed this in *Jiangsu Changbao, Qingdao Taifa Grp. Co. II*, and *Jiangsu Jiasheng II*.¹²⁵
- The Department’s *AD Preliminary Determination* and the Department’s presumption that all exporters in an NME country are controlled by the government are inconsistent with the United States’ obligations as a member of the WTO.¹²⁶
- Two separate WTO Panels have addressed this issue, and both times, the Panels determined the Department’s policy to be WTO inconsistent.¹²⁷
- The WTO Panel’s conclusion in DS 471 applied to “all instances in which the Department applies” the practice of presuming government control over exporters from NME countries and treatment of NME exporters as part of a single NME-wide entity.¹²⁸

Petitioner Argues:

- In this case, the Department does not rely on a presumption to conclude that Taigang is ineligible for a separate rate, as the record clearly demonstrates the company is controlled by the GOC.¹²⁹
- *Sigma* is the seminal case affirming the Department’s presumption of state control in non-market economy cases: “...The antidumping statute recognizes a close correlation between a nonmarket economy and government control of prices, output decisions, and the allocation of resources.”¹³⁰
- In the initiation notice for this investigation, the Department announced that it intended to base decisions on respondent selection on the Q&V responses it received from Chinese

¹²¹ *Id.*

¹²² *Id.* at 31.

¹²³ *Id.* at 32-33 citing to *Sigma* at 1405-1407.

¹²⁴ *Id.* at 33 citing to *Sigma* at 1405-1407.

¹²⁵ *Id.* at 34 citing to *Jiangsu Changbao* at 1295; *Qingdao Taifa Grp. Co. II* at 1375, 1385; and *Jiangsu Jiasheng II* 1317 n.107.

¹²⁶ See Taigang’s Case Brief at 58 citing to WTO Shrimp from Vietnam (2014) and WTO AD China (2016)

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ See Petitioners’ Rebuttal Brief at 12.

¹³⁰ *Id.* at 14 citing to *Sigma* at 1405-1406

exporters/producers. The Department received responses from 5 out of the 148 companies to which it had issued Q&V questionnaires.¹³¹

- In the companion CVD investigation, the Department utilized entry data from the CBP for its selection of mandatory respondents. One of the respondents chosen in the CVD investigation was Ningbo Baoxin Stainless Steel Co., Ltd. (Ningbo Baoxin). As Ningbo Baoxin did not respond to the Department's Q&V questionnaire in this investigation, the Department's selection of it as a mandatory respondent in the CVD investigation indicates that at least one major exporter of the subject merchandise did not respond to the Department's Q&V questionnaire.¹³²
- Finally, Daming, an affiliate of Taigang, was also selected as a mandatory respondent in this investigation. However, Daming later informed the Department that it would no longer be participating in the investigation.¹³³
- "The lack of cooperation by various respondents – including at least two entities that were selected as mandatory respondents – indicates that control by the central government over prices, output decisions, and/or allocation of resources may well be occurring."¹³⁴
- Since the Department still considers China to be an NME country, and because the presumption of government control only places a burden on respondents to provide evidence to demonstrate a lack of control, the Department's presumption is still a reasonable exercise of its discretion.¹³⁵
- "WTO reports are without effect under U.S. law, 'unless and until such a {report} has been adopted pursuant to the specified statutory scheme' established in the URAA."¹³⁶
- The panel decisions cited by Taigang are inapposite and should be rejected. Contrary to Taigang's assertions, the Department's findings with respect to Taigang are not based on a presumption – but rather are based significantly on information that was placed on the record by Taigang and was certified to be accurate and complete by both a Taigang official and Taigang's counsel.¹³⁷
- Accordingly, the findings by the WTO dispute settlement panels in DS 429 and DS 471 are irrelevant to the Department's preliminary finding that Taigang is not eligible for a separate rate based on the GOC's holding a majority (and controlling) interest in the company – a finding that is completely separate and independent from any presumption the Department might make concerning government control of all exporters.¹³⁸
- Neither DS 429 or DS 471 has resulted in a change in the Department's application of an NME-Wide Rate.
 - With respect to DS 429, the Department did not take any action to change its presumption concerning control by governments in NME countries over all exporters in its Section 129 determination in connection with that dispute, nor in

¹³¹ *Id.* at 15.

¹³² *Id.* at 15-16.

¹³³ *Id.* at 16.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at 36 citing to *Refrigerators from Korea*, IDM at 27.

¹³⁷ See Petitioners' Rebuttal at 37.

¹³⁸ *Id.* citing to WTO Shrimp from Vietnam (2014) and WTO AD China (2016).

the mutually agreed solution between the United States and Vietnam in July 2016.¹³⁹

- o Given the recent publication and the fact that DS 471 is still subject to potential review by the Appellate Body, the Department has not yet taken any actions to implement the decision.¹⁴⁰ As such, there is no basis for the Department to depart from its long-standing presumption.

Department's Position:

Taigang's argument that the *Georgetown Memorandum* demonstrates that the Department's presumptions with respect to the PRC economy are based on the outdated Soviet-style economies of the early 1990's is misplaced. The Department previously noted that the analysis in the *Georgetown Memorandum* focused only on the concept of the single economic entity that characterized the economies in the *Georgetown Memorandum*, and that it would be incorrect to conflate that concept with the concept of the NME-wide entity for AD assessment purposes.¹⁴¹ Given the reforms discussed in the *Georgetown Memorandum*, the Department found that a single central authority no longer comprises the PRC's economy, and that the policy that gave rise to the *Georgetown Memorandum* litigation does not prevent the Department from concluding that the PRC government has bestowed a countervailable subsidy upon a PRC producer. As such, we agree with Petitioners that the analysis in the *Georgetown Memorandum* is misplaced to the issue of the PRC-wide entity in antidumping proceedings.¹⁴²

Taigang claims that under *PRC Company Law*, all companies make all export decisions independent from Chinese government control. In rejecting similar arguments, the CIT found the *PRC Company Law* as evidence rebutting the presumption of control to be "inadequate ... and it lacks ... common business sense."¹⁴³ See Issue 5 for more discussion on the *PRC Company Law* and government control over export activities. Taigang's reliance on the *NME Methodological Change* as evidence that Department's presumption of PRC government control is outdated is also misplaced. The *NME Methodological Change* implemented a methodological change to reduce export price or constructed export price in certain NME antidumping proceedings by the amount of export tax, duty, or other charge, pursuant to section 772(c)(2)(B) of the Act. As such, this methodological change is not relevant to the Department's separate rate analysis.

