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

C-570-046
Investigation
Public Document
E&C/V: MR, JB

DATE: March 20, 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: Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China from the People's Republic of China: Issues and Decision Memorandum for the Final Affirmative Determination

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I. SUMMARY

The Department of Commerce (Department) determines that countervailable subsidies are being provided above the *de minimis* level to producers and exporters of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the People's Republic of China (PRC), as provided for in section 705 of the Tariff Act of 1930, as amended (the Act). Below is a complete list of issues in this investigation for which we received comments from interested parties:

Comment 1: Electricity for Less Than Adequate Remuneration Calculation
Comment 2: Whether the Department Should Find Wujin Water to Be Cross-Owned with Nantong Uniphos

II. BACKGROUND

A. *Case History*

On September 8, 2016, we published the *Preliminary Determination* for this investigation.[1] In the *Preliminary Determination*, we calculated above *de minimis* rates for Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory (Wujin Water) and the

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[1] *See Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Preliminary Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 62084 (September 8, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

Taihe Companies.[2] Seven companies did not respond to our request for quantity and value (Q&V) questionnaires responses,[3] and, as a result, we applied a rate based on adverse facts available (AFA) to these companies. The all-others rate was calculated using a simple average of the rates for Wujin Water and the Taihe Companies. We conducted verifications of the questionnaire responses submitted by Wujin Water, Nantong Uniphos Chemicals Co., Ltd. (Nantong Uniphos), Changzhou Wujin Fine Chemical Factory Co., Ltd. (Wujin Fine), and the Taihe Companies between October 31 and November 10, 2016.[4] We received case briefs from Wujin Water and Nantong Uniphos, and the Taihe Companies on January 24, 2017.[5] On January 30, 2017, we received rebuttal briefs from Petitioner[6] and the GOC.[7] On March 2, 2017, we issued a Post-Preliminary Analysis.[8] No party commented on our Post-Preliminary Analysis.

B. *Period of Investigation*

The period of investigation (POI) is January 1, 2015, through December 31, 2015.

III. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation includes all grades of aqueous acidic (non-neutralized) concentrations of HEDP, also referred to as hydroxyethylidenendiphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The Chemical Abstract Service (CAS) registry number for HEDP is 2809-21-4.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2931.90.9043. It may also enter under HTSUS subheadings 281.19.6090 and 2931.90.9041. While HTSUS subheadings and the CAS registry number are provided for convenience and customs purposes only, the written description of the scope of this investigation is dispositive.

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[2] "The Taihe Companies" is composed of Shandong Taihe Chemicals Co., Ltd. (Taihe Chemicals) and Shandong Taihe Water Treatment Technologies Co., Ltd. (Taihe Technologies). Taihe Chemicals is a wholly-owned subsidiary of Taihe Technologies. Taihe Technologies produced the subject merchandise exported by Taihe Chemicals during the POI.
[3] Hereafter referred to as the Non-Responsive Companies.
[4] *See* Memoranda to the File, Verification of the Questionnaire Responses of Shandong Taihe Chemicals Co., Ltd. and Shandong Taihe Water Treatment Technologies Co., Ltd. (Taihe Companies Verification Report), dated January 10, 2017, and Verification of the Questionnaire Responses of Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory; Nantong Uniphos Chemicals Co., Ltd; and Changzhou Wujin Fine Chemical Factory Co., Ltd. (Wujin Verification Report), dated January 10, 2017.
[5] *See* the Case Brief from Wujin Water and Nantong Uniphos, dated January 24, 2017 (Wujin Case Brief), and the Case Brief from the Taihe Companies, dated January 24, 2017 (Taihe Companies Case Brief).
[6] *See* the Rebuttal Brief from Compass Chemical International LLC (Petitioner), dated January 30, 2017 (Petitioner Rebuttal Brief).
[7] *See* the Rebuttal Brief from the Government of the People's Republic of China (GOC), dated January 30, 2017 (GOC Rebuttal Brief).
[8] *See* Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Post-Preliminary Analysis Memorandum, dated March 2, 2017 (Post-Preliminary Analysis).

