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

C-570-048
Expedited Review
Public Document
E&C/V: KJA/RMM

DATE: July 13, 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: Issues and Decision Memorandum for the Final Results of Expedited Review of the Countervailing Duty Order on Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China

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I. SUMMARY

In this expedited review, the Department of Commerce (Commerce) determines that countervailable subsidies are being provided to Jiangsu Tiangong Tools Company Limited (TG Tools) and its cross-owned affiliates. Below is the complete list of issues in this expedited review for which we received comments from interested parties. We analyzed these comments in the "Analysis of Comments" section below.

Issues:

Comment 1: Whether Commerce Should Have Considered TG Tools' Ministerial Error Allegation
Comment 2: Whether Commerce Erred in its Application of Adverse Facts Available for TG Tools' Land Use
Comment 3: Whether Commerce Applied an Incorrect Cross-Ownership Standard for TG Tools
Comment 4: Whether Commerce Erred in its Electricity for LTAR Calculation
Comment 5: Whether Commerce Improperly Rejected Xeneta Ocean Freight Benchmark Data
Comment 6: Whether VAT Should be Included in Benchmarks
Comment 7: Whether Commerce Should Revise its Policy Loan Calculations

Comment 8: Whether Commerce Should Revise its Import Tariff and VAT Exemptions Calculation

II. BACKGROUND

A. Case History

On March 21, 2018, Commerce published the *Preliminary Results* for this expedited review.[1] On March 26, 2018, TG Tools alleged certain ministerial errors in the *Preliminary Determination*.[2] We declined to consider TG Tools' allegations at that time and noted that, consistent with 19 CFR 351.224(c)(1), comments concerning ministerial errors made in the preliminary results of a review should be included in a party's case brief.[3] We received timely case brief submissions from TG Tools and Arcelormittal USA (the petitioner).[4] On April 24, 2018, the petitioner requested a two-day extension of the deadline to submit rebuttal briefs, which we granted in full.[5] On April 27, 2018, we received timely rebuttal briefs from TG Tools and the petitioner.[6]

On April 20, 2018, Commerce received a timely request for a hearing from TG Tools.[7] On May 8, 2018, TG Tools withdrew its request for a hearing.[8] Because TG Tools was the only interested party to request a hearing in this review, and that request was withdrawn, we did not hold a hearing.

B. Period of Review

The period of review (POR) is January 1, 2015, through December 31, 2015.

III. SCOPE OF THE ORDER

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Preliminary Results of Countervailing Duty Expedited Review*, 83 FR 12337 (March 21, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).
[2] *See* TG Tools' Letter re: Ministerial Error Comments, dated March 26, 2018.
[3] *See* Memorandum, "Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Ministerial Error Comments Filed by Jiangsu Tiangong Tools Company Limited," dated March 27, 2018.
[4] *See* TG Tools' Case Brief, "Carbon and Allow Steel Cut-to-Length Plate from the People's Republic of China: Case Brief," dated April 20, 2018 (TG Tools Case Brief); *see also* Petitioner's Case Brief, "Arcelormittal USA's Case Brief," dated April 23, 2018 (Petitioner Case Brief).
[5] *See* Petitioner's Letter, "AMUSA's Request for Extension of Rebuttal Brief Deadline," dated April 24, 2018; *see also* Memorandum, "Petitioner's Rebuttal Brief Extension," dated April 24, 2018.
[6] *See* TG Tools' Rebuttal Brief "Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Rebuttal Case Brief," dated April 27, 2018 (TG Tools Rebuttal Brief); *see also* Petitioner's Rebuttal Brief, "Arcelormittal USA's Rebuttal Brief," dated April 30, 2018 (Petitioner Rebuttal Brief).
[7] *See* TG Tools' Letter, "Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Hearing Request," dated April 20, 2018.
[8] *See* TG Tools' Letter, "Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Withdrawal of Hearing Request," dated May 8, 2018.

non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above; and

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

Steel products included in the scope of the order are products in which: (1) iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of the order unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of the order:

(1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL-A-12560,
- MIL-DTL-12560H,
- MIL-DTL-12560J,
- MIL-DTL-12560K,
- MIL-DTL-32332,
- MIL-A-46100D,
- MIL-DTL-46100-E,
- MIL-46177C,
- MIL-S-16216K Grade HY80,
- MIL-S-16216K Grade HY100,
- MIL-S-24645A HSLA-80;
- MIL-S-24645A HSLA-100,
- T9074-BD-GIB-010/0300 Grade HY80,
- T9074-BD-GIB-010/0300 Grade HY100,
- T9074-BD-GIB-010/0300 Grade HSLA80,
- T9074-BD-GIB-010/0300 Grade HSLA100, and
- T9074-BD-GIB-010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of the order;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A-829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.20,
- Manganese 1.20-1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0-2.5,
- Molybdenum 0.35-0.80,
- Boron 0.002-0.004,

- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270-300 HBW,
(ii) 290-320 HBW, or
(iii) 320-350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.15,
- Manganese 1.20-1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20-1.50,
- Molybdenum 0.35-0.55,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18%

or more and Reduction of area 35% or more; having charpy V at -75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01-75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at -40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25-0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0-3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0-1.5,
- Molybdenum 0.6-0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at -40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the order may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

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

IV. SUBSIDIES VALUATION

A. Allocation Period

Commerce made no changes to, and interested parties raised no issues in their briefs regarding, the allocation period or the allocation methodology used in the *Preliminary Results*. For a description of the allocation period and the methodology used for these final results, *see* the *Preliminary Results*.[9]

B. Attribution of Subsidies

Consistent with the *Preliminary Results*, we continue to find that TG Group, TG Tools, and TG Aihe are cross-owned companies within the meaning of 19 CFR 351.525(b)(6)(vi), through TG Group's status as a holding and parent company during the AUL, and that TG Tools, TG Aihe, and TG R&D are cross-owned companies through ownership interest during the POR.[10]

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[9] *See* PDM at 9.
[10] Due to the proprietary nature of the affiliation and ownership between TG Tools and its cross-owned companies, these findings are further discussed in the TG Tools Preliminary Calculation Memorandum. *See* Memorandum, "Preliminary Affirmative Countervailing Duty Expedited Review Results: Certain Carbon and Alloy Steel Cut-to-

As discussed in Comment 3 below, Commerce made certain changes to the attribution of subsidies in the *Preliminary Results* based on the issues interested parties have raised in their briefs. Commerce has made no further changes to the attribution of subsidies.

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. We have identified the denominator we used to calculate the countervailable subsidy rate for each program, as discussed below and in the calculation memorandum prepared for these final results.[11]

D. Loan Interest Rate Benchmarks and Discount Rates

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, loan interest rate benchmarks and discount rates.[12] For a description of the loan benchmark rates and the discount rates used for these final results, *see* the *Preliminary Results* and applicable calculation memorandum.[13]

V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act) provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" (FA) if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

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.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting

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Length Plate from the People's Republic of China: Preliminary Results Calculations for Jiangsu Tiangong Tools Company Limited," (TG Tools Preliminary Calculation Memorandum) dated March 15, 2018.

[11] *See* Memorandum, "Final Results Calculations for TG Tools" dated concurrently with these final results (Final Calculation Memorandum).

[12] *See* PDM at 11-15.

[13] *Id*. and TG Tools Final Calculation Memorandum.

to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record.[14] When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide {Commerce} with complete and accurate information in a timely manner."[15] Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[16]

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[17] Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[18] It is Commerce's practice to consider information to be corroborated if it has probative value.[19] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[20] However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[21] Furthermore, Commerce is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.[22]

Finally, under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[23]

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[14] See also 19 CFR 351.308(c).

[15] *See, e.g., Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China*); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

[16] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870.

[17] See also 19 CFR 351.308(d).

[18] *See*, *e.g.*, SAA at 870.

[19] *See* SAA at 870.

[20] *See*, *e.g.*, SAA at 869.

[21] *See* SAA at 869-870.

[22] *See* section 776(c)(2) of the Act.

[23] *See* section 776(d)(3) of the Act.

It is our practice in CVD proceedings to apply an AFA rate using the highest calculated program-specific rates determined for the identical or similar programs.[24] Specifically, in an administrative review, Commerce applies the highest calculated above-*de minimis* rate for the identical program from any segment of the same proceeding.[25] If there is no identical program match within the same proceeding, or if the rate is *de minimis*, Commerce uses the highest non-*de minimis* rate calculated for a similar program within any segment of the same proceeding, based on treatment of the benefit. Absent an above-*de minimis* subsidy rate calculated for the identical or similar program from the same proceeding, Commerce looks to other proceedings involving the same country and applies the highest calculated above-*de minimis* subsidy rate for the identical or similar/comparable program. Where no above-*de minimis* rate for an identical or similar program within the country has previously been calculated, Commerce applies the highest calculated rate for any program from any CVD case involving the same country that could conceivably be used by the non-cooperating company.[26]

