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

C-570-068
Investigation
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March 7, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Forged Steel Fittings from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of forged steel fittings from the People's Republic of China (China), as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On October 5, 2017, Commerce received a countervailing duty (CVD) petition concerning imports of forged steel fittings from China, filed in proper form, on behalf of the Bonney Forge Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) (the petitioners).[1] The CVD petition was accompanied by an antidumping duty (AD) petition for forged steel fittings from China. On October 25, 2017, Commerce initiated the CVD investigation of forged steel fittings from

[1] *See* Petitioner's Letter, "Forged Steel Fittings from the People's Republic of China – Petition for the Imposition of Countervailing Duties," dated October 5, 2017 (the Petition).

China.[2] The initial allegations and supplements to the Petition are described in the CVD Initiation Checklist.[3]

On October 26, 2017, Jiangsu Haida Pipe Fittings Group Company Ltd. (Haida) requested that Commerce accept it as a voluntary respondent in this investigation.[4] Haida later withdrew its request for voluntary respondent status.[5]

In the *Initiation Notice*, Commerce stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of forged steel fittings from China during the period of investigation (POI).[6] Accordingly, on November 30, 2017, Commerce selected Both-Well (Taizhou) Steel Fittings Co., Ltd. (Both-Well) and Beijing Bell Plumbing Mfg., Ltd. (Beijing Bell), the two largest publicly identifiable exporters/producers of the subject merchandise by volume, for individual examination as mandatory respondents in this investigation.[7]

On November 30, 2017, Commerce issued the CVD questionnaire to the Government of China (GOC) and the mandatory respondents.[8] Between January and March 2018, the GOC and Both-Well filed responses to Commerce's affiliation,[9] initial,[10] and supplemental questionnaires.[11]

On December 1, 2017, Beijing Bell requested that Commerce de-select it as a mandatory respondent in this investigation because it claimed to have no sales or production of subject merchandise during the POI.[12]

On December 7, 2017, Commerce informed Beijing Bell that it was still required to respond to the initial questionnaire and had no basis to de-select it as a mandatory respondent in this investigation because the products listed in its December 1, 2017, letter were still considered

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[2] *See Forged Steel Fittings from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 82 FR 50623 (November 1, 2017) (*Initiation Notice*).
[3] *See* Countervailing Duty Investigation Initiation Checklist: Forged Steel Fittings from the People's Republic of China, dated October 25, 2017 (CVD Initiation Checklist).
[4] *See* Haida's Letter, "Forged Steel Fittings from the People's Republic of China: Haida's Request for Voluntary Respondent Treatment," dated October 26, 2017.
[5] *See* Haida's Letter, "Forged Steel Fittings from the People's Republic of China: Withdrawal of Request for Voluntary Respondent Treatment," dated December 21, 2017.
[6] *See Initiation Notice* at 82 FR 50623, 50625.
[7] *See* Memorandum, "Countervailing Duty Investigation of Forged Steel Fittings from the People's Republic of China: Respondent Selection," dated November 30, 2017.
[8] *See* Commerce's Letter, "Countervailing Duty Investigation of Forged Steel Fittings from the People's Republic of China: Countervailing Duty Questionnaire," dated November 30, 2017 (Initial Questionnaire).
[9] *See* Both-Well's December 14, 2017, Affiliation Response (Both-Well AFFR).
[10] *See* GOC's January 19, 2018, Initial Questionnaire Response (GOC IQR) and Both-Well's January 19, 2018, Initial Questionnaire Response (Both-Well IQR).
[11] *See* Both-Well's February 9, 2018, First Supplemental Questionnaire Response (Both-Well SQR1); GOC's February 27, 2018, First Supplemental Questionnaire Response (GOC SQR1); Both-Well's February 27, 2018, Second Supplemental Questionnaire Response; and GOC's February 27, 2018, Second Supplemental Questionnaire Response (GOC SQR2).
[12] *See* Beijing Bell's Letter, "Forged Steel Fittings from PRC ("FSPF"); C-570-068; Request for Deselection of Beijing Bell as a Mandatory Respondent.

within the scope of the investigation. Commerce also placed on the record public information from its website indicating that Beijing Bell may have produced subject merchandise during the POI.[13] Beijing Bell filed responses to Commerce's affiliation and initial questionnaire but maintained that it had no U.S. exports or production of subject merchandise during the POI.[14] As a result of our preliminary scope ruling discussed in a separate memorandum,[15] it appears that Beijing Bell's products are outside the scope of this investigation. Although we have not individually examined Beijing Bell for this preliminary determination, we will verify its claim that it did not produce or sell the subject merchandise during the POI.

On January 29, 2018, the petitioners submitted a timely-filed new subsidy allegation in which it alleged that Both-Well, a foreign invested enterprise (FIE), may have been exempt from paying value added tax (VAT) on purchases of Chinese-made equipment.[16] On February 16, 2018, Commerce initiated an investigation of the new subsidy allegation[17] and issued a questionnaire to the GOC and Both-Well on February 16, 2018.[18] We intend to issue a post-preliminary analysis addressing this program prior to the final determination.

On February 6, 2018, the petitioners submitted data for Commerce to consider using as benchmarks in the less than adequate remuneration (LTAR) subsidy rate calculations.[19]

On February 21, 2018, we placed memoranda on the record concerning China's financial system, non-market economy (NME) status, and whether particular enterprises should be considered to be "public bodies."[20]

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[13] *See* Memorandum to the File, "Countervailing Duty Investigation of Forged Steel Fittings from the People's Republic of China: Placing Public Information on the Record," dated November 30, 2017.
[14] *See* Beijing Bell's December 14, 2017, Affiliation Response, and Beijing Bell's January 16, 2018, Initial Questionnaire Response.
[15] *See* Memorandum, "Certain Forged Steel Fittings from China, Italy, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated concurrently with this memorandum (Preliminary Scope Decision Memorandum).
[16] *See* Petitioners' Letter, "Forged Steel Fittings from the People's Republic of China: New Subsidy Allegations," dated January 29, 2018.
[17] *See* Memorandum, "Countervailing Duty Investigation on Forged Steel Fittings from the People's Republic of China: Decision Memorandum on New Subsidy Allegation," dated February 16, 2018.
[18] *See* Commerce's Letters, "Forged Steel Fittings from the People's Republic of China: Countervailing Duty Investigation, New Subsidy Allegations Questionnaire for Both-Well (Taizhou) Steel Fittings, Co., Ltd.," dated February 16, 2018, and "Forged Steel Fittings from the People's Republic of China: Countervailing Duty Investigation, New Subsidy Allegations Questionnaire for the Government of the PRC(GOC)," dated February 16, 2018.
[19] *See* Letter from the petitioners, "Forged Steel Fittings from the People's Republic of China: Submission of Benchmark Data" (Benchmarks Submission), dated February 6, 2018.
[20] *See* Memorandum, "Placing Information on the Record," dated February 21, 2018.