IV. SCOPE COMMENTS

Although Changzhou Yao's Tongde Chemical Co., Ltd. and Enviro Tech Chemical Services, Inc. requested an exclusion for high purity HEDP from the scope of the AD and CVD investigations,[9] we found in the *AD Preliminary Determination*[10] that the scope covers merchandise that "includes all grades of aqueous acidic (non-neutralized) concentrations of {HEDP}" and, therefore, the plain language of the scope covers high purity HEDP.

V. SUBSIDIES VALUATION

A. Allocation Period

The Department has made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.[11]

B. Attribution of Subsidies

The Department has made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies, and as described below in Comment 2, we have made no changes regarding the attribution of subsidies for Wujin Water. For descriptions of the methodologies used for this final determination, *see* the *Preliminary Determination*.[12]

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the Final Analysis Memoranda prepared for this final determination.[13] As a result of verification, we used the corrected denominators for both Wujin Water and the Taihe Companies, as reported in their respective minor corrections.

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[9] *See* Changzhou/Enviro Tech's May 10, 2016 submission.

[10] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 81 FR 76916 (November 4, 2016) (*AD Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

[11] *See* PDM at 4.

[12] *Id.*, at 5-6.

[13] *See* Final Determination Calculations for Shandong Taihe Water Treatment Technologies Co., Ltd. and Shandong Taihe Chemicals Co., Ltd., dated concurrently with this memorandum (Taihe Companies Calculation Memo), and Final Determination Calculations for Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory, dated concurrently with this memorandum (Wujin Water Calculation Memo) (collectively, Final Analysis Memoranda).

VI. BENCHMARKS AND DISCOUNT RATES

The Department made no changes to the benchmarks or discount rates used in the *Preliminary Determination* or the Post-Preliminary Analysis. For a description of the benchmarks and discount rates used for this final determination, *see* the *Preliminary Determination*, Post-Preliminary Analysis, and the Final Analysis Memoranda.

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

The Department relied on "facts otherwise available," including AFA, for several findings in the *Preliminary Determination* and the Post-Preliminary Analysis. For a description of these decisions, *see* the *Preliminary Determination* and the Post-Preliminary Analysis. The Department has not made any changes to its decision to use facts otherwise available and AFA in the two aforementioned determinations. Consistent with our latest CVD practice,[14] for this final determination, we are including in the AFA rate those programs that were self-reported by Wujin Water and the Taihe Companies.

In determining the AFA rate, we are guided by the Department's methodology detailed in the *Preliminary Determination*.[15] We have selected, as AFA, the highest calculated program-specific above-zero rates for the cooperating respondents in this investigation for the following programs:

- Provision of Electricity for LTAR;
- College Students Probations Subsidy;
- Self Renovation;
- Scientific Subsidy;
- Export Special Funds;
- Export Credit Insurance Subsidy;
- Awarding Subsidy;
- New Plant Building Subsidy;
- R&D Subsidy;
- Export Special Subsidy;
- Patent Subsidy;
- Employees Subsidy;
- International Market Development Fund;
- New and Important Industry Development Special Subsidy;
- Foreign Trade Development Special Fund.

Also, as noted in the *Preliminary Determination*, we applied an adverse inference that each of the non-responsive companies paid no income tax during the POI, including under:

- Corporate Income Tax Law Article 33: Reduction of Taxable Income for the Revenue

[14] *See, e.g., Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Affirmative Determination and Final Determination of Critical Circumstances, in Part*, 82 FR 3282 (January 11, 2017) and accompanying Issues and Decision Memorandum at 6-11 (*Geogrids*).
[15] *See* PDM at 9-12.

Derived from the Manufacture of Products that are in Line with State Industrial Policy and Involve Synergistic Utilization of Resources;

- Income Tax Reduction for High and New Technology Enterprises.