Commerce relied on "facts otherwise available," including AFA, for several findings in the *Preliminary Determination*.[27] Pursuant to section 776(b) of the Act, we continue to rely on AFA with respect to: 1) the Government of China (GOC) and TG Tools for the provision of land-use rights for less than adequate remuneration (LTAR), 2) the GOC for the provision of steam coal for LTAR, 3) the GOC for the provision of electricity for LTAR, and, 3) the GOC and TG Tools for the provision of "Other Subsidies."[28] Commerce has not made any changes to its determination to rely on facts otherwise available and AFA, as applied in the *Preliminary Results*. Interested parties raised comments with respect to the application of AFA to TG Tools for the land-use rights for LTAR program, which we address at Comment 2, below, and the application of AFA to the GOC for the electricity for LTAR program, which we address in Comment 4, below.

VI. ANALYSIS OF PROGRAMS

As discussed below, we have made certain changes to the *Preliminary Determination* with regard to the methodology used to calculate the subsidy rates for the programs listed below. For the descriptions, analyses, and calculation methodologies of these programs, *see* the *Preliminary*

[24] *See, e.g., Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 27466 (June 15, 2017) and accompanying Issues and Decision Memorandum (IDM) at "Use of Facts Otherwise Available and Adverse Inferences." *See also Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) and accompanying Issues and Decision Memorandum (IDM) at 13.
[25] For purposes of selecting AFA program rates, we normally treat rates less than 0.5% to be de minimis. *See, e.g., Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."
[26] *Id.*; *see also, e.g., Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying IDM at "Selection of the Adverse Facts Available Rate."
[27] *See* PDM at 16 – 27.
[28] *Id.*

Determination. We have noted below where interested parties raised issues in briefs regarding these programs. The final program rates for the mandatory respondent are identified below.

A. <u>Programs Determined To Be Countervailable</u>

1. Policy Loans for the CTL Plate Industry

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[29] As discussed below at Comment 3 and Comment 7, Commerce has made certain changes to its *Preliminary Results* with regard to the analysis and methodology used to calculate the subsidy rate for this program.[30]

TG Tools: 7.29 percent *ad valorem*

2. Preferential Income Tax Reductions for HNTEs

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[31] As discussed in Comment 3 below, Commerce has made certain changes to its *Preliminary Results* with regard to the analysis and methodology used to calculate the subsidy rate for this program.[32]

TG Tools: 2.90 percent *ad valorem*

3. Preferential Deduction of R&D Expenses for HNTEs

As discussed below at Comment 3, Commerce has made certain changes to its *Preliminary Results* with regard to the analysis and methodology used to calculate the subsidy rate for this program.[33]

TG Tools: 0.30 percent *ad valorem*

4. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[34] As discussed in Comment 3 below, Commerce has made certain changes to its *Preliminary Results* with regard to the analysis and methodology used to calculate the subsidy rate for this program.[35]

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[29] *See* Comment 3 and Comment 7.
[30] *See* Final Calculation Memorandum at 2.
[31] *See* Comment 3; Final Calculation Memorandum at 1-2.
[32] *See* PDM at 28; Final Calculation Memorandum at 1-2.
[32] *See* PDM at 28; Final Calculation Memorandum at 1-2.
[33] *See* PDM at 29; Final Calculation Memorandum at 1-2.
[34] *See* Comment 3 and Comment 8.
[35] *See* PDM at 17-18; Final Calculation Memorandum at 1-2.

TG Tools: 0.29 percent *ad valorem*

5. Provision of Steam Coal for LTAR

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[36] As discussed in Comment 3 below, Commerce has made certain changes to its *Preliminary Results* with regard to the analysis and methodology used to calculate the subsidy rate for this program.[37]

TG Tools: 0.10 percent *ad valorem*

6. Provision of Electricity for LTAR

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[38] As discussed in Comment 3 and Comment 4 below, Commerce has made certain changes to its *Preliminary Results* with regard to the analysis and methodology used to calculate the subsidy rate for this program.[39]

TG Tools: 5.44 percent *ad valorem*

7. Provision of "Other Subsidies"

As discussed in Comment 3 below, Commerce made changes to its *Preliminary Results* with regard to the analysis and methodology used to calculate the subsidy rate for these programs.[40]