In antidumping proceedings involving NME countries such as the PRC, the Department has a rebuttable presumption that the export activities of all firms within the country are subject to government control and influence. This presumption stems not from an economy comprised entirely of the government (*e.g.*, a firm is nothing more than a government work unit), but rather from the NME-government's use of a variety of legal and administrative levers to exert influence and control (both direct and indirect) over the assembly of economic actors across the economy.

¹³⁹ See *Shrimp from Vietnam*. See also Petitioners' Rebuttal at 38.

¹⁴⁰ See Petitioners' Rebuttal Brief at 38.

¹⁴¹ See *Diamond Sawblades from the PRC 2011-2012 AR IDM* at Comment 4.

¹⁴² See, *e.g.*, *PVLT Tires Final Determination*, IDM at Comment 36.

¹⁴³ See *Advanced Tech. I* at 1353.

As such, this presumption is patently different from a presumption that all firms are one and the same as the government, such that they comprise a monolithic economic entity. Moreover, the presumption underlying the separate rates test was upheld in *Sigma*, where the CAFC affirmed the Department's separate rates test as reasonable, stating that the statute recognizes a close correlation between an NME and government control of prices, output decisions, and the allocation of resources.¹⁴⁴ The CAFC also stated in *Sigma* that it was within the Department's authority to employ a presumption of state control for exporters in an NME-country, and to place the burden on the exporters to demonstrate an absence of central government control.¹⁴⁵ Firms that do not rebut the presumption are assessed a single AD rate, *i.e.*, the NME country-wide entity rate. In recognition that parts of the PRC's economy are transitioning away from the state-controlled economy, the Department developed the separate rates test.¹⁴⁶ In an economy comprised of a single, monolithic state entity, it would be impossible to identify separate firms, let alone rebut government control. Rather, the PRC's economy today is neither command-and-control nor market-based; government control and/or influence is omnipresent (which gives rise to the presumption) but not omnipotent (and hence, the presumption is rebuttable).¹⁴⁷

The Department also disagrees with Taigang's reliance on a partial quote regarding prices in the PRC. The *Georgetown Memorandum* states that "although price controls and guidance remain on certain 'essential' goods and services in China, the PRC Government has eliminated price controls on most products; market forces now determine the prices of more than 90 percent of products traded in China."¹⁴⁸ This quote is a reference to deregulation of prices, *i.e.*, phasing out of the direct, administrative price-setting common in command-and-control economies. It is not a reference, for example, to an absence of direct government control over resource allocations, or government control, or influence over economic actors that can fundamentally distort the price formation process. Therefore, the reference is not relevant to our requirements that NME companies seeking a separate rate demonstrate the absence of *de jure* or *de facto* control.¹⁴⁹

Taigang's reliance on *Jiangsu Changbao*, *Qingdao Taifa Grp.*, and *Jiangsu Jiasheng* is misplaced as none of the cases support a change in our presumption of government control of export activity.¹⁵⁰ We have not changed our separate rate criteria. Rather in light of the *Advanced Tech. II* litigation, we have determined that the existence of government majority ownership indicates government control of export activity, which must be rebutted by a company to qualify for a separate rate.¹⁵¹

Finally, WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.¹⁵² As is clear from

¹⁴⁴ See *Sigma* at 1405-06.

¹⁴⁵ *Id.*

¹⁴⁶ See *Sparklers from the PRC*; see also *Silicon Carbide from the PRC*.

¹⁴⁷ See *Georgetown Steel Memorandum* at 9; see also *PVLT Tires Final Determination*, IDM at Comment 36.

¹⁴⁸ See *Id.* at 5, citing The Economist Intelligence Unit, Country Commerce: China, 2006 at 73. See also *PVLT Tires Final Determination*, IDM at Comment 36.

¹⁴⁹ See *e.g.* *PVLT Tires from the PRC AD*; *Galvanized Steel Wire from the PRC*.

¹⁵⁰ See *Jiangsu Jiasheng* at 1317, 1348-1349; see also *Qingdao Taifa Grp Co. II* at 1375; *Jiangsu Changbao* at 1295.

¹⁵¹ See *Advanced Tech. I*, *aff'd*, *Advanced Tech. II*, *aff'd*, *Advanced Tech. III*.

¹⁵² See *Corus Staal BV* at 1370, 1375; and *NSK Ltd.* at 1375, 1379-80.

the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.¹⁵³

Issue 5: Whether Taigang's Export Activities Are Controlled by the Chinese Government

Taigang Argues:

- For its final determination, the Department should consider factual evidence on the record that affirmatively demonstrates that Taigang's export activities are in fact not controlled by the Chinese government.¹⁵⁴
- Since the Department did not find that the Chinese government had *de jure* control over Taigang, it must analyze *de jure* control and thereby inform its *de facto* analysis of control over Taigang's export activities.¹⁵⁵
- The logic used by the Department in the preliminary results, that because there might be "some possibility for involvement of the government in Taigang's commercial affairs, this fact necessarily leads to the conclusion that Taigang's export activities are in fact controlled," was rejected by the CIT in *Jiangsu Jiasheng*.¹⁵⁶
- The Department's conclusion about the meaning of government ownership is not supported by the evidence on the record, and is based on an improper understanding of Chinese laws governing companies.¹⁵⁷
- As a matter of Chinese law, Taigang is required to act as an independent company, and the management must act in accordance with the interests of the company, not the shareholders, regardless of the structure of the company.¹⁵⁸
- Since Taigang is a publically traded company, its rules limit the rights of shareholders with a majority or controlling interest, and grant certain rights of supervision and control to minority shareholders.¹⁵⁹
- The Department also ignores the rights of the minority shareholders. Those rights mean that TISCO cannot exercise unilateral control over Taigang. "One of the key minority rights the Department has not addressed is the right to bring suit against a member of the board or senior management who acts against the interests of the company, breaching applicable law or Taigang's AOA. See Taigang's AOA at Article 35."¹⁶⁰
- Articles 34 through 36 of Taigang's AOA expose shareholders, directors, and senior managers to prosecution should they act against the interests of the company.¹⁶¹
- Article 109 of Taigang's AOA proclaims that more than one third of the members of the board must be independent directors who are required to act without the interference of the principal shareholders or the persons in actual control of Taigang.¹⁶²

¹⁵³ See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary).

¹⁵⁴ See Taigang's Case Brief at 40.

¹⁵⁵ *Id.* at 41.

¹⁵⁶ *Id.* citing to *Jiangsu Jiasheng* at 1317, 1348-1349.

¹⁵⁷ *Id.* at 42.

¹⁵⁸ *Id.* at 45 citing to PRC Company Law and the Code of Corporate Governance for Listed Companies.

¹⁵⁹ *Id.*

¹⁶⁰ See Taigang's Case Brief at 48.

¹⁶¹ *Id.* at 46.

¹⁶² *Id.* at 50.

- “A proper understanding of the underlying documents demonstrates that, in fact, TISCO does not have the control that the Department surmises.”¹⁶³
- Understanding Taigang’s conflict of interest rule, “demonstrates that anytime a decision is debated by the meeting of the shareholders in which TISCO has a conflict of interest, TISCO’s shares would have to be excluded from voting, rendering the percentage of its shareholding moot.”¹⁶⁴
- The Department cannot infer that the right to appoint Taigang’s board of directors would result in complete control by TISCO. “The Department’s reliance on the so-called “normal business practices” to infer full control through majority ownership in direct contradiction to specific and explicit legal provisions in place to deter such control is simply wrong.”¹⁶⁵
- The Board is not directly involved in the day-to-day operations of Taigang, and members of management who are involved in the day-to-day operations may not be controlling shareholders.¹⁶⁶
- The Department should dismiss Petitioner’s allegation members of TISCO’s board are members of the Chinese Communist Party and that the board membership between Taigang and TISCO is intertwined as irrelevant to its separate rate analysis.¹⁶⁷
- The Department does not, and cannot, cite a single example in which TISCO actually exercises its legal right to control or influence a day-to-day decision about the manner in which Taigang sells subject merchandise to the United States. This lack of actual evidences undermines the Department’s finding of *de facto* control.
- The Department’s reliance on *Advanced Tech.* is unreasonable and must be reconsidered as the CIT has noted in *Jiangsu Jiasheng*.¹⁶⁸
- There is no record evidence that the Chinese Government exercised *de facto* control over Taigang’s decision-making process on export-related investment, pricing, and output decisions at the individual firm level as stipulated in Policy Bulletin 05.1. In *Diamond Sawblades from China*, the Department stated that “an investigation of the decision-making process at the individual firm level does not concern the activities of its owner or its owner’s parent company.”¹⁶⁹
- For two decades the Department’s focus in analyzing *de facto* control was whether the interested party is able to negotiate selling prices with U.S. customers free from the influences of the Chinese government.¹⁷⁰
- In the past, the Department has determined that evidence of a price quotation offer and acceptance sufficiently establishes independence from government control.¹⁷¹

¹⁶³ *Id.* at 51.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 48-49.

¹⁶⁶ *Id.* at 49.

¹⁶⁷ *Id.*

¹⁶⁸ See Taigang’s Case Brief at 53 citing to *Advanced Tech. I* at 1343 and *Jiangsu Jiasheng* at 1317, 1348-1349.

¹⁶⁹ *Id.* at 55.

¹⁷⁰ *Id.* at 57, citing to *Wooden Bedroom Furniture from the PRC*.

¹⁷¹ *Id.* at 57, citing to Memorandum from the Department, “Issues and Decision Memorandum for the Less-Than-Fair-Value Investigation of Wooden Bedroom Furniture from the People’s Republic of China,” dated November 8, 2004.

- As shown in Taigang’s Section A Response,¹⁷² Taigang USA engages in price negotiations with U.S. customers based on price lists that are created and updated regularly.
- Since Taigang has demonstrated that Taigang USA actually sets its export prices based on market conditions, and engages in price negotiations with U.S. customers, the Department should conclude that Taigang has demonstrated its eligibility for a separate rate.¹⁷³

Petitioners Argue:

- As confirmed by Petitioners’ May 25, 2016 Deficiency Letter, Taigang’s financial statements, submitted as an attachment to its Section A response, demonstrated that the SASAC of Shanxi Province fully owned TISCO.¹⁷⁴
- Taigang’s Articles of Association prove that it is ultimately controlled by the government of China.¹⁷⁵
 - Article 99 of Taigang’s AOA, states that the board of directors shall be elected or replaced by the shareholders general meeting and that that “up to one half of the directors are permitted to hold managerial positions within the company. Since TISCO is the controlling shareholder, it controls the election and replacement of the board, which in turn may also be the managers of the company.”¹⁷⁶
 - Article 126 states that there is one general manger who can be appointed and dismissed by the board of directors, and that deputy general managers are also appointed and dismissed by the board.¹⁷⁷
 - Article 130 states that the general manager is accountable to the board, and is authorized to appoint or dismiss the responsible management personnel of the company, other than those decided on by the board.¹⁷⁸
- State Council Decree No. 378 confirms that the SASAC of Shanxi Province has *de jure* control of Taigang.¹⁷⁹ Specifically, SASACs have the power to “appoint representatives of shareholders to the shareholders’ meeting, or directors to the board of directors, of State-owned holding companies or companies with State-owned equity.”¹⁸⁰
- SASACs also have the power to:
 - Appoint or remove the general manager, deputy general manager, chief accountant, or other responsible persons of a wholly state-owned enterprise.
 - Appoint or remove the chairman, vice chairman, or director of the board of a wholly state-owned company.
 - Nominate the candidate for the director of the board or supervisor to be dispatched to a state-owned holding company; recommend the candidate for the chairman or vice-chairman of the board, or the chairman of the supervisory panel of a state-owned holding company.