B. Postponement of Preliminary Determination

On November 30, 2017, Commerce postponed the deadline for the preliminary determination of the investigation to the full 130 days permitted under section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).[21] Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the preliminary determination in this investigation is now March 7, 2018.[22]

C. Period of Investigation

The POI is January 1, 2016, through December 31, 2016.

III. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,[23] we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and we encouraged all parties to submit comments within 20 calendar days of the signature date of that notice.[24] We received comments concerning the scope of this CVD investigation and the concurrent AD investigations of forged steel fittings from China, Italy and Taiwan. We evaluated the scope comments filed by the interested parties and are issuing our preliminary decision regarding the scope of the AD and CVD investigations in conjunction with this preliminary determination.[25] We will issue final scope decisions after considering any relevant comments submitted in case and rebuttal briefs.

IV. SCOPE OF THE INVESTIGATION

The scope of this investigation covers forged steel fittings. The complete description of the scope of this investigation is contained in Appendix I of the preliminary determination *Federal Register* notice. Merchandise subject to the investigation is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. It also may be entered under HTSUS 7307.92.3010, 7307.92.3030, 7307.92.9000, and 7326.19.0010. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

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[21] *See Forged Steel Fittings from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 82 FR 59584 (December 15, 2017).

[22] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum) dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[23] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*AD Preamble*).

[24] *See CVD Initiation*, 82 FR at 50623.

[25] *See* Preliminary Scope Decision Memorandum.

V. ALIGNMENT

In accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4), and based on the petitioner's request,[26] we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of forged steel fittings from China. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than July 23, 2018, unless postponed.[27]

VI. INJURY TEST

Because China is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry. On November 27, 2017, the ITC preliminarily determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of forged steel fittings from China that are alleged to be subsidized by the GOC.[28]

VII. APPLICATION OF THE CVD LAW TO IMPORTS FROM CHINA

On October 25, 2007, Commerce published its final determination in *CFS from China*, where we found that:

> {G}iven the substantial differences between the Soviet-style economies and China's economy in recent years, Commerce's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.[29]

Commerce affirmed its decision to apply the CVD law to China in numerous subsequent determinations.[30] Furthermore, on March 13, 2012, Public Law 112-99 was enacted which makes clear that Commerce has the authority to apply the CVD law to countries designated as

[26] *See* Petitioners' Letter, "Forged Steel Fittings from the People's Republic of China: Request for Alignment," dated January 10, 2018.
[27] *See Forged Steel Fittings from the People's Republic of China, Italy and Taiwan: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 83 FR 4899 (February 2, 2018).
[28] *See Forged Steel Fittings from China, Italy, and Taiwan: Investigation Nos. 701-TA-589 and 731-TA-1394-1396 (Preliminary)*, Publication 4743, November 2017 (ITC Publication 4743); *see also Determinations; Forged Steel Fittings from China, Italy, and Taiwan*, 82 FR 56049 (November 27, 2017).
[29] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*), and accompanying Issues and Decision Memorandum (CFS IDM) at Comment 6.
[30] *See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from China*), and accompanying Issues and Decision Memorandum (CWP IDM) at Comment 1.

NMEs under section 771(18) of the Act, such as China.[31] The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[32]

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

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

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Under the Trade Preferences Extension Act of 2015 (TPEA), numerous amendments to the AD and CVD laws were made. Amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act were included.[33] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[34]

Section 776(b) of the Act provides that Commerce may use adverse facts available (AFA) when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[35] Furthermore, section 776(b)(2) of the Act states that AFA may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a

[31] Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.
[32] *See* Pub. L. No. 112-99, 126 Stat. 265 §1(b).
[33] *See* TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The text of the TPEA may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.
[34] *See Applicability Notice*, 80 FR at 46794-46795.
[35] *See* section 776(b)(1)(B) of the Act; *see also* section 502(1)(B) of the TPEA.

previous administrative review, or other information placed on the record.[36]

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[37] Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[38] Furthermore, Commerce is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.[39]

Finally, under the new section 776(d) of the Act, when applying AFA, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.[40] The TPEA also makes clear that, when selecting facts available with an adverse inference, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[41]

For purposes of this preliminary determination, we are applying AFA for the circumstances outlined below.

B. Application of AFA: Input Producers Are "Authorities"

As discussed below under "Programs Preliminarily Found to Be Countervailable," Commerce is investigating whether the GOC provided special bar quality (SBQ) bar for LTAR. As part of its analysis, Commerce sought information that would allow it to analyze whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act. Specifically, we asked Both-Well to provide a complete list of the suppliers and producers from which it sourced SBQ bar during the POI. We also requested information from the GOC with which to assess the relationship between the identified producers of SBQ bar and the GOC.

In response to the initial questionnaire, the GOC indicated that Both-Well purchased hot-rolled round bar instead of SBQ bar, and that the company only had one supplier of hot-rolled round bar.[42] Although the GOC contends that the category of SBQ bar does not also include hot-rolled round bar which the respondent, Both-Well, used to make the subject merchandise during the POI, we disagree. Specifically, information in the ITC Publication 4743 indicates that SBQ bar

[36] *See also* 19 CFR 351.308(c).
[37] *See also* 19 CFR 351.308(d).
[38] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 at 870, reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (1994) (SAA).
[39] *See* section 776(c)(2) of the Act; *see also* section 502(2) of the TPEA.
[40] *See* section 776(d)(1) of the Act; *see also* section 502(3) of the TPEA.
[41] *See* section 776(d)(3) of the Act; *see also* section 502(3) of the TPEA.
[42] *See* GOC IQR, at 57.

includes hot-rolled steel bar.[43] Additionally, Commerce and the GOC have used the terms SBQ bar and "engineering steel" interchangeably in the questionnaires and questionnaire responses.[44]

The GOC provided a response to Commerce's questions regarding Both-Well's SBQ bar producer in the GOC SQR2, which included ownership structure and basic registration information of this company.[45] However, the GOC did not provide information tracing the ownership of this producer back to the ultimate individual or state owners of the company.[46] Moreover, the GOC did not identify the government entity which holds ownership in the producer at issue.[47] This response undermined Commerce's ability to accurately determine whether the producer at issue constitutes an "authority."

Furthermore, we requested information on the owners, members of the board of directors, or managers of the SBQ bar producer who were also government or Chinese Communist Party (CCP) officials or representatives during the POI. In response to our supplemental questionnaire, the GOC only provided board of directors information for the producer at issue, and stated that "in accordance with the law {Article 53 of the Law of Civil Servant} none of the owners, directors, or managers of a company can concurrently be a civil servant; otherwise, he/she may violate the law."[48] Because the GOC did not provide the requested information in either its initial questionnaire or supplemental responses, we do not have the information necessary for our analysis.