TG Tools: 5.34 percent *ad valorem*

8. Provision of Land-Use Rights for LTAR

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[41] Commerce has made no changes to its *Preliminary Results* with regard to the analysis and methodology used to calculate the subsidy rate for this program.[42]

TG Tools: 5.24 percent *ad valorem*

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[36] *See* Comment 3, Comment 5, and Comment 6.
[37] *See* PDM at 30-31; Final Calculation Memorandum at 1-2.
[38] *See* Comment 4.
[39] *See* PDM at 31-32; Final Calculation Memorandum at 2.
[40] *See* PDM at 32; Final Calculation Memorandum at 1-2.
[41] *See* Comment 2.
[42] *See* PDM at 32-33.

C. Programs Determined to be Not Used during the POR

Commerce made no changes to its preliminary finding that the following programs were not used. For the descriptions and analysis used for these programs, *see* the *Preliminary Results*.[43]

1. **Preferential Income Tax Program for HNTEs in Designated Zones**
2. **Preferential Income Tax Program for FIEs**
3. **Preferential Tax Programs for FIES - Export Oriented FIEs**
4. **Income Tax Credits for Domestically-Owned Enterprises Purchasing Domestically Produced Equipment**
5. **Preferential Loans to SOEs**
6. **Export Loans**
7. **Treasury Bond Loans**
8. **Preferential Loans for Key Projects and Technologies**
9. **Preferential Lending to CTL Plate Producers and Exporters Classified as "Honorable Enterprises"**
10. **Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program**
11. **Debt-to-Equity Swaps**
12. **Exemptions for SOEs from Distributing Dividends**
13. **Loan and/or Interest Forgiveness for SOEs**
14. **Stamp Tax Exemption on Share Transfer Under Non-Tradeable Share Reform**
15. **VAT and Tariff Exemptions for Purchasers of Fixed Assets Under the Foreign Trade Development Fund**
16. **Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring**
17. **Provision of Land to SOEs for LTAR**
18. **Provision of Hot-Rolled Steel for LTAR**
19. **Provision of Iron Ore for LTAR**
20. **Provision of Coking Coal for LTAR**
21. **State Key Technology Project Fund**
22. **Foreign Trade Development Fund Grants**
23. **Export Assistance Grants**
24. **Programs to Rebate Antidumping Legal Fees**
25. **Subsidies for Development of Famous Brands and China World Top Brands**
26. **Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands**
27. **Grants to Loss-Making SOEs**
28. **Export Interest Subsidies**
29. **Grants for Energy Conservation and Emission Reduction**
30. **Grants for the Retirement of Capacity**
31. **Grants for Relocating Production Facilities**
32. **Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China**
33. **Preferential Income Tax Policy for Enterprises in the Northeast Region**
34. **Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory**

[43] *See* PDM at 33-34.

Tax

35. **Income Tax Benefits for Domestically-Owned Enterprises Engaging in Research and Development**

VII. ANALYSIS OF COMMENTS

Comment 1: Whether Commerce Should Have Considered TG Tools' Ministerial Error Allegation

TG Tools' Comments:

- Although Commerce declined to examine certain ministerial error allegations related to the preliminary results, Commerce did not account for the difference in purpose between an expedited review and a standard administrative review.[44]
- The interpretation of the regulation that comments concerning ministerial errors made in the preliminary results should be included in the party's case brief[45] does not account for the separate legal authority of expedited reviews, which function as a continuation of the underlying investigation.[46]
- An expedited review is a fundamentally different action from a normal review, which is untethered from the initial investigation and examines a different period. The expedited review is designed to ensure that a company receives the rate it would have received in the investigation if Commerce had the resources to examine it.[47]
- The rates from an expedited review apply to shipments made during the investigation. Respondents, therefore, should have the same opportunity to receive the correct rate as the respondents in the investigation did.[48]

Petitioner's Comments:

- Commerce's regulations state that "{c}omments concerning ministerial errors made in the preliminary results of a review should be included in a party's case brief," where "should" indicates the mandatory nature of the rule.[49]
- Although the regulations include a provision for ministerial error comments "in connection with a preliminary determination," the phrasing expressly limits such comments to investigations.[50]
- The distinction between ministerial error comments filed "in connection with a final determination or the final results of a review" indicates that in reviews, ministerial error comments are only allowed in connection with final calculations.[51]

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[44] *See* TG Tools Case Brief at 1.
[45] *Id*. at 2; *see also* Memorandum, "Ministerial Error Comments Filed by Jiangsu Tiangong Tools Company Limited," dated March 27, 2018 (Ministerial Response Memo).
[46] *See* TG Tools Case Brief at 1.
[47] *Id*. at 3.
[48] *Id*.
[49] *See* Petitioner Rebuttal Brief at 3; *see also* 19 CFR 351.224(c)(1).
[50] *Id.*
[51] *Id.* at 3-4.