¹⁷² *Id.* citing to Taigang’s Section A Response at Exhibits A-7 and A-8.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 4.

¹⁷⁵ *Id.* at 6.

¹⁷⁶ *Id.* at 4-5.

¹⁷⁷ *Id.* at 5.

¹⁷⁸ *Id.* at 5-6.

¹⁷⁹ *Id.* at 6.

¹⁸⁰ *Id.*

- Nominate the candidate for the director of the board or supervisor to be dispatched to a company with state-owned equity.
- Perform investor's responsibilities, supervising and managing the state-owned assets of the enterprises under the SASAC's supervision, and enhance the management of state owned assets.
- Manage work of wages and remuneration of the supervised enterprises and formulate policies regulating the income distribution of top executives at the supervised enterprises.
- Guide and advance reforms and restructurings of state-owned enterprises.
- Appoint and remove the top executives of the supervised enterprises, evaluate the performance of top executives, and establish corporate executive selection systems.
- Dispatch supervisory panels to the supervised enterprises, and take charge of daily management of the supervisory panels.
- Undertake other tasks assigned by the Chinese government.¹⁸¹
- The fact that TISCO is wholly-owned and controlled by the SASAC of Shanxi Province, and that members of its Board hold positions within the CCP, is relevant to the Department's separate rate analysis.¹⁸²
- Further evidence from Taigang's Section A Response demonstrates the *de facto* control exerted by TISCO, and through TISCO, the SASAC of Shanxi Province, over the selection of the management of Taigang.¹⁸³

Department's Position:

We continue to find for this final determination that Taigang has not demonstrated the absence of *de facto* government control over its operations. Specifically, record evidence shows that, TISCO, which is 100 percent owned by the Shanxi SASAC, holds 63.49 percent of Taigang's shares, while the remaining shares are owned by investors whose individual holdings are no more than five percent of the company.¹⁸⁴

The Department notes that many of Taigang's arguments raised in this investigation are similar to ones that were dismissed by the CIT in the *Advanced Tech.* litigation. In the *Advanced Tech.* litigation,¹⁸⁵ the CIT and CAFC sustained the Department's determination that the respondent was not entitled to a separate rate under similar facts as this investigation. In that proceeding, SASAC owned 100 percent of the majority shareholder of the respondent company. In sustaining the Department's remand determination, the CIT rejected the respondent's artificial distinction between actual instances of government control versus the potential to exercise control, finding that "the point is that because (the respondent) had not shown autonomy in choosing its own management, Commerce found that (the respondent) had failed to rebut the

¹⁸¹ *Id.* at 7-8.

¹⁸² *Id.* at 9.

¹⁸³ *Id.* at 9-10.

¹⁸⁴ See Taigang's SAQR at 10.

¹⁸⁵ See *Advanced Tech. I*; *Advanced Tech. II*, *aff'd Advanced Tech. III*.

presumption of control.”¹⁸⁶ The record of this investigation similarly shows that the Shanxi SASAC owns 100 percent of TISCO, which is the majority shareholder of Taigang. Taigang argued that the Department should analyze *de jure* control. We note that the PRC laws provided by Taigang confirm that the government can control the business activities of a company when the government is a controlling shareholder.¹⁸⁷ For example, Taigang claims that under *PRC Company Law*, TISCO cannot exercise control over Taigang in general, or over its export activities specifically. In rejecting similar arguments, the CIT found the *PRC Company Law* as evidence rebutting the presumption of control to be “inadequate ... and it lacks ... common business sense.”¹⁸⁸ For Article 20 of the *PRC Company Law* in particular, the CIT stated that it “does not appear that this {article} may reasonably be construed to ‘limit’ the power of the state in the companies in which the state invests.”¹⁸⁹ Moreover, the structure of the *PRC Company Law* provides controlling shareholders with direct and effectual control as “{s}hareholders have the ability to hire and fire each board member and decide their pay pursuant to Article 38, and each board member is thereby beholden.”¹⁹⁰ That amounts to delegation, as opposed to separation, because the general manager, in point of fact, is selected by the same board of directors “in charge of overall business planning and the selection of upper management” that is “responsible to the shareholders” and can readily be replaced at the board’s whim.”¹⁹¹ Furthermore, the CIT addressed Articles 22-27 of the *PRC Code of Corporate Governance*, noting that these articles “reveal little to an inquiry into ‘governmental control’ in the running of a company including its export operations.”¹⁹²

With respect to Taigang’s arguments that its AOA make clear that managers control the day-to-day operations, the CIT addressed similar arguments made by the respondent in the *Advanced Tech.* litigation.¹⁹³ Specifically, the CIT rejected arguments made by the respondent in that proceeding regarding its management and control of daily operations. Similarly, we find that Taigang’s management is beholden to its board, which is controlled by TISCO, which is wholly state-owned.¹⁹⁴ As discussed below, Article 126 states that the board of directors can appoint and dismiss the general manager, and can appoint and dismiss deputy general managers. Thus, managers are beholden to the board, to the extent that the board can remove them from service.

Regardless of the restrictions of PRC law and the protections afforded to minority shareholders, Taigang’s AOA demonstrates that a majority shareholder – and particularly one with 63.49 percent ownership – has majority control over any shareholder decisions, including decisions which may affect the management and operations of the company.¹⁹⁵ Moreover, State Council Decree No. 378 confirms that SASACs have the power to “appoint representatives to

¹⁸⁶ *Advanced Tech. II* at 1348.