The standard corporate income tax rate in China is 25 percent. We, therefore, find the highest possible benefit for all income tax exemption and reduction programs combined is 25 percent (*i.e.*, the income tax programs combined provide a countervailable benefit of 25 percent). Consistent with past practice, the 25 percent AFA rate does not apply to income tax credit and rebate, accelerated depreciation, or import tariff and value-added tax exemption programs, because such programs may not affect the tax rate.[16]

Lastly, for all other programs not mentioned above, we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in other PRC CVD proceedings. For this *Final Determination*, we can match, based on program names, program type, descriptions, and/or benefit treatments, the following programs to the same programs from other PRC CVD proceedings:

- "Famous Brands" Program;
- Value-Added Tax and Tariff Exemptions for FIEs and Certain Domestic Enterprises using Imported Equipment in Encouraged Industries;
- External Development Compensation;
- Security Award;
- Bachelor's Subsidy;
- Intellectual Subsidy;
- First Technology Innovation Subsidy for SMEs;
- Superior Training Subsidy;
- Technology Progress Award;
- Independent Items Innovation Fund;
- Export Industry Development Fund;
- Scientific Technology Development Special Fund;
- Patent Development Fund;
- International Market Development Fund for SMEs;
- Zaozhuang Human Resource Subsidy;
- Subsidy for SMEs;
- International Market Subsidy;
- Planned Special Item Subsidy;
- Technology Subsidy;
- Financial Subsidy;
- Innovation Fund for SMEs;
- Subsidy;
- Subsidy for Private Enterprise;
- Technology Bureau Subsidy;

[16] *See, e.g., Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) at "Application of Adverse Inferences: Non-Cooperative Companies."

- Export Trading Award;
- Market Development for Small and Medium Enterprises (SMEs);
- Special Fund for Service Industry Development;
- Enterprise Important Technology Subsidy;
- Subsidy Received;
- Foreign Trade Development Special Fund;
- Innovation Fund;
- Subsidy from Patent Bureau;
- Subsidy from Intellectual Property Bureau.

Accordingly, we determine the AFA countervailable subsidy rate is 54.11 percent *ad valorem*. The chart below summarizes the calculation of the AFA rate.

<table>
<tr><th><u>Summary</u></th><th><u>AFA Rate (percent)</u></th></tr>
<tr><td>Provision of Electricity for LTAR[17]</td><td>0.75</td></tr>
<tr><td>College Students Probations Subsidy[18]</td><td>0.01</td></tr>
<tr><td>Self Renovation</td><td>0.01</td></tr>
<tr><td>Scientific Subsidy</td><td>0.12</td></tr>
<tr><td>Export Special Funds</td><td>0.08</td></tr>
<tr><td>Export Credit Insurance Subsidy</td><td>0.03</td></tr>
<tr><td>Awarding Subsidy</td><td>0.02</td></tr>
<tr><td>New Plant Building Subsidy</td><td>0.15</td></tr>
<tr><td>R&D Subsidy</td><td>0.12</td></tr>
<tr><td>Export Special Subsidy</td><td>0.08</td></tr>
<tr><td>Patent Subsidy</td><td>0.01</td></tr>
<tr><td>Employees Subsidy</td><td>0.01</td></tr>
<tr><td>International Market Development Fund</td><td>0.01</td></tr>
<tr><td>New and Important Industry Development Special Subsidy</td><td>0.01</td></tr>
<tr><td>Foreign Trade Development Special Fund</td><td>0.01</td></tr>
<tr><td>Corporate Income Tax Law Article 33: Reduction of Taxable Income for the Revenue Derived from the Manufacture of Products that are in Line with State Industrial Policy and Involve Synergistic Utilization of Resources</td><td rowspan="2">25.00</td></tr>
<tr><td>Income Tax Reduction for High and New Technology Enterprises</td></tr>
<tr><td>“Famous Brands” Program[19]</td><td>0.58</td></tr>
<tr><td>Value-Added Tax and Tariff Exemptions for FIEs and Certain Domestic</td><td>9.71</td></tr>
</table>