- TG Tools provides no legal basis for its assertion that this review is fundamentally different than a normal review and is wrong in arguing that Commerce should ignore its regulations because an expedited review is more like an investigation; an expedited CVD review is most similar to a new shipper review, not an original investigation.[52]
- Commerce properly declined to consider TG Tools' ministerial error allegations.[53]

Commerce's Position:

We disagree with TG Tools that it was improper to decline to consider TG Tools' ministerial error allegations when it submitted them immediately after the preliminary results. In response to TG Tools' ministerial error allegations, we informed TG Tools that "consistent with 19 CFR 351.224(c)(1), comments concerning ministerial errors made in the preliminary results of a review should be included in a party's case brief."[54] Although TG Tools points to the nature of an expedited review to argue that we should treat ministerial error allegations in the same manner as we would in an investigation, TG Tools neglects to consider that there are many elements of an expedited review that distinguish it from an investigation. Most importantly, while cash deposit instructions are transmitted to U.S. Customs and Border Protection (CBP) at the preliminary determination in an investigation, in an expedited review our preliminary results simply represent a preliminary decision and the cash deposit instructions released with the preliminary results are just draft instructions to be transmitted to CBP after our final decision has been made. Thus, whether Commerce addresses ministerial errors in the final results or earlier, there is no effect on the respondent's rate, because no cash deposit instructions are issued until after the final results. Moreover, although the POR of an expedited review is the same period of investigation examined in the investigation, the regulations governing an expedited review state that Commerce "will conduct a review under this paragraph (k) in accordance with the provisions of this section applicable to new shipper reviews."[55] Thus, as noted by the petitioner, an expedited review is governed by the same regulations as a new shipper review rather than an investigation. Our regulations are clear that for the preliminary results in any type of review under section 751 of the Act, which includes administrative reviews, new shipper reviews, and expedited reviews, ministerial error comments should be made in case briefs.[56] Accordingly, we continue to consider our decision to instruct TG Tools to submit any ministerial error allegations in its case brief appropriate within the context of this expedited review. Moreover, as the issues outlined in the ministerial error comments were again raised in TG Tools' case brief, Commerce has now addressed these arguments and made the appropriate changes, and thus the issue is moot.

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[52] *Id.* at 4.
[53] *Id.*
[54] *See* Ministerial Response Memo.
[55] *See* 19 CFR 351.214 (k)(3).
[56] *See* 19 CFR 351.214 (k)(3); 19 CFR 351.224(b) and (c)(1).

Comment 2: Whether Commerce Erred in its Application of Adverse Facts Available for TG Tools' Land Use

TG Tools' Comments:

- Commerce erroneously applied AFA to TG Tools' land-use reporting because Commerce found TG Tool's reporting to be deficient, despite record evidence that addressed all of Commerce's concerns.[57]
- The decision not to conduct verification effectively turned a preliminary AFA decision into a final decision by preventing TG Tools from demonstrating that its reported land data was accurate.[58]
- At verification, TG Tools could have shown Commerce relevant account data, provided a tour of the land, and provided testimony from company officials, but the decision not to verify closed the door for Commerce to confirm that TG Tool's reporting was complete and accurate.[59]
- Company records support the explanation provided regarding the prices paid and area of land purchased.[60]
- In the *Preliminary Results,* Commerce focused on differences between the contract and certificates for certain parcels and the fact that fewer payments were made than land-use rights acquired, but issuance of those documents was the responsibility of the local authority, which took years to complete the process of acquisition, rather than TG Tools.[61]
- Differences between "value in the contract" and "price paid" stem from the same differences between the contract and certificates. While they appear significant individually, the overall difference is less than one percent, which, contrary to Commerce's conclusion, could be "attributed to a re-measurement of the land by the local authority."[62]
- The integrity of TG Tools' reporting can be confirmed by the land-use certificates and the bank records, which confirm the area of land purchased and the amount paid.[63]
- Commerce raised concerns about certain elements of TG Tools' land-use rights acquisitions but the key element of the purchase is not when the respondent occupied the land, but rather the date of payment; the conclusion of a contract does not mean that TG Tools occupied, used or otherwise benefitted from the government provision of land.[64]
- There is no basis for Commerce to infer from the record that TG Tools received any free land, failed to pay for land, or failed to report any land that it occupied as the facts regarding land-use were accurately reported by TG Tools.[65]