¹⁸⁷ *See Advanced Tech. I* at 1353-54.

¹⁸⁸ *See Advanced Tech. I* at 1353.

¹⁸⁹ *Id.* at 1354.

¹⁹⁰ *Id.* at 1355.

¹⁹¹ *Id.* at 1355.

¹⁹² *Id.* at 1358.

¹⁹³ *Id.*

¹⁹⁴ *See Advanced Tech. II* at 1359; *see also, id.*, at 1352 (“...the exclusion of ‘day to day operations’ from ‘oversight’ responsibility is a straw man.”).

¹⁹⁵ *Id.* at Exhibit A-5; *see also* Prelim Separate Rate Determination for Taigang at 3.

shareholders' meeting, or directors to the board of directors, of State-owned holding companies or companies with State-owned equity.”¹⁹⁶ Whether or not TISCO, as Taigang's majority shareholder, demonstrably exercised control over Taigang's day-to-day operations does not refute the fact that a government-owned entity has a majority control of the shareholder decisions of Taigang.¹⁹⁷

We disagree with the argument that reliance on certain Articles in its AOA demonstrate that Taigang should be given separate rate status. It is unclear how Articles 34 through 36 of Taigang's AOA, which specify that company officials are subject to prosecution, and Article 109, which states that more than one third of the members of the board must be independent directors, demonstrate the *de facto* absence of government control. Moreover, other articles in Taigang's AOA show the level of control of its majority shareholder:

- Article 99 states that the board of directors shall be elected or replaced by the shareholders general meeting and that “up to one half of the directors are permitted to hold managerial positions within the company.”
- Article 126 states that there is one general manager who can be appointed and dismissed by the board of directors, and that deputy general managers are also appointed and dismissed by the board.
- Article 130 states that the general manager is accountable to the board, and is authorized to appoint or dismiss the responsible management personnel of the company, other than those decided on by the board.

Thus, as noted above, Taigang's AOA demonstrates that the government, through TISCO, Taigang's majority shareholder, has majority control over any and all shareholder decisions of Taigang, including decisions which may affect the management and operations of the company.¹⁹⁸ The facts that Taigang company officials are subject to prosecution, a minority of seats on its board are independent directors, or that minority shareholders have the right to call a shareholder meeting, do not prove the absence of government control when the majority shareholder with over 63.49 percent ownership can control shareholder decisions.¹⁹⁹

We also take issue with Taigang's contention that the Department's reliance on the idea of “potential” for government control over the company's operations should not be a standard and note that Taigang's reliance on *Jiangsu Jiasheng* to support its argument that the intertwined board membership between Taigang and TISCO is irrelevant to our analysis, as it does not show actual control but only the “possibility,” is misplaced.²⁰⁰ Indeed, Taigang's general argument

¹⁹⁶ See Petitioners' May 25, 2016 Deficiency Letter at Attachment 2.

¹⁹⁷ See Prelim Separate Rate Determination for Taigang.

¹⁹⁸ *Id.* at Exhibit A-5.

¹⁹⁹ Moreover, it remains unclear whether these codified rights are actually exerted and, regardless, it is unclear how evidence demonstrating that minority shareholders routinely called meetings or brought suit against managers would plainly rebut the presumption of control on behalf of the majority state-owned shareholder. The example of minority rights referenced in Taigang's Case Brief at 48, *i.e.*, the conflict of interest rule, (whereby any decision which contains a conflict of interest to TISCO would require the recusal of TISCO's voting shares) might be relevant, but Taigang did not provide information indicating any such recusals, nor did it provide an explanation of how this recusal process actually works in practice.

²⁰⁰ See *Jiangsu Jiasheng* at 1348.

that the Department cannot cite a single example in which TISCO actually exercised its legal right to control or influence a day-to-day decision about the manner in which Taigang sold subject merchandise to the United States is similarly unconvincing, as this also ignores the fact that ownership entitles the government control of the company's operations, including, but not limited to, the selection and removal of Taigang's board members, and the selection and removal of individual managers. Moreover, the burden to rebut the presumption of government control is on the party seeking separate rate status.

We also disagree with Taigang's arguments that the Department's focus in analyzing *de facto* control is no longer based on whether the interested party is able to negotiate selling prices with U.S. customers free from the influences of the Chinese government. We have not changed our separate rate criteria. Rather, we have analyzed the facts on this record in light of the *Advanced Tech.* litigation, wherein, as described above, the existence of majority government ownership can serve as evidence that a party has failed to rebut the presumption of government control. The Department has, using record evidence, described the ways in which the majority government ownership enables government control of Taigang. Moreover, Taigang's argument that TISCO's control of Taigang's board cannot be equated to control of Taigang's export activity, and that the PRC ownership structure has no effect on sales prices in the United States, because the prices are set by Taigang's U.S. affiliate, Taigang USA, is also misplaced. Taigang's general manager's sworn statement concerning the independence of Taigang's export activities does not overcome the evidence on the record. We note that the respondent in the *Advanced Tech.* litigation made similar arguments in that proceeding.²⁰¹ The CIT rejected this line of reasoning in *Advanced Tech. I*, stating that "the actual setting of price is only one of the four *de facto* factors described in *Policy Bulletin 05.1*, whereas governmental manipulation of the cost of inputs, ... or rationalization of industry or output are among numerous other scenarios of concern that can affect seller pricing."²⁰² Similarly, we find that Taigang's arguments regarding U.S. sales by Taigang USA do not overcome the rebuttable presumption of government control.