The information we requested regarding the role of CCP officials in the management and operations of the SBQ bar producer at issue is necessary for our determination as to whether this producer is an "authority" within the meaning of section 771(5)(B) of the Act.[49] The GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The GOC's responses in prior CVD proceedings demonstrate that it is, in fact, able to access information similar to what we requested.[50] Additionally, pursuant to section 782(c) of the Act, if the GOC could not provide any of the requested information, it should have promptly explained to Commerce what attempts it made to obtain this information, and proposed

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[43] *See ITC Publication 4743, at V-1.*
[44] *See e.g.,* Initial Questionnaire, at II-9 through 12; *see also* GOC SQR1, at 7.
[45] See GOC SQR2, at Input Producer Appendix.
[46] *Id*. at 2.
[47] *Id*. at 3.
[48] *Id*. at 7.
[49] *See* Memorandum to the File, "Placing Information on the Record," dated February 21, 2018, at Attachments 4 and 5.
[50] *See, e.g., High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*HPSC from China*), and accompanying Issues and Decision Memorandum at 13.

providing this information in an alternative form.[51] Nor did the GOC elect to supplement its initial filing when presented with a second opportunity to do so.[52]

We preliminarily find that the GOC has withheld necessary information that was requested of it and, thus, that Commerce must rely on "facts otherwise available" for the preliminary determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, we preliminarily find that the GOC failed to cooperate by not acting to the best of its ability to comply with our repeated request for information on the ultimate ownership the input supplier. Consequently, we find that AFA is warranted pursuant to section 776(b) of the Act. As AFA, we preliminarily find that the SBQ bar producer for which the GOC failed to provide complete information necessary for our financial contribution analysis is an "authority" within the meaning of section 771(5)(B) of the Act.

For details on the calculation of the subsidy rate for the respondents, *see* below at "Provision of SBQ Bar for LTAR."

C. Application of AFA: Inputs Are Specific

Commerce asked the GOC to provide a list of industries in China that use SBQ bar directly, and to provide the amounts (volume and value) purchased by each of the industries, including the industry classification that includes forged steel fittings producers.[53] Commerce requests such information for purposes of its *de facto* specificity analysis. Specifically, our questionnaire asked the GOC to:

> Provide a list of the industries in the PRC that purchase {the input} directly, using a consistent level of industrial classification. Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use whatever resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.[54]

[51] Section 782(c)(1) of the Act states, "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."

[52] *See* GOC SQR2, at 2.

[53] *See* Initial Questionnaire, at 11.

[54] *Id*.

The GOC did not provide this information, nor did it explain what efforts it made to compile this information. Instead, the GOC simply replied in the following manner:

> "In China, there are many industries that use engineering steel, including building, machinery, automotive, home appliances, and shipping industries, among others. With respect to amounts (volume and value) purchased by the industry in which the mandatory respondent company operates, as well as the total purchases by every other industry, the NBS does not retain the specific information.[55]

This response is insufficient.

Commerce asked that the GOC provide information on purchases by industry, using "whatever resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry."[56] For example, an International Standard Industrial Classification ("ISIC") category at the 2-digit level would encompass the forged steel fittings industry (*e.g.*, ISIC Category 24 "Manufacture of basic metals"). A number of the more nuanced sector classifications, at the 3- or 4-digit level, would encompass the forged steel fittings industry as well. The GOC did not provide usage data pursuant to *any* classification grouping. Accordingly, Commerce was precluded from examining and considering the actual relative consumption of SBQ bar by industrial sector, as the GOC provided no data for this purpose.[57]

As discussed above, although the GOC contends that the category of SBQ bar does not also include hot-rolled round bar which the respondent, Both-Well, used to make the subject merchandise during the POI, we disagree. Therefore, we find that this response reflects a failure to fully cooperate because the GOC has not provided the requested information regarding the input used by Both-Well (SBQ bar, also referred to by Both-Well and Commerce as hot-rolled round bar, and by the GOC as engineering steel). Instead, the GOC has refused to provide the requested information on the grounds that "SBQ bar" is not used by Both-Well.

Specifically, in this case, the GOC did not provide the required data on the relative consumption of SBQ bar at *any* industry level (*see* "Provision for SBQ Bar LTAR" section below for further discussion). Consistent with past proceedings,[58] we preliminarily determine that because necessary information is missing from the record and the GOC withheld information requested of it, the use of the "facts available" is warranted in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our repeated request for SBQ bar information. Consequently, AFA is warranted, pursuant to section 776(b) of the Act. In applying AFA, we find that the GOC's provision of SBQ bar is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

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[55] *See* GOC IQR, at 63.
[56] *See* Initial Questionnaire, at 11.
[57] The GOC provided a listing of industrial classifications in the GOC SQR2 which did not identify the classifications for all the industries that consumed SBQ bar. *See* GOC SQR2, at Exhibit VIII.
[58] *See e.g.*, *Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 60178 (December 19, 2017) (*Cast Iron Soil Pipe Fittings from China*), and accompanying Preliminary Determination Memorandum (PDM) at 5.

D. Application of AFA: Provision of Electricity for LTAR

The GOC did not provide complete responses to Commerce's questions regarding the alleged provision of electricity for LTAR. These questions requested information needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act.

In order to analyze the financial contribution and specificity of this program, we requested that the GOC provide information regarding the roles of provinces, the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in making electricity price adjustments. Specifically, we requested, *inter alia*: 1) copies of the Provincial Price Proposals for each province in which the mandatory respondent or any of its "cross-owned" companies were located for applicable tariff schedules that were in effect during the POI; 2) all original NDRC Electricity Price Adjustment Notices in effect during the POI; 3) an explanation of the procedure for adjusting retail electricity tariffs and the role of the NDRC and provincial governments in this process; 4) details of the price adjustment conferences that took place between the NDRC and the provinces, grids and power companies with respect to the creation of all tariff schedules applicable to the POI; 5) identification of the cost elements and adjustments that were discussed between the provinces and the NDRC in the price adjustment conferences; and 6) an explanation of how the NDRC determines that the provincial level price bureaus have accurately reported all relevant cost elements in their price proposals with respect to electricity generation, transmission and distribution. Commerce requested this information in order to determine the process by which electricity prices and price adjustments were derived, identify entities that manage and impact price adjustment processes, and examine cost elements included in the derivation of electricity prices in effect throughout China during the POI.