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[57] *See* TG Tools Case Brief at 3.
[58] *Id*. at 4-5.
[59] *Id.* at 5.
[60] *Id.* at 6.
[61] *Id*. at 6-7.
[62] *Id.* at 8-9.
[63] *Id.* at 9.
[64] *Id.* at 10.
[65] *Id.* at 11.

Petitioner's Comments:

- Commerce gave numerous opportunities for TG Tools to correct its information on land purchases but TG Tools failed to provide satisfactory explanations.[66]
- TG Tools argues that the decision not to conduct verification was inconsistent with the regulations and prejudicial to TG Tools, but the regulations do not require Commerce to conduct a verification in this proceeding.[67]
- It is difficult to imagine how "a tour of the land" or "testimony from company officials" at verification could clarify the inconsistencies in the record; verification is not an opportunity to put new information on the record, or to correct deficient responses.[68]
- The application of AFA did not require Commerce to find that a respondent acted with intent to impede the investigation.[69]
- TG Tools' argument that the discrepancies "appear significant on a parcel by parcel basis" but that the "overall difference is small" disregards the fact that Commerce examines land use transactions on a parcel by parcel basis, and these admitted variations in the distinct land purchases renders the data unreliable.[70]
- Commerce applied total AFA in similar cases that were affirmed by the courts where the deficient factual evidence was "core, not tangential" to Commerce's analysis, which is the case with TG Tools' land for the LTAR data.[71]
- TG Tools' claim that its information is accurate and consistent with its records cannot be true because it repeatedly revised its purchase information during this proceeding.[72]
- TG Tools' bank records do not allow Commerce to trace specific purchases and its payments for land cannot be tied to any specific land use transactions.[73]
- Although TG Tools claims that "the key element for establishing the time frame for the purchase is not when the respondent occupied the land, but rather" the date of payment, Commerce cannot use the date of payment to calculate the benefit from this program because the information does not reconcile with the land use certificates and cannot be tied to a specific land use transaction.[74]

Commerce's Position:

We agree with the petitioner and continue to find, as we did in the *Preliminary Results*, that the land-use information submitted by TG Tools is so deficient that we cannot use it to calculate a benefit and must rely on AFA for this program in these final results. In the *Preliminary Results* we explained that we issued multiple supplemental questionnaires to TG Tools on this matter but that its responses continued to exhibit numerous discrepancies with regard to the area of land

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[66] *See* Petitioner Rebuttal Brief at 5.
[67] *Id.* at 5-6 (citing *to* 19 CFR 351.307(a)).
[68] *Id*. at 6-7.
[69] *Id.* at 7-8 (citing to *Nippon Steel Corp. v. United States*, 337 F.3d 1373,1383 (Fed. Cir. 2003).
[70] *Id.* at 8.
[71] *Id.* at 8-9.
[72] *Id.* at 10.
[73] *Id.* at 10-12.
[74] *Id.* at 11-12.

negotiated in the contracts and the area of land conveyed by the certificates.[75] We further stated that TG Tools' failure to clearly describe and document the circumstances surrounding its land-use rights acquisition and transfers prevented Commerce from concluding whether TG Tools had accurately reported its land-use rights or determining whether it had properly disclosed all payments for its land use-rights.[76] Because TG Tools failed to remedy or satisfactorily explain the deficiencies within the applicable time limits, subject to section 782(e) of the Act, we disregarded TG Tools' reported land-use data and, in accordance with section 776(d) of the Act, assigned a program rate based upon AFA, using a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving China.[77]

In the Preliminary Calculation Memorandum, we identified specific discrepancies in TG Tools' reported land areas in its contracts and land use certificates, the values in its contracts and the prices it purportedly paid, and revisions made by TG Tools from one submission to the next that TG Tools was not able to satisfactorily reconcile.[78] We also noted TG Tools' inability to tie any payments to individual purchases, by timing or by value, and discrepancies between the per-unit land prices agreed upon in the contracts and the per-unit land prices purportedly paid by TG Tools as additional points that lacked resolution throughout TG Tools' submissions.[79]