[17] *See* Wujin Water Calculation Memo.
[18] *See* Taihe Companies Calculation Memo for this and the following 13 programs.
[19] *See Chlorinated Isocyanurates from the People’s Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 73 FR 57323 (October 2, 2008) and accompanying Issues and Decision Memorandum at “Funds for Outward Expansion of Industries in Guangdong Province.”

Enterprises Using Imported Equipment in Encouraged Industries[20]	
External Development Compensation[21]	0.58
Security Award	0.58
Bachelor's Subsidy	0.58
Intellectual Subsidy	0.58
First Technology Innovation Subsidy for SMEs	0.58
Superior Training Subsidy	0.58
Technology Progress Award	0.58
Independent Items Innovation Fund	0.58
Export Industry Development Fund	0.58
Scientific Technology Development Special Fund	0.58
Patent Development Fund	0.58
International Market Development Fund for SMEs	0.58
Zaozhuang Human Resource Subsidy	0.58
Subsidy for SMEs	0.58
International Market Subsidy	0.58
Planned Special Item Subsidy	0.58
Technology Subsidy	0.58
Financial Subsidy	0.58
Innovation Fund for SMEs	0.58
Subsidy	0.58
Subsidy for Private Enterprise	0.58
Technology Bureau Subsidy	0.58
Export Trading Award	0.58
Market Development for Small and Medium Enterprises (SMEs)	0.58
Special Fund for Service Industry Development	0.58
Enterprise Important Technology Subsidy	0.58
Subsidy Received	0.58
Innovation Fund	0.58
Subsidy from Patent Bureau	0.58
Subsidy from Intellectual Property Bureau	0.58
Total *Ad Valorem* Rate	54.11

VIII. ANALYSIS OF PROGRAMS

A. *Programs Determined to Be Countervailable*

For the descriptions, analyses, and calculation methodologies of these programs, *see* the *Preliminary Determination* and Post-Preliminary Analysis. Except where noted, no issues were raised by

[20] *See Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Critical Circumstances Determination, in Part,* 80 FR 34888 (June 18, 2015) and accompanying Issues and Decision Memorandum.
[21] *See Geogrids* for this and all remaining grant programs listed below.

interested parties in case briefs regarding these programs. Therefore, the only changes in the final company-specific program rates from the *Preliminary Determination* or Post-Preliminary Analysis for each of the following programs is the incorporation of Wujin Water's and the Taihe Companies' corrected denominators.[22] Wujin Water's and the Taihe Companies' final program rates are as follows.

1. *Electricity for LTAR*

Wujin Water, the Taihe Companies, the GOC, and Petitioner submitted comments in either their case or rebuttal briefs regarding this program.[23] As explained below in Comment 1, we have used the VAT-inclusive electricity rates paid by Wujin Water and the Taihe Companies in the calculation for this program in the final determination, and have used the most recently reported electricity information for each respondent.

Wujin Water: 0.75 percent *ad valorem*
Taihe Companies: 0.44 percent *ad valorem*

2. *Income Tax Reduction for High and New Technology Enterprises*

Taihe Companies: 1.20 percent *ad valorem*

3. *Self-Reported Grant Programs*[24]

Taihe Companies:
a. College Students Probations Subsidy
b. Self Renovation
c. Scientific Subsidy
d. Export Special Funds
e. Export Credit Insurance Subsidy
f. Awarding Subsidy
g. New Plant Building Subsidy
h. R&D Subsidy
i. Export Special Subsidy
j. Patent Subsidy
k. Employees Subsidy
l. International Market Development Fund
m. New and Important Industry Development Special Subsidy

0.76 percent *ad valorem* cumulative for the above-listed programs

[22] *See* Final Analysis Memoranda
[23] *See* Comment 1 below.
[24] As in the PDM, certain of Taihe's grants have the same name. All of the grants at issue are non-recurring, and during the AUL, Taihe applied separately for each grant. Additionally, we have listed the grant names only once in the appropriate list in cases where there were multiple instances of the grant having the same name (*e.g.*, "Export Special Funds" or "Patent Subsidy"). *See* the Taihe Companies Verification Report at Exhibits 1 and 5.