In its initial questionnaire response, the GOC stated that Provincial Price Proposals did not exist during the POI and that "the electricity prices within the jurisdiction of each of provinces are established by the relevant pricing authorities at the provincial level."[59] Consequently, according to the GOC, the NDRC no longer has any impact on prices, which are set autonomously at the provincial level. The GOC contends that electricity prices in China are based on purely market mechanisms and reflect market supply and demand.[60] The GOC states that the NDRC price adjustment notice in effect during the POI, Number 3105, was issued on December 27, 2015.[61] In the current cast iron soil pipe fittings from China CVD investigation, the GOC confirmed that Notices 748, 3105, and 3169 are the most recent central government measures mandating delegation of what it claims to be electricity pricing authority to the provinces.[62]

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[59] *See GOC IQR,* at 74.
[60] *Id*. at 72.
[61] *Id*. at 63 and Exhibit II. E-9 (Notice 3105).
[62] *See Cast Iron Soil Pipe Fittings from China* and accompanying PDM at 19.

However, Article 1 of Notice 748 stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.[63] Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts.[64] Article 2 indicates that this price reduction is to be "mainly used for reducing the price of industrial and commercial electricity."[65] Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.[66] Articles 6 and 7, respectively, indicate that provincial pricing authorities shall "develop and issue specific adjustment plan of electricity price and sales price in accordance with the average price adjustment standards of Annex 1, and reported to our Commission for the record," and that the "above price adjustment should be implemented since April 20, 2015."[67] Lastly, Article 10 directs that "{l}ocal price departments shall organize and arrange carefully to put in place the electricity price adjustment measures."[68]

NDRC Notice 3105, which was based upon consultations between the NDRC and the National Energy Administration, directs additional price reductions, and stipulates at Articles II and X, that local price authorities shall implement in time the price reductions included in its Annex and report resulting prices to the NDRC.[69]

Article 2 of NDRC Notice 3169 provides that, when the "thermal coal price is fluctuated for more than {Renminbi (RMB)} 30 Yuan (inclusive) comparing with benchmark coal price during the cycle," then an adjustment must be made pursuant to a "tiered regressive linkage for {the} excess portion" using a "linkage coefficient" which is also defined in Article 2.[70] Article 3 stipulates that "{b}enchmark on-grid electricity price of coal-fired machine unit should be strictly measured and determined by coal-electricity price linkage mechanism" using a specific formula defined in Appendix 1 of Notice 3169.[71] Article 3 further stipulates that the "industrial and commercial electricity price should be correspondingly adjusted; adjustment level should be determined by on-grid electric quantity of coal-fired machine unit, on-grid electric quantity of other power sources, outsourced electric quantity condition, energy-saving and eco-friendly electricity price and other factors" using a specific formula defined in Appendix 1 of Notice 3169.[72]

Consequently, both Notice 748 and Notice 3105 explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Neither Notice 748 nor Notice 3105 explicitly stipulate that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions, as the GOC states to be the case.[73] Rather, both notices indicate that the NDRC continues to play an influential role in setting and adjusting electricity

[63] *See* GOC IQR, at Exhibit II.E-8.
[64] *Id*. at Annex 1.
[65] *Id.* at Exhibit II.E-8.
[66] *Id*.
[67] *Id*.
[68] *Id*.
[69] *Id.*
[70] *See* GOC SQR1, at Exhibit IX.
[71] *Id*.
[72] *Id*.
[73] *See* GOC IQR, at 71.

prices, by mandating average price adjustment targets with which the provinces are obligated to comply in setting their own specific prices.[74] Moreover, while Article IV of Notice 3169 does indicate that "local government and relevant departments should not designate the transaction price," Articles 2 and 3 of Notice 3169 also make clear that the NDRC stipulates the formulae by which prices are to be adjusted.[75]

In a supplemental questionnaire, Commerce requested that the GOC explain what steps are taken in the NDRC's review of provincial price schedules. The GOC referred Commerce to Notice 3169, and explained that, with Notice 3169 regulating the electricity calculation adjustment method in the adjustment on January 1, 2016, provincial agencies are delegated the authority to prepare and publish the price adjustment packages/schedules for their own jurisdiction respectively.[76] The GOC also stated that the relevant provincial agencies are only required to provide their final adjusted electricity price schedules to the NDRC for its records.[77] The GOC also referred Commerce to Notice 748, and stated that for electricity price adjustment in the middle of 2016, the provincial governments were only required to provide their final adjusted electricity prices schedules to the NDRC for its "review."[78] However, as discussed above, these documents, issued by the NDRC, direct provinces to reduce prices by amounts specific to provinces and provide specific formulae by which price adjustments must be made. They neither explicitly eliminate Provincial Price Proposals nor define distinctions in price-setting roles between national and provincial pricing authorities. Additionally, we requested that the GOC explain whether the pricing values set forth in Notices 3169, 3105, and 748 were mandatory for each province and sub-Central jurisdiction, as indicated in the schedule. The GOC responded that "{t}hese pricing values issued by NDRC are not mandatory" and that "{s}uch pricing values provided in notice 748 are average pricing adjustment principles and are calculated based on an average range of selling price adjustments of the several provinces."[79]

Finally, we requested that the GOC explain what action the NDRC would take were any province not to comply with the directed price changes. The GOC responded that "the provincial governments have authority in implementing adequate price adjustments in their respective jurisdictions and {t}here is no obligation of provincial authorities to comply with the indicated pricing values." However, the GOC failed to explain what actions the NDRC would take in the event of non-compliance with directed price changes.[80]

Commerce additionally requested that the GOC explain, in detail, how the pricing values indicated in the Appendix to Notice 748 were derived, including the specific factors or information relied upon by the NDRC. In its supplemental response, the GOC merely repeated its initial explanation, stating that the range of electricity sales prices was calculated through the formulae provided in the two appendixes of Notice 3169.[81] We also asked the GOC whether

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[74] *See, e.g.*, Notice 748 Article 10 and Notice 3105 Articles II and X.
[75] *See* GOC SQR1, at Exhibit IX.
[76] *Id.* at 8-9.
[77] *Id*. at 12.
[78] *Id*.
[79] *Id*.
[80] *Id.*
[81] *Id.*

NDRC Notifications, *e.g.* Notice 748, coincided with price changes set forth at the provincial level. The GOC responded that the prices set forth by the NDRC and Jiangsu Province during 2016 showed variations.[82] However, as discussed above, these documents, issued by the NDRC, direct provinces to reduce prices by amounts specific to provinces and provide specific formulae by which price adjustments must be made.