The parties' arguments concerning the relevance of the CCP membership of certain TISCO board members are largely moot. In the instant investigation, we have ample evidence that the 100 percent SASAC-owned majority owner of Taigang, TISCO, exerts considerable influence over the board of directors (and, thus, the management and operations of the company), and that the factual record does not provide sufficient information to rebut the presumption of government control. We note that Taigang's arguments to the contrary are virtually identical to those made by respondents in other proceedings, which have been similarly rejected by the Department and the CIT.²⁰³ As a result, Taigang is ineligible for a separate rate and is part of the PRC-wide entity pursuant to the Department's practice, as discussed above.

Finally, as discussed under Issue 3, the Department is not assigning the PRC-wide entity rate to Taigang as AFA, but is determining that Taigang is a part of the PRC-wide entity to which an AFA rate is assigned. The Department does not need to determine whether the 76.64 percent

²⁰¹ See *Advanced Tech. I*, *aff'd*, *Advanced Tech. II*, *aff'd*, *Advanced Tech. III*.

²⁰² See *Advanced Tech. I* at 1359-1360.

²⁰³ See, e.g., *Advanced Tech. II*, *Jiangsu Jiasheng*.

rate is reliable and relevant with respect to Taigang; rather the PRC-wide entity rate must be corroborated as to the PRC-wide entity.²⁰⁴ As discussed above, the Department has corroborated the 76.64 percent PRC-wide entity rate.²⁰⁵

XIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the *Federal Register* and will notify the ITC of our determination.

☒

☐

Agree

Disagree

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

February 1, 2017

Date

²⁰⁴ See *Watanabe Group* at 9, note 8; see also *Peer Bearing Co. II* at 1327 (“... there is no requirement that the PRC-wide entity rate based on AFA relate specifically to the individual company. It is not directly analogous to the process used in a market economy, where there is no countrywide rate. Here, the rate must be corroborated according to its reliability and relevance to the countrywide entity as a whole.”).

²⁰⁵ See *AD Preliminary Determination*, PDM at 14-18, unchanged.

APPENDIX

I. LITIGATION TABLE

Short Cite	Cases
<i>Ad Hoc Shrimp</i>	<i>Ad Hoc Shrimp Trade Action Comm. v. United States</i> , 992 F. Supp. 2d 1285 (CIT 2014)
<i>Advanced Tech. I</i>	<i>Advanced Technology & Materials Co., Ltd., et al. v. United States</i> , 885 F. Supp. 2d 1353 (CIT 2012)
<i>Advanced Tech. II</i>	<i>Advanced Technology & Materials Co., Ltd., et al. v. United States</i> , 938 F. Supp. 2d 1342 (CIT 2013)
<i>Advanced Tech. III</i>	<i>Advanced Technology & Materials Co. v. United States</i> , Court No. 2014-1154 (Fed. Circ. 2014)
<i>Albemarle</i>	<i>Albemarle Co. & Subsidiaries v. United States</i> , 821 F.3d 1345 (Fed. Cir. 2016)
<i>American Lamb</i>	<i>American Lamb Co. v. United States</i> , 785 F. 2d 994 (Fed. Cir. 1986)
<i>Baroque Timber</i>	<i>Baroque Timber Industries (Zhongshan) Co., Ltd., et al., v. United States</i> , 971 F.Supp.2d 1333 (CIT 2014)
<i>Brake Drum & Rotor Mfrs.</i>	<i>The Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers v. United States</i> , 44 F.Supp.2d 229 1405 (CIT 1999)
<i>Bomont</i>	<i>Bomont Indus. V. United States</i> , 733 F. Supp. 1507(CIT1990)
<i>Chevron</i>	<i>Chevron, U.S.A., Inc. v. NRDC, Inc.</i> , 467 U.S. 837 (1984)
<i>Corus Staal BV</i>	<i>Corus Staal BV v. United States</i> , 395 F.3d 1343 (Fed. Cir. 2005), accord <i>Corus Staal BV v. United States</i> , 502 F.3d 1370 (Fed. Cir. 2007)
<i>Elkem Metals</i>	<i>Elkem Metals Co., v. United States</i> , 468 F.3d 795 (Fed. Cir. 2006)
<i>FAG Italia</i>	<i>FAG Italia S.p.A. v. United States</i> , 291 F.3d 806 (Fed. Circ. 2002).
<i>Floral Trade Council</i>	<i>Floral Trade Council v. United States</i> , 822 F. Supp. 766, 17 CIT 392 (CIT 1993).
<i>Georgetown Steel</i>	<i>Georgetown Steel Corp. v. United States</i> , 801 F.2d 1308 (Fed. Cir. 1986)
<i>Heartland By-Products, Inc.</i>	<i>Heartland By-Products, Inc. v. United States</i> , 568 F.3d 1360(Fed. Cir. 2009)
<i>Heinzelman</i>	<i>Heinzelman v. Sec’y of Health and Human Services</i> , 681 F.3d 1374 (Fed Cir. 2012)
<i>Hercules</i>	<i>Hercules, Inc. v. United States</i> , 673 F. Supp. 454 (CIT 1987)
<i>Jiangsu Changbao</i>	<i>Jiangsu Changbao Steel Tube Co., Ltd. v. United States</i> , 884 F. Supp.2d 1295 (CIT 2012)
<i>Jiangsu Jiasheng</i>	<i>Jiangsu Jiasheng Photovoltaic Tech. Co., Ltd. v. United States</i> , 28 F. Supp. 3d 1317 (CIT 2014)
<i>Jiangsu Jiasheng II</i>	<i>Jiangsu Jiasheng Photovoltaic Tech. Co. v. United States</i> , 121 F. Supp. 3d 1263 (CIT 2015)
<i>Michaels Stores, Inc. CIT</i>	<i>Michaels Stores, Inc. v. United States</i> , 931 F. Supp. 2d 1308 (CIT 2013)
<i>Micron</i>	<i>Micron Tech. Inc. v United States</i> , 117 F.3d 1386(Fed. Cir. 1997).
<i>Nippon Steel</i>	<i>Nippon Steel Corp. v. United States</i> , 337 F.3d 1373(Fed. Cir. 2003)