Although TG Tools asserts that verification would have given the company an opportunity to demonstrate the accuracy of its reporting by showing Commerce relevant account data, providing a tour of the land, and providing testimony from company officials, we disagree.[80] To the extent that relevant accounts exist that could clarify the inconsistencies on the record, the time for submission of that documentation was in response to our several supplemental questionnaires, not at verification. Further, as noted by the petitioner, it is unclear how a tour of the land and testimony from company officials would demonstrate the accuracy of TG Tools' information, given the numerous deficiencies identified in the *Preliminary Results*. It is a well-established principle that verification is not an opportunity to submit new factual information.[81] Although additional information is often collected to support information already on the record, the collection of new and previously absent information from the record at verification would deprive interested parties of the opportunity to provide factual information to rebut said information. Accordingly, to the extent that TG Tools could produce additional land contracts or certificates in order to remedy the discrepancies identified in the *Preliminary Determination*, such information would constitute new factual information that we would not accept at verification. Thus, although the decision to verify in an expedited CVD review is at

[75] *See* PDM at 20-21.
[76] *Id.* at 20.
[77] *Id.*
[78] *See* Memorandum, "Preliminary Affirmative Countervailing Duty Expedited Review Results: Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Preliminary Results Calculations for Jiangsu Tiangong Tools Company Limited," dated March 15, 2018, (Preliminary Calculation Memorandum) at 11-12.
[79] *Id.* at 12-13.
[80] *See* TG Tools Case Brief at 5.
[81] *See*, *e.g.*, *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) and accompanying IDM at Comment 9.

Commerce's discretion,[82] a decision to verify in this segment would not include verification of TG Tools' land use information, because that would require the submission of new factual information, which Commerce would not accept at verification.

Further, we disagree with TG Tools that a decision not to verify effectively finalized the preliminary AFA decision and precluded TG Tools from demonstrating that its reported land data was accurate. Preliminary results are necessarily preliminary and thus are subject to change.[83] Following the *Preliminary Results*, had TG Tools pointed to record evidence which detracted from our finding, or offered compelling arguments to challenge our AFA determination, we may have reconsidered our decision. Furthermore, had Commerce deemed it appropriate, verification could have been scheduled. However, as noted above, TG Tools did not provide any explanation in its case or rebuttal briefs that would resolve the discrepancies identified in the *Preliminary Results* or that were not already considered prior to the *Preliminary Results*. Therefore, we find that our decision not to conduct verification was appropriate in this instance.

TG Tools attempts to resolve the discrepancies between the land area in the contracts and the land certificates and the values in the contracts and the prices paid by pointing to negligible differences between aggregate amounts.[84] However, the issues identified by Commerce in the *Preliminary Results* were specific to individual contracts and certificates.[85] Because land use rights benefits are calculated on a parcel by parcel basis, it is our practice to analyze each parcel on an individual basis.[86] Moreover, as demonstrated in this case, analyzing land use rights solely on an aggregate basis could allow a respondent to improperly mask omissions or inconsistencies in its reporting. TG Tools' inability to resolve the discrepancies in its records on a contract and certificate-specific basis reveals the distorted nature of TG Tools' reported information.

Moreover, while TG Tools states that its reporting can be confirmed by analyzing the bank records and the land-use certificates, the evidence available on the record does not support this assertion.[87] Although the company provided certain bank documentation, it was unable to tie any payments to individual land purchases by timing or value.[88] In fact, the payment documentation provided by TG Tools shows an amount paid that is significantly different than the amounts indicated in the relevant contract.[89] With regard to the land-use certificates, the responses provided by TG Tools exhibited numerous discrepancies between the area of land negotiated in the contracts, and the area of land conveyed by the certificates.[90] For an in-depth discussion of the discrepancies, which includes business proprietary information, *see* the

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[82] *See* 19 CFR 351.307(b)(2).
[83] *See NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995).
[84] *See* TG Tools Case Brief at 7-9.
[85] *See* PDM at 20-21 and Preliminary Calculation Memorandum at 10-13.
[86] *See, e.g.*, *Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32902 (June 10, 2010) and accompany IDM at "Provision of Land for LTAR."
[87] *See* TG Tools Preliminary Calculation Memorandum at 11-13.
[88] *Id*.
[89] *See* TG Tool's Letter, "Third Supplemental Questionnaire Response," dated November December 20, 2017, at 5-6.
[90] *See* TG Tools Preliminary Calculation Memorandum at 11-12.