In addition to our request for a detailed explanation of how the NDRC derived the price reduction amounts indicated in Notice 748 and Notice 3105, we requested that the GOC explain how the increases/decreases in cost elements led to retail price increases/decreases with regards to the Jiangsu province. In its response, the GOC stated that fuel and coal are the main inputs to power generation and the impact of the changes in price of these two factors on retail prices is reflected using the formulas to derive a link between coal-fired machine and the coal price.[83] However, the GOC again failed to provide requested sources and relevant documentation to support its statements with regards to the Jiangsu province and instead only referred back to its original response.[84]

As explained above, the GOC failed on multiple occasions to explain the roles of, and the nature of cooperation between, the NDRC and the provinces in deriving electricity price adjustments. Further, the GOC failed to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves. Consequently, we preliminarily determine, in accordance with section 776(a)(1)(A), that the GOC withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, Commerce must rely on facts available in making its preliminary determination.[85] Moreover, we preliminarily determine, in accordance with section 776(b), that the GOC failed to cooperate by not acting to the best of its ability to comply with our repeated request for electricity pricing information. We also note that the GOC did not ask for additional time to gather and provide such information. Consequently, AFA is warranted.[86] We find, based on AFA, that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. The GOC failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments. Therefore, we are also applying AFA in selecting the benchmark for determining the existence and amount of the benefit.[87] The benchmark rates we selected are derived from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* the "Provision of Electricity for LTAR" section.

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[82] *Id*. at 14.
[83] *Id.* at 15.
[84] *Id.*
[85] *See* section 776(a)(2)(A) of the Act.
[86] *See* section 776(b) of the Act.
[87] *See* section 776(b)(2)(D) of the Act.

E. APPLICATION OF AFA – PROVISION OF LAND USE RIGHTS FOR LTAR

In its initial questionnaire response, the GOC provided the Land Administration Law of the People's Republic of China (2004 Revision), Regulation on the Implementation of the Land Administration Law of the People's Republic of China (2014 Version), and Provisions on the Assignment of State-owned Construction Land Use Right through Bid Invitation Auction and Quotation.[88]

The GOC did not provide any application or approval documents for land-use rights obtained by Both-Well as requested in its questionnaire response.[89] When we attempted to gather this information again in a supplemental questionnaire, the GOC provided a chart identifying the transfer of the land-use rights and the date Both-Well obtained the land-use rights, and the land-use rights contracts. However, the GOC only provided one of the approval notices associated with the land-use rights contracts and no explanation of how the price of the land-use rights was established between Both-Well and the local authorities. Furthermore, the GOC did not reconcile the land-use rights price paid and the price dictated by the applicable laws.[90]

Both-Well purchased land-use rights in 2004, 2007, 2008, and 2010.[91] In a supplemental questionnaire, Commerce requested that the GOC explain how the price of land or land-use rights was established and provide a reconciliation between the prices paid by Both-Well and those dictated by the laws and regulations of the relevant provinces, cities, and counties.[92] The GOC did not provide the requested explanation, but simply referred Commerce to the Regulation on the Implementation of the Land Administration Law of China and to Both-Well's questionnaire response for the price Both-Well paid for its land-use rights.[93]

All of the information requested regarding the provision of land and land-use rights to the mandatory respondent and the basis for which they were provided is crucial for our analysis to determine whether an alleged program is a financial contribution and specific. This type of information has been provided and verified in previous investigations.[94] Thus, we preliminarily find that the information requested, but not provided, was available to the GOC.

Because the GOC did not provide complete responses to Commerce's supplemental questions regarding the derivation of the prices paid by Both-Well for land-use rights, Commerce is unable to determine whether the provision of these land-use rights was specific. Therefore, we preliminarily determine that the GOC withheld information that was requested of it and, thus, that Commerce must rely on facts available pursuant to section 776(a)(2)(A) of the Act in making its preliminary specificity determination for Both-Well. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with

[88] *See* GOC IQR, at 54 and Exhibits II.E-1 through E-3.
[89] *Id.* at 53.
[90] *See* GOC SQR2, at 2-3 and Exhibit 2nd Supplemental Exhibit 1.
[91] *See* Both-Well IQR, at Exhibit E.LUR.2
[92] *See* Commerce's February 22, 2018, supplemental questionnaire to GOC.
[93] *See* GOC SQR2, at 3.
[94] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum.

our request for information. Specifically, the GOC failed to explain how the price of land-use rights was established between Both-Well and the local government (or between the entities that transfer the land-use rights) and did not provide the application documentation and complete approval documentation for Both-Well's land-use rights. Consequently, the GOC has not cooperated to the best of its ability, and an adverse inference is warranted in the application of facts available. In drawing an adverse inference, we find that the GOC's provision of land-use rights constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. For details regarding the remainder of our analysis for this program, see the "Provision of Land for LTAR" section below.

IX. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.[95] In the initial questionnaire, we notified the respondents to this proceeding that the AUL period would be 15 years, pursuant to 19 CFR 351.524(d)(1) and the U.S. Internal Revenue Service Publication 946 (2017), "Appendix B - Table of Class Lives and Recovery Periods" (IRS Pub. 946).[96] The 15-year period corresponds to IRS Pub. 946 asset class, "33.4 Manufacture of Primary Steel Mill Products." No party in this proceeding submitted comments challenging the proposed AUL period, and we therefore preliminarily determine that a 15-year period is appropriate to allocate benefits from non-recurring subsidies.

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

Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

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95 *See* 19 CFR 351.524(b).

96 *See* U.S. Internal Revenue Service Publication 946 (2017), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to Commerce's regulations further clarifies Commerce's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

> {T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[97]

Thus, Commerce's regulations make clear that the agency must look at the facts presented in each case to determine whether cross-ownership exists. The U.S. Court of International Trade upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[98]

Both-Well

Both-Well identified itself as a privately-owned Chinese exporter of the subject merchandise with no Chinese parent or holding companies.[99] In its AFFR, Both-Well did not identify any companies with which it was affiliated that were involved in the production, export, or sale of subject merchandise in China.[100] Therefore, we preliminarily determine that none of Both-Well's affiliates are cross-owned.[101]

B. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator. Where the program has been found to be contingent upon export activities, we used the recipient's total export sales as the

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[97] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).
[98] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600 (Ct. Int'l Trade 2001).
[99] *See* Both-Well AFFR, at Exhibit CVD-1.
[100] *Id.* at 3.
[101] *See* 19 CFR 351.525(b)(6)(ii)-(v).

denominator. All sales used in our net subsidy rate calculations are net of intra-company sales. For a further discussion of the denominators used, *see* the Both-Well Preliminary Calculation Memorandum.[102]

X. BENCHMARKS AND INTEREST RATES

Commerce is investigating non-recurring, allocable subsidies received by Both-Well.[103] The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

A. Short-Term and Long-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, Commerce uses comparable commercial loans reported by the respondent as a benchmark.[104] If the firm did not have any comparable commercial loans during the period, Commerce's regulations provide that we "may use a national average interest rate for comparable commercial loans."[105]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from China*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.[106] In an analysis memorandum dated July 21, 2017, Commerce conducted a re-assessment of the lending system in China.[107] Based on this re-assessment, Commerce has concluded that, despite reforms to date, the GOC's role in the system continues to fundamentally distort lending practices in China in terms of risk pricing and resource allocation, precluding the use of interest rates in China for CVD benchmarking or discount rate purposes. Consequently, we preliminarily find that any loans received by the respondent from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, Commerce is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with Commerce's practice. For example, in *Lumber from Canada,* Commerce used U.S. timber prices to measure the benefit for government-provided timber in Canada.[108] In past