B. *Programs Determined Not to Have Conferred a Measurable Benefit or Not to Have Conferred a Benefit During the POI*

1. External Development Compensation
2. Security Award
3. Employees Subsidy
4. Bachelor's Subsidy
5. Intellectual Subsidy
6. First Technology Innovation Subsidy for SMEs
7. Superior Training Subsidy
8. Technology Progress Award
9. Independent Items Innovation Fund
10. Export Industry Development Fund
11. Export Credit Insurance Subsidy
12. Scientific Technology Development Special Fund
13. Patent Development Fund
14. International Market Development Fund for SMEs
15. Financial Credit Insurance Subsidy
16. Zaozhuang Human Resource Subsidy
17. Subsidy for SMEs
18. International Market Subsidy
19. Planned Special Item Subsidy
20. Technology Subsidy
21. Financial Subsidy
22. Innovation Fund for SMEs
23. Subsidy
24. Subsidy for Private Enterprise
25. Technology Bureau Subsidy
26. Export Trading Award
27. Patent Subsidy
28. College Students Probation Subsidy
29. Market Development for Small and Medium Enterprises (SMEs)
30. New and Important Industry Development Special Subsidy
31. Special Fund for Service Industry Development
32. Enterprise Important Technology Subsidy
33. Export Special Funds
34. Subsidy Received
35. Foreign Trade Development Special Fund
36. Innovation Fund
37. Subsidy from Patent Bureau
38. Subsidy from Intellectual Property Bureau

C. *Programs Determined Not to Be Used During the POI*

The Department determines that the following programs were not used by the Taihe Companies or Wujin Water during the POI:

1. “Famous Brands” Program
2. Corporate Income Tax Law Article 33: Reduction of Taxable Income for the Revenue Derived from the Manufacture of Products that are in Line with State Industrial Policy and Involve Synergistic Utilization of Resources
3. Value-Added Tax and Tariff Exemptions for FIEs and Certain Domestic Enterprises using Imported Equipment in Encouraged Industries

IX. ANALYSIS OF COMMENTS

General Issues

Comment 1: Electricity for LTAR Calculation

Respondents and the GOC:

- Respondents and the GOC argue that the Department should correct its calculation for this program to make an “apples-to apples” comparison. Specifically, citing to record evidence, both respondents state that they reported their electricity rates on a VAT-exclusive basis, whereas the benchmarks used in the calculation are VAT-inclusive.[25]
- Respondents and the GOC argue that the Department should either adjust the benchmarks downward to remove the 17 percent VAT, or use the appropriate VAT-inclusive rate from the provinces in which Wujin Water and the Taihe Companies are located to compare to the benchmark prices.[26] The Taihe Companies state that the Department adopted the latter approach in two prior cases.[27]

Petitioner:

- Because the Department has accounted for the information provided by Respondents, and the benchmark rates were based on AFA, no adjustments should be made to the calculation for this program.[28]

Department Position: After reviewing the record evidence, we agree with Wujin Water, the Taihe Companies, and the GOC. We verified Wujin Water’s and the Taihe Companies’ submitted information that they paid the requisite provincial electricity rates and reported all payments.[29] In their submitted electricity worksheets, both Wujin Water and the Taihe Companies adjusted the provincial per-kilowatt hour (kWh) electricity rates downward 17 percent to remove the VAT amount. Hence, our preliminary electricity for LTAR calculation compared the companies’ adjusted per-kWh electricity rates to the AFA benchmark (the appropriate highest provincial per-kWh electricity rate in the PRC), which was VAT-inclusive.