<i>NSK Ltd.</i>	<i>NSK Ltd. v. United States</i> , 510 F.3d 1375 (Fed. Cir. 2007)
<i>NTN Bearing Corp</i>	<i>NTN Bearing Corp. of Am. v. United States</i> , 186 F. Supp. 2d 1257 CIT 2002)
<i>Peer Bearing Co. II</i>	<i>Peer Bearing Company – Changshan v. United States</i> , 587 F. Supp.2d 1319 (CIT 2008)
<i>PPG Indus.</i>	<i>PPG Indus. Inc. v. United States</i> , 781 F. Supp. 781(CIT 1991)
<i>Qingdao Taifa Grp. Co. II</i>	<i>Qingdao Taifa Grp. Co. v. United States</i> , 760 F. Supp. 2d 1379 (CIT 2010)
<i>Rhone Poulenc Inc.</i>	<i>Rhone Poulenc, Inc. v. United States</i> , 899 F. 2d 1185 (Fed. Cir. 1990)
<i>Shandong Huarong Machinery</i>	<i>Shandong Huarong Machinery v. United States</i> , 435 F.Supp.2d 1261 (CIT 2006)
<i>Shanghai Taoen</i>	<i>Shanghai Taoen Int’l Trading Co. v. United States</i> , 360 F. Supp. 2d 1339 (CIT 2005)
<i>Sigma</i>	<i>Sigma Corp. v. United States</i> , 117 F.3d 1401 (Fed. Cir. 1997)
<i>SKF USA Inc.</i>	<i>SKF USA Inc. v. United States</i> , 263 F.3d 1369 (Fed. Cir. 2001)
<i>Transcom</i>	<i>Transcom Inc. v. United States</i> , 182 F.3d 876 (Fed. Cir. 1999)
<i>Transcom II</i>	<i>Transcom Inc. v. United States</i> , 294 F.3d 1371 (Fed. Cir. 2002)
<i>Tung Fong</i>	<i>Tung Fong Indus. Co. v. United States</i> , 318 F. Supp. 2d 1321 (CIT 2004)
<i>UCF</i>	<i>UCF Am. v. United States</i> , 919 F.Supp. 435 (CIT 1996)
<i>Watanabe Group</i>	<i>Watanabe Group v. United States</i> , 2010 Ct. Intl. Trade LEXIS 144; Court No. 09-00520, slip op 2010-139
<i>Yantai</i>	<i>Yantai Timken Co. v. United States</i> , 521 F. Supp. 2d 1356 (CIT 2007)
<i>Zhejiang Dunan Hetian</i>	<i>Zhejiang Dunan Hetian Metal Co. v. United States</i> 652 F.3d 1333 (Fed. Cir. 2011)
WTO Shrimp from Vietnam (2014)	<i>United States – Antidumping Measures on Certain Shrimp from Vietnam</i> (DS 429) (November 2014)
WTO AD China (2016)	<i>United States – Certain Methodologies and the Application to Anti-Dumping Proceedings Involving China</i> , (DS 471) (October 2016)

II. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

Short Cite	Administrative Case Determinations
<i>AD Initiation</i>	<i>Stainless Steel Sheet and Strip from the People's Republic of China: Initiation of Less Than Fair Value Investigation, 81 FR 12711 (March 10, 2016).</i>
<i>AD Preliminary Determination</i>	<i>Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, 81 FR 64135 (September 19, 2016).</i>
<i>Biaxial Integral Geogrid Products from the PRC</i>	<i>Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 82 FR 3284 (January 11, 2017).</i>
<i>Corrosion-Resistant Steel Products from the PRC</i>	<i>Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part, 81 FR 35308 (June 2, 2016)</i>
<i>Cut-to-Length Plate from the PRC: AD Preliminary Determination</i>	<i>Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, 81 FR 79450 (November 4, 2016).</i>
<i>Cut-to-Length Plate from the PRC Final CVD Determination</i>	<i>Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Carbon Alloy Steel Cut-to-Length Plate from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 82 FR 8510 (January 26, 2016).</i>
<i>Diamond Sawblades from the PRC: AD Investigation Final Determination</i>	<i>Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303, 29307 (May 22, 2006),</i>
<i>Diamond Sawblades from the PRC 2011-2012 AR</i>	<i>Diamond Sawblades and Parts Thereof from the People's Republic of China, 79 FR 35723 (June 24, 2014)</i>
<i>Diamond Sawblades from the PRC 2012-2013 AR</i>	<i>Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 80 FR 12797 (March 11, 2015)</i>
<i>Galvanized Steel Wire from the PRC</i>	<i>Galvanized Steel Wire from the People's Republic of China, Final Determination of Sales at Less Than Fair Value, 77 FR 17430 (March 26, 2012)</i>
<i>Hand Tools from the PRC</i>	<i>Final Determinations of Sales at Less Than Fair Value: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China, 56 FR 241 (January 3, 1991).</i>
<i>Hydrofluorocarbon Blends</i>	<i>Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 81 FR 42314 (June 29, 2016)</i>