Preliminary Calculation Memorandum.

As for TG Tools' arguments regarding discrepancies between the time of acquisition of land and the time of payment for that land, Commerce disagrees. Although the company states that the key element is the date of payment, and not the date it occupied the land, this fails to acknowledge the numerous discrepancies with the payment dates reported by the company.[91] As noted above, we are unable to tie TG Tools' payments to any of the individual purchases. Therefore, we are unable to use the date of payment to calculate the benefit from this program as the company suggests.

TG Tools' case and rebuttal briefs contain no new explanation that could reconcile the fatal flaws and inconsistencies in TG Tools' land use information that was not previously considered for the *Preliminary Results* or that would present cause to reconsider our preliminary decision. Accordingly, we are not making any changes to our preliminary decision to disregard TG Tools' reported land-use data and, in accordance with section 776(d) of the Act, assign a program rate based upon AFA.

Comment 3: Whether Commerce Applied an Incorrect Cross-Ownership Standard for TG Tools

TG Tools' Comments:

- Commerce applied the incorrect cross-ownership standards to TG Tools in the *Preliminary Decision*. Commerce's regulations state that if corporations "with cross-ownership produce the subject merchandise, the Secretary will attribute the subsidies received by either or both corporations to the products produced by both corporations." TG Tools and Tiangong Aihe Company Limited (TG Aihe) meet these standards and should have their sales consolidated under the methodology described in section 351.525(b)(6)(ii)[92]
- Commerce did not utilize the appropriate sales denominator in the preliminary results, inflating the preliminary countervailing duty margin as a result. In the calculation relating to the Preferential Income Tax Program for HNTE, Commerce found that both TG Tools and TG Aihe benefited from this program based on a rate which is inaccurate based on Commerce's determination that TG Tools and TG Aihe are cross-owned.[93]
- Regarding Import Tariff and VAT Exemptions for Imported Equipment, Commerce found that TG Tools and TG Aihe benefitted from this program at a calculated rate that is incorrect based on Commerce's prior determination that TG Tools and TG Aihe are cross-owned.[94]
- Regarding the Policy Loans, Commerce found that TG Tools, TG Aihe and Jiangsu Tiangong Group Company Limited (TG Group) benefitted from this program based on an incorrect calculation, which does not account for the previous determination that TG

[91] *Id*.
[92] *See* TG Tools' Case Brief at 12 (citing IQR at Vol. I, p. 4 and Vol. II, p. 5).
[93] *Id*. at 12-13 (citing Prelim. Calculation memo at 6).
[94] *Id*. at 13 (citing Prelim. Calculation memo at 6-7).

Tools, TG Aihe and TG Group are cross-owned.[95]

- Commerce's calculation of Policy Loans received by TG Group is flawed, as the calculation should include "consolidated sales of the holding company and its subsidiaries" as described in section 351.525(b)(6)(iii), and not the calculation of the sales denominator described in section 351.525(b)(6)(iv).[96]
- The calculation of the countervailable subsidy rate for Steam Coal for less-than-adequate-remuneration (LTAR) was inaccurate because the subsidy rate was calculated for each individual company rather than on an entity wide basis.[97] Steam coal consumption was reported, and should be calculated to reflect cross-ownership of TG Tools and TG Aihe.[98]

Petitioner's Comments:

- TG Tools' proposed denominators fail to properly account for intercompany sales, and must be rejected.[99] Commerce's standard practice is to exclude intercompany sales.[100]
- If Commerce revises the sales denominators utilized in the attribution of TG Tools' and TG Aihe's subsidies in the final results, intercompany sales between TG Tools and TG Aihe must be excluded.[101]
- TG Tools' proposed sales denominator for TG Group also fails to consider intercompany sales, which is inconsistent with Commerce's practice.[102] The sales denominator used in the *Preliminary Results* was correct and should be affirmed.[103]

Commerce's Position:

We agree with TG Tools, in part, and have modified the sales denominator used in the *Preliminary Results* to include the combined sales of TG Tools and TG Aihe. Section 351.525(b)(6)(ii) of our regulations states that "If two (or more) corporations with cross-ownership produce the subject merchandise, the Secretary will attribute the subsidies received by either or both corporations to the products produced by both corporations." As explained above, we continue to find that TG Tools and TG Aihe are cross-owned companies