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[25] *See* Wujin Case Brief at 3-6; *see also* Taihe Companies Case Brief at 4-5; *see also* GOC Rebuttal Brief at 1-3.
[26] *Id*.
[27] *See* Taihe Companies Case Brief at 4-5, citing *Countervailing Duty Investigation of 1, 1, 1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*,79 FR 62594 (Oct. 20,2014), and accompanying Issues and Decision Memorandum (*Tetrafluoroethane)* at Comment 8, and *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination*, 81 FR 75037 (October 28, 2016), and accompanying Issues and Decision Memorandum (*IMTDC*) at Comment 8.
[28] *See* Petitioner Rebuttal Brief at 1-3.
[29] *See* Wujin Verification Report at 8-9 and Exhibit 9; *see also* Taihe Companies Verification Report at 7 and Exhibit 4.

Record evidence demonstrates that the rate schedules for Jiangsu and Shandong provinces, where Wujin Water and the Taihe Companies are respectively located, are VAT-inclusive.[30] Furthermore, information provided by the GOC in an exhibit to its initial response indicates that all Chinese provincial electricity rates are VAT-inclusive, a fact that, thus, applies to those provinces whose rates we used as the AFA benchmarks.[31]

Therefore, for this final determination, we will use the per-kWh electricity rates as they appear on the applicable provincial rate schedules for Wujin Water and the Taihe Companies (*i.e.*, the VAT-inclusive and unadjusted rates for Jiangsu and Shandong Provinces, respectively) to compare to the AFA benchmark rates (also VAT-inclusive) in our calculation for the final determination. This will ensure an "apples-to-apples" comparison in our LTAR calculation. Our treatment of this issue in this final determination is consistent with the approach adopted in *Tetrafluoroethane* and *IMTDC*.

Comment 2: Whether the Department Should Find Wujin Water to Be Cross-Owned with Nantong Uniphos

Wujin Water and Nantong Uniphos

- The Department should find Wujin Water and Nantong Uniphos to be "cross-owned" under 19 CFR 351.525(b)(6)(vi), and their benefits should be attributed to the combined sales of the two companies, pursuant to 19 CFR 351.525(b)(6)(ii).
- Wujin Water owns a significant portion of the shares of Nantong Uniphos and is the second largest shareholder.
- Three of Wujin Water's directors serve on the board of Nantong Uniphos.
- One of Wujin Water's shareholders, who serves on Nantong Uniphos' board, also serves as the sales manager for both Nantong Uniphos and Wujin Water.
- Production at Wujin Water was shut down shortly after the POI, and all production has since shifted to Nantong Uniphos. Nantong Uniphos now acts as the producer for Wujin Water, as well as for its own sales.
- Wujin Water not only can use the assets of Nantong Uniphos as its own, but also the combination is such that the two entities are not readily distinguishable as separate entities and such combination occurred prior to the end of the POI.
- Thus, cross-ownership exists because Wujin Water can use or direct the individual assets of Nantong Uniphos in the same way that it can use its own assets.
- Wujin Water and Nantong Uniphos should be excluded from any order, if the combined calculated rate is less than one percent.
- If Wujin Water and Nantong Uniphos are found not to be cross-owned, the Department should use Nantong Uniphos' submitted and verified information to calculate a subsidy rate for the company.

Petitioner did not comment on this issue.

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[30] *See* the GOC's initial questionnaire response, dated July 15, 2016 (GOC Initial Response) at Exhibit 6; *see also* Wujin Verification Report at Exhibit 9 and Taihe Companies Verification Report at Exhibit 4.
[31] *See* GOC Initial Response at Exhibit 4.

Department Position: Pursuant to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.