<i>Iron Castings from the PRC</i>	<i>Iron Construction Castings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 56 FR 2742 (January 24, 1991).</i>
<i>Melamine from the PRC</i>	<i>Melamine from the People's Republic of China: Decision Memorandum for the Preliminary Determination of Sales at Less Than Fair Value, 80 FR 34891 (June 18, 2015).</i>
<i>OTR Tires from India</i>	<i>New Pneumatic Off-the-Road Tires from India: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part, 82 FR 2946 (January 10, 2017)</i>
<i>OTR Tires from the PRC</i>	<i>Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013 80 FR 20197 (April 15, 2015).</i>
<i>Paper Products from the PRC</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China, 71 FR 53079 (September 8, 2006).</i>
<i>Postponement of Final</i>	<i>Stainless Steel Sheet and Strip from the People's Republic of China: Postponement of Final Determination of Sales at Less Than Fair Value Investigation, 81 FR 72776 (October 21, 2016).</i>
<i>Pressure Pipe from Japan: Preliminary Determination</i>	<i>Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 ½ Inches) from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015, 81 FR 45124 (July 12, 2016)</i>
<i>Pressure Pipe from Japan: Final Determination</i>	<i>Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 ½ Inches) from Japan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015, 81 FR 80640 (November 16, 2016).</i>
<i>PVLT Tires from the PRC CVD</i>	<i>Passenger Vehicle and Light Truck Tires from the People's Republic of China, Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination (June 11, 2015)</i>
<i>PVLT Tires from the PRC AD</i>	<i>Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part, 80 FR 34893 (June 18, 2015).</i>
<i>Refrigerators from Korea</i>	<i>Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination, 77 FR 17410 (March 26, 2012)</i>
<i>Roller Bearings from the PRC 1990-1991, 1991-1992, and 1992-1993 ARs</i>	<i>Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, 61 FR 65527 (December 13, 1996)</i>
<i>Shrimp from the PRC 2012-2013 AR Final</i>	<i>Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 57872 (September 26, 2014)</i>

<i>Silicon Carbide from the PRC</i>	<i>Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994).</i>
<i>Sparklers from the PRC</i>	<i>Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991)</i>
<i>SSSS from the PRC: CVD Preliminary Determination</i>	<i>Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination, 81 FR 46643 (July 18, 2016).</i>
<i>Tetrafluoroethane from the PRC</i>	<i>1,1,1,2-Tetrafluoroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value Antidumping Duty Investigation, 79 FR 62597 (October 20, 2014)</i>
<i>Truck and Bus Tires from the PRC</i>	<i>Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances 82 FR 8599 (January 27, 2017)</i>
<i>Warmwater Shrimp from the PRC</i>	<i>Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460, 49462 (August 13, 2010)</i>
<i>Wire Hangers from the PRC</i>	<i>First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 27994 (May 13, 2011).</i>
<i>Wooden Bedroom Furniture from the PRC</i>	<i>Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 221 (November 17, 2004).</i>

III. MISCELLANEOUS TABLE (REGULATORY, STATUTORY, ARTICLES, ETC.)

Short Cite	Full Name
<i>Georgetown Memorandum</i>	Memorandum to David M. Spooner, Assistant Secretary of Commerce, Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China – Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy (March 29, 2007)
<i>NME Methodological Change</i>	<i>Methodological Change for Implementation of section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings</i> , 77 FR 36481 (June 19, 2012)
<i>Preamble</i>	<i>Antidumping Duties; Countervailing Duties</i> , 62 FR 27296 (May 19, 1997).
<i>Policy Bulletin 05.1</i>	Import Administration Policy Bulletin, No. 05.1, <i>Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non- Market Economy Countries</i> (Apr. 5, 2005)
<i>PRC Company Law</i>	The Company Law of the PRC (2006)
SAA	Statement of Administrative Action, Uruguay Round Agreements Act, SAA, H.R. doc. No. 103-316 (1994)
The Act	Tariff Act of 1930, as amended

IV. ACRONYMS AND ABBREVIATIONS

Short Cite	Full Name
AD	Antidumping Duty
AFA	Adverse Facts Available
AOA	Articles of Association
BIA	Best Information Available
BPI	Business Proprietary Information
CAFC	Court of Appeals for the Federal Circuit
CBP	U.S. Customs and Border Protection
CCP	Chinese Communist Party
CIT	Court of International Trade
CVD	Countervailing Duty
FA	Facts Available
GOC	Government of China
IDM	Issues and Decision Memorandum
ITC	U.S. International Trade Commission
LTAR	Less Than Adequate Remuneration
LTFV	Less Than Fair Value
NME	Non-Market Economy
PDM	Preliminary Decision Memorandum
POI	Period of Investigation
PRC	People's Republic of China
Q&V	Quantity and Value
SASAC	State-Owned Assets Supervision and Administration Commission
Stainless Sheet and Strip	Stainless Steel Sheet and Strip
TISCO	Taiyuan Iron and Steel (Group) Co., Ltd.
WTO	World Trade Organization

V. DEPARTMENT MEMORANDA AND INTERESTED PARTY SUBMISSIONS

Final Double Remedy Memo	Department Memorandum, “Stainless Steel Sheet and Strip from the People’s Republic of China: Final Double Remedy Memorandum,” dated concurrently with this memorandum.
Hearing Memorandum	Memorandum to the File “Antidumping Duty Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China: January 12 Hearing,” (January 13, 2017).
Hearing Transcript	Transcript to the File in the Matter of: “Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China, Public Hearing Transcript,” (January 17, 2017).
Petitioners' May 25, 2016 Deficiency Letter	Letter from Petitioners: “Antidumping Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China – Petitioners’ Comments on Significant Deficiencies in Shanxi Taigang Stainless Steel Co., Ltd.’s Section A Questionnaire Response,” (May 25, 2016).
Petitioners’ Rebuttal Brief	Letter from Petitioners, “Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China: Petitioners’ Rebuttal Case Brief,” (November 14, 2016).
Prelim Separate Rate Determination for Taigang	Memorandum to Thomas Gilgunn, “Antidumping Duty Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China: Preliminary Separate Rate Determination for Shanxi Taigang Stainless Steel Co., Ltd.” (September 9, 2016).
Preliminary Scope Memorandum	Stainless Steel Sheet and Strip from the People’s Republic of China: Preliminary Scope Memorandum (September 9, 2016).
Taigang’s Case Brief	Letter from Taigang, “Submission of Taigang’s Case Brief: Stainless Steel Sheet and Strip from China (A-507-042),” (November 2, 2016).
Taigang’s Hearing Request	Letter from Taigang, “Taigang’s Request for Hearing: Certain Stainless Steel Sheet and Strip from the People’s Republic of China (A-570-042),” (September 22, 2016).
Taigang’s SAQR	Letter from Taigang, “Taigang’s Response to Section A of the AD Questionnaire (Part 1 – Q&V and Separate Rate Questions),” (May 13, 2016).