[102] *See* Memorandum, "Both-Well Calculations for the Preliminary Determination," dated March 7, 2018 (Both-Well Preliminary Calculation Memorandum).
[103] *See* 19 CFR 351.524(b)(1).
[104] *See* 19 CFR 351.505(a)(3)(i).
[105] *See* 19 CFR 351.505(a)(3)(ii).
[106] *See* CFS IDM at Comment 10.
[107] *See* Memorandum, "Placing Information on Record," dated February 21, 2018, at Attachments 1 and 2.
[108] *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Lumber from Canada*), and accompanying IDM at "Analysis of Programs: Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China* and later updated in *Thermal Paper from China*.[109] Under that methodology, we first determine which countries are similar to China in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from China*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, China fell in the lower-middle income category.[110] Beginning in 2010, however, China was classified in the upper-middle income category and remained there from 2011 to 2014.[111] Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2014. This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.[112]

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

In each of the years from 2003-2009 and 2011-2014, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.[113] For 2010, however, the regression does not yield that outcome for China's income group.[114] This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from China* to compute the benchmarks for the years from 2001-2009 and 2011-2014. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund (IMF), and they are included in that agency's *International Financial Statistics* (*IFS*). With the exceptions noted below, we used the interest and inflation rates reported in the *IFS* for the countries identified as

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[109] *See* CFS IDM at Comment 10; *see also Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*), and accompanying IDM (Thermal Paper IDM) at 8-10.
[110] *See* World Bank Country Classification, http://data.worldbank.org/about/country-and-lending-groups (World Bank Country Classification).
[111] *See* World Bank Country Classification.
[112] *See, e.g., Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying PDM at "VII. Subsidies Valuation: Benchmarks and Discount Rates" (unchanged in *Shrimp from the PRC*).
[113] *See* Memorandum to The File, "Forged Steel Fittings from the People's Republic of China: Interest Rate Benchmark Memorandum," dated March 7, 2018 (Interest Rate Benchmark Memorandum).
[114] *Id.*

"upper middle income" by the World Bank for 2010-2014 and "lower middle income" for 2001-2009.[115] First, we did not include those economies that Commerce considered to be NMEs for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to *IFS* for those years. Third, we remove any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year Commerce calculated a short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.[116] Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.[117]

The lending rates reported in the *IFS* represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, Commerce developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.[118]

In *Citric Acid from China*, this methodology was revised by switching from a long-term markup based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where "n" equals or approximates the number of years of the term of the loan in question.[119] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component. The resulting inflation-adjusted benchmark lending rates are provided in the Interest Rate Benchmark Memorandum.

B. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the GOC provided non-recurring subsidies. The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the Both-Well Preliminary Calculation Memorandum.

C. Land Benchmark

As detailed in previous CVD investigations regarding China, Commerce cannot rely on the use of so-called "first-tier" and "second-tier" benchmarks to assess the benefits from the provision of land for LTAR in China.[120] Specifically, in *Sacks from China*, Commerce determined that "Chinese land prices are distorted by the significant government role in the market," and hence,

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[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] *See, e.g.,* Thermal Paper IDM at 10.
[119] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from China*), and accompanying IDM at Comment 14.
[120] *See, e.g., Laminated Woven Sacks from the People's Republic of China: Preliminary Affirmative Countervailing*

no usable "tier one" benchmarks exist.[121] Furthermore, Commerce also found that "tier two" benchmarks (world market prices that would be available to purchasers in China) are not appropriate.[122] Accordingly, consistent with Commerce's past practice, we are relying on the use of "tier three" benchmarks for purposes of calculating a benefit for this program.

For this investigation, we are placing on the record 2010 Thai benchmark information to value land from "Asian Marketview Reports" by CB Richard Ellis (CBRE),[123] which was also relied upon in calculating land benchmarks in the CVD investigations of *Solar Cells from China PRC* and *ITDCs from China*.[124]

We initially selected this information in the *Sacks from China* investigation after considering a number of factors, including national income levels, population density, and producers' perceptions that Thailand is a reasonable alternative to China as a location for Asian production. We find that these benchmarks are suitable for this preliminary determination, adjusted accordingly for inflation, to account for any countervailable land received by Both-Well during the AUL period.

D. Input Benchmarks

We selected benchmarks for determining the benefit from the provision of SBQ bar for LTAR in accordance with 19 CFR 351.511. Section 351.511(a)(2) sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three).

To determine the appropriate benchmark for which to measure the benefits of inputs provided at LTAR under 19 CFR 351.511, Commerce asked the GOC several questions concerning the structure of the SBQ bar industry.[125] In response, the GOC provided summary data for crude

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

[121] *Id*.

[122] *Id*.

[123] *See* Memorandum to the File, " Asian Marketview Report," dated concurrently with this memorandum.

[124] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China*), and accompanying IDM (Solar Cells IDM), at 6 and Comment 11; *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 81 FR 21316 (April 11, 2016) (*ITDCs from China*), and accompanying IDM at 13.

[125] *See* Initial Questionnaire, at II-9 through 12.

steel and bar material industries, explaining that it does not maintain records on the SBQ bar industry.[126] This information included the number of domestic producers of each input, the number of such producers in which the GOC maintains an ownership or management interest, the total volume of production of each input, and the volume and value of imports, exports and domestic consumption.[127] For this input, we have analyzed the information provided to determine whether domestic prices for the input in question can be used as the Tier 1 benchmark provided in 19 CFR 351.511(a)(2)(i).

For the Provision of SBQ bar, as discussed in the section entitled "Use of Facts Otherwise Available and Adverse Inferences," above, we preliminarily determine that Both-Well's input producer is an "authority." Therefore, prices from this producer do not constitute market-determined prices. Below we analyze the information provided and the selection of a benchmark.

The GOC reported that of the 234 bar material producers in operation during the POI, the GOC maintains an ownership or management interest in 69.[128] According to data provided by the GOC, these 69 producers account for 28.06[129] percent of domestic bar material production. This level of GOC-controlled production is substantial. The data provided by the GOC also show that the volume of imports as a percentage of domestic production and consumption (1.66 and 3.82 percent, respectively), is insignificant. Additionally, in the past Commerce has determined that the GOC exercises significant control and influence in the broader economy and steel industry specifically:

> "{Commerce} finds that the record information indicates that China's steel industry is characterized by significant government ownership, control and intervention. This broad government intervention across the entire market, extending to all enterprises, coupled with {Commerce's} findings regarding the leading role for SIEs in the steel sector as envisioned and implemented by the GOC, distorts and diminishes the signals faced by all enterprises. Therefore, {Commerce} finds that based on the record of these proceedings, there are no potential benchmarks from the domestic industry that can be considered "market based" in accordance with the SCM Agreement…"[130]

Based on these facts together, we may reasonably conclude that domestic prices in China for SBQ bar are distorted such that they cannot be used as a Tier 1 benchmark. Thus, to measure the adequacy of remuneration for the provision of SBQ bar, we are relying on world market prices as the Tier 2 benchmark provided for in 19 CFR 351.511(a)(2)(ii).

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[126] *See* GOC IQR, at 57-60.
[127] *Id*.
[128] *Id.* at 58.
[129] *See* Memorandum to the File, "Analysis of Market Distortion in the Market for SBQ Bar," dated March 7, 2018 (Market Distortion Analysis Memo).
[130] *See* Benefit (Market Distortion) Memorandum – *Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO/DS437)*, and the accompanying *Supporting Memorandum* for additional information. *See* also *Final Determination for Pressure Pipe, Line Pipe, OCTG, Wire Strand and Solar Panels* Decision Memorandum. These memorandums were placed on the record concurrently with this preliminary determination.

The petitioner submitted 2016 monthly data from the American Metal Market.[131] The average of the export prices provided by the petitioner represents an average of commercially available world market prices for the inputs that would be available to purchasers in China. Also, 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, Commerce will average the prices to the extent practicable. Therefore, we averaged the prices to calculate a single benchmark by month.

E. Provision of Electricity for LTAR

As discussed above in the section, "Use of Facts Otherwise Available and Adverse Inferences," we are relying on AFA to select the highest non-seasonal provincial rates in China for each electricity category that are on the record of this investigation as our benchmark for measuring the adequacy of remuneration for electricity, as discussed below.

XI. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined to Be Countervailable

1. Provision of SBQ Bar for LTAR

The petitioner alleges that the respondents received countervailable subsidies in the form of the provision of SBQ bar for LTAR.[132] We requested information from the GOC regarding the specific company that produced the SBQ bar that Both-Well purchased during the POI in order to determine whether the producer is an "authority" within the meaning of section 771(5)(B) of the Act.[133] The GOC provided information indicating the name of the single producer, but only partially provided the data requested by Commerce in its initial questionnaire, and requested again in a supplemental questionnaire.[134] Therefore, as described in the "Use of Facts Otherwise Available and Adverse Inferences" section, Commerce determines that the GOC failed to cooperate to the best of its ability in responding to our requests for information. Therefore, we preliminarily determine as AFA that the producer of special quality bar purchased by Both-Well is an "authority" within the meaning of section 771(5)(B) of the Act and, as such, that the provision of special quality bar constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

Additionally, as discussed in the "Application of AFA: Inputs are Specific" section, Commerce has determined, based on AFA, that the SBQ bar for LTAR program is specific in accordance with section 771(5A)(D)(iii)(I) of the Act.

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[131] *See* Benchmarks Submission.
[132] *See* CVD Initiation Checklist at 19-20.
[133] *See* Initial Questionnaire, at 11.
[134] *See* GOC IQR, at 57-70; GOC SQR1, at 6-8; and SQR2, at 1 and Input Producer Appendix.

The GOC reported that of the 234 steel bar producers in operation during the POR, the GOC maintains an ownership interest in 69.[135] According to data provided by the GOC, these 69 producers account for 28.06 percent[136] of the domestic steel bar production during the POI. Additionally, Commerce has previously found that the GOC plays a significant, distortive role in the steel industry, rendering Tier 1 benchmarks inappropriate for the benefit analysis. For a full discussion see above section titled "Input Benchmarks."[137]

Therefore, we preliminarily determine that the domestic market for SBQ bar is distorted through the intervention of the GOC, and are relying on an external benchmark for determining the benefit from the provision of this input at LTAR. Commerce is, accordingly, selecting external benchmark prices, *i.e.*, "tier two" or world market prices, for our LTAR analysis consistent with Commerce's regulations.[138] The external benchmarks are derived from the American Metal Market.[139]

As explained in the Both-Well Preliminary Calculation Memorandum, Commerce adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv). Regarding delivery charges, we included ocean freight and inland freight charges that would be incurred to deliver SBQ bar to Both-Well's production facility. We added import duties as reported by the GOC, and the VAT applicable to imports of SBQ bar into China, also as reported by the GOC.[140] In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding in amounts for ocean freight and import duties. We compared these monthly benchmark prices to Both-Well's reported purchase prices for individual domestic transactions, including VAT and delivery charges.[141]

Based on this comparison, we preliminarily determine that SBQ bar was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark prices and the prices Both-Well paid.[142] We divided the total benefits by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section, and in the Both-Well Preliminary Calculation Memorandum.

On this basis, we preliminarily determine a subsidy rate for Both-Well of 7.14 percent *ad valorem*.[143]

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[135] *See* GOC IQR at 58
[136] *See* Memorandum to the File, "Analysis of Market Distortion in the Market for SBQ Bar," dated March 7, 2018 (Market Distortion Analysis Memo).
[137] *See* Benefit (Market Distortion) Memorandum – *Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO/DS437),* and the accompanying *Supporting Memorandum* for additional information. *See* also *Final Determination for Pressure Pipe, Line Pipe, OCTG, Wire Strand and Solar Panels* Decision Memorandum. These memorandums were placed on the record concurrently with this preliminary determination.
[138] *See* 19 CFR 351.511.
[139] *See* Both-Well Preliminary Calculation Memorandum.
[140] *See* GOC IQR, at 62.
[141] *See* Both-Well Preliminary Calculation Memorandum.
[142] *Id.*
[143] *Id*.

2. **Provision of Electricity for LTAR**

The petitioner alleges that the NDRC establishes electricity rates for the provinces and that the NDRC employs preferential electricity rates as a policy tool to promote and encourage the development of China's forged steel fittings industry.[144] Commerce has countervailed this program in previous investigations.[145] We preliminarily find that Both-Well used this program during the POI, because it purchased electricity from a provincial utility.[146]

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the GOC's provision of electricity for LTAR, in part, on AFA. Therefore, we determine that the GOC's provision of electricity confers a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act and is specific under section 771(5A)(D) of the Act.

For determining the existence and amount of any benefit under this program, as the benchmark, we selected the highest non-seasonal provincial rates in China for each electricity category (*e.g.*, "large industry," "general industry and commerce") and "base charge" (either maximum demand or transformer capacity) used by the respondent. Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a category.[147]

Consistent with our approach in *Tires from China*,[148] we first calculated the respondents' variable electricity costs by multiplying the monthly kilowatt hours (kwh) consumed at each price category (*e.g.*, peak, normal, and valley, where appropriate) by the corresponding electricity rates paid by the respondent during each month of the POI.[149] Next, we calculated the benchmark variable electricity costs by multiplying the monthly kwh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by the respondent during the POI from the monthly benchmark variable electricity costs.

To measure whether Both-Well received a benefit with regard to its base rate (*i.e.*, either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to the companies by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the company's consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by the company during the POI from the benchmark base rate costs. We then calculated the total benefit received during the POI under

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[144] *See* CVD Initiation Checklist, at 21.
[145] *See, e.g., Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008), and accompanying IDM at 29.
[146] *See* Both-Well IQR, at 20.
[147] *See* Both-Well Preliminary Calculation Memorandum.
[148] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 82 FR 46754 (October 6, 2017), and accompanying IDM (*Tires from China.).*
[149] *Id.* at 31-32.

this program by summing the benefits stemming from the respondent's variable electricity payments and base rate payments.[150]

To calculate the net countervailable subsidy rate attributable to Both-Well, we divided the total benefits by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section, and in the Both-Well Preliminary Calculation Memorandum. On this basis, we preliminarily determine that Both-Well received a net countervailable subsidy rate of 1.15 percent *ad valorem*.[151]

3. Provision of Land and/or Land-Use Rights for LTAR in Jiangsu Province and the Western Region of China

For this preliminary determination, as discussed above, we find, as AFA, that the GOC has policies in place to provide land to producers in the forged steel fittings industry for LTAR. We also find, as AFA, that land use rights were provided to Both-Well for LTAR by the GOC, and constitute a financial contribution under section 771(5)(D)(iii) of the Act. This subsidy is specific under sections 771(5A)(D)(i) and (iii)(I) of the Act because preferential land-use rights at LTAR are provided to a limited number of industries or enterprises.

Specifically, we are relying on AFA to find that the GOC's provision of land-use rights to Both-Well is specific within the meaning of section 771(5A) of the Act, because the GOC's failed to provide information regarding how land prices were determined for land-use rights held by Both-Well in certain instances (land provided before 2008, and land that is auctioned).[152]

To determine the benefit pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we first multiplied the Thai industrial land benchmarks discussed above under the "Benchmarks and Interest Rates" section, by the total land areas of the land-use rights held by Both-Well. We then subtracted the net price actually paid for the land to derive the total unallocated benefit. We next conducted the "0.5 percent test" provided for under 19 CFR 351.524(b)(2) for the years of the relevant land-rights agreement by dividing the total unallocated benefit by the appropriate sales denominator. As a result, we found that the benefits were greater than 0.5 percent of relevant sales and, therefore, allocated the benefits to the POI. We allocated the total benefit amounts across the terms of the land-use agreements, using the standard allocation formula as laid out in 19 CFR 351.524(d), and determined the amounts attributable to the POI. We divided this amount by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section. On this basis, we preliminarily determine a subsidy rate of 4.44 percent *ad valorem* for Both-Well.

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150 *See* Both-Well Preliminary Calculation Memorandum.
151 *Id*.
152 *Id*.

4. Import Tariff and VAT Exemptions on Imported Equipment for Encouraged Industries

The Circular of the State Council on Adjusting Tax Policies on Imported Equipment (GUOFA {1997} No. 37) exempts FIEs and certain domestic enterprises from VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into a prescribed list of non-eligible items, in order to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.[153] As of January 1, 2009, the GOC discontinued VAT exemptions under this program, but companies can still receive import duty exemptions.[154] Over the AUL, Both-Well reported receiving VAT and tariff exemptions under this program.[155] Commerce has previously found VAT and tariff exemptions under this program to confer countervailable subsidies.[156]

Consistent with these earlier cases and the GOC's IQR, we preliminarily determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy.[157] The exemptions constitute a financial contribution in the form of revenue forgone by the GOC, and they provide a benefit to the recipient in the amount of VAT and tariff savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(i) of the Act, because the program is limited to certain enterprises, *i.e.*, domestic enterprises involved in "encouraged" projects.

Both-Well reported using this program during the AUL.[158] Since these exemptions are provided for, or tied to, the capital structure or capital assets of a firm, Commerce treated them as a non-recurring benefit and applied our standard methodology for non-recurring grants to calculate the subsidy rate.[159] Specifically, where the benefits exceeded 0.5 percent of the relevant sales of that year, we allocated the amount of the VAT and/or tariff exemptions over the AUL.[160] In the years that the benefits received by Both-Well under this program did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described in the section "Subsidies Valuation" above to calculate the amount of the benefit allocable to the POI. Those benefits expensed or allocated to the POI were then used as the basis for calculating the net subsidy rate, which we calculated by dividing the total POI benefit by the total sales denominator. On this basis, we preliminarily determine a subsidy rate of 1.06 percent *ad valorem* for Both-Well.

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153 *See* GOC IQR, at 41.
154 *Id.* at 41.
155 *See* Both-Well IQR, at 15-17.
156 *See, e.g.*, *Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Investigation*, 75 FR 39202 (June 10, 2010), and accompanying IDM at 25-27.
157 *See* GOC IQR, at 40-51.
158 *See* Both-Well IQR, at 15-17.
159 *See* 19 CFR.351.524(b).
160 *See* 19 CFR 351.524(c)(2)(iii) and (d)(2).

B. Programs Preliminarily Determined to Be Not Used by Both-Well

Commerce preliminarily finds that the following programs were not used by Both-Well during the POI:

1. Policy Loans to the Forged Steel Fittings Industry
2. Export Loans
3. Treasury Bond Loans
4. Preferential Lending to Forged Steel Fittings Producers and Exporters Classified as "Honorable Enterprises"
5. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
6. Preferential Income Tax Reductions for High and New Technology Enterprises
7. Preferential Deduction of Research and Development (R&D) Expenses for High and New Technology Enterprises
8. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
9. Preferential Income Tax Policy for Enterprises in the Northeast Region
10. Reductions in or Exemption from Fixed Assets Investment Orientation Regulatory Tax
11. Income Tax Benefits for Domestically Owned Enterprises Engaging in R&D
12. VAT and Tariff Exemptions for Purchasers of Fixed Assets under the Foreign Trade Development Fund
13. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
14. The State Key Technology Fund
15. Foreign Trade Development Fund Grants
16. Export Assistance Grants
17. Export Interest Subsidies
18. Grants for Energy Conservation and Emission Reduction
19. Grants for the Retirement of Capacity
20. Grants for Relocating Production Facilities

XII. CONCLUSION

We recommend that you approve the preliminary findings described above.

☒ Agree

☐ Disagree

3/7/2018

X 

Signed by: GARY TAVERMAN