In the *Preliminary Determination*, the Department stated that:

> Wujin Water responded to the questionnaire on behalf of itself and two producers of subject merchandise, Changzhou Wujin Fine Chemicals Factory Co., Ltd. and Nantong Uniphos Chemicals Co., Ltd. However, none of the three companies owns a majority voting ownership interest in either of the other companies, and there is no indication on the record that one company can use or direct the assets of the other companies in essentially the same ways it can use its own assets. Based on this information, we preliminarily determine that cross-ownership does not exist between Wujin Water and the other two reported companies pursuant to 19 CFR 351.525(b)(6)(vi). Therefore, we will attribute any subsidies received by Wujin Water to its sales pursuant to 19 CFR 351.525(b).[32]

Subsequent to the *Preliminary Determination*, the Department requested, received, and verified additional information regarding the potential cross-ownership of Wujin Water, Nantong Uniphos, and Wujin Fine. The record evidence continues to show that there is no majority ownership between Wujin Water and Nantong Uniphos or between Wujin Fine and Nantong Uniphos.[33] In addition, there is no ownership between Wujin Water and Wujin Fine.[34]

Furthermore, pursuant to Nantong Uniphos' Articles of Incorporation, no particular shareholder or board of director has any veto power or golden shares, and all decisions can only be achieved by a two-thirds[35] or simple[36] majority vote of the shareholders.[37] Given these facts, it would take at least two out of three of Nantong Uniphos' shareholders to have direction or control over Nantong Uniphos, and Wujin Water holds only one of three shareholder positions.

Therefore, based on the record evidence, we continue to find no cross-ownership between Wujin Water and Nantong Uniphos, because of Wujin Water's inability to use or direct unilaterally the assets of Nantong Uniphos as its own, pursuant to 19 CFR 351.525(b)(6)(vi). As such, we will not include any of Nantong Uniphos' subsidies in Wujin Water's calculated rate.

As to the argument that Wujin Water's production shut down after the POI and shifted to Nantong Uniphos, we note that this transpired after the POI, and thus does not affect our POI cross-ownership analysis in this investigation. With regard to the argument that Wujin Water can use the assets of

[32] *See* PDM at 5-6.
[33] *See* Wujin Verification Report at 4-5.
[34] *Id*.
[35] For example, a two-thirds majority vote of the shareholders is required to: modify the Articles of Association; make changes to registered capital; and approve mergers, divisions, dissolution or transformation of the enterprise.
[36] For example, a simple majority vote of the shareholders is required to: establish business policies and investment plans; elect and replace directors and supervisors; and approve the annual budget plan and final accounts.
[37] *See* Nantong Uniphos' July 15, 2016, submission at Exhibit 7 (Article 13).

Nantong Uniphos as its own, and that the two entities are not readily distinguishable as separate entities, as stated before, the record evidence does not support a finding of cross-ownership between Wujin Water and Nantong Uniphos during the POI. Moreover, the fact that the companies are currently (*i.e.* post-POI) not readily distinguishable as separate entities based on changes in production is moot for our POI cross-ownership analysis.

With regard to calculating an individual rate for Nantong Uniphos, even though it submitted responses (that were verified), the responses it provided were in connection with the question of potential cross-ownership with Wujin Water. Given that we find Nantong Uniphos was not cross-owned with Wujin Water during the POI, and that Nantong Uniphos was not selected for individual examination,[38] we are under no statutory obligation to calculate a distinct rate for Nantong Uniphos at this time and will not do so.

Finally, regarding whether Wujin Water and Nantong Uniphos should be excluded from any order, notwithstanding our cross-ownership determination above, given that Wujin Water's calculated rate is *de minimis,* we will exclude Wujin Water from any potential order.[39]

X. RECOMMENDATION

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

☒ ☐

Agree Disagree

3/20/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

[38] *See* Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Respondent Selection, dated June 8, 2016.
[39] Nantong Uniphos was not selected for individual examination, thus this is a moot argument regarding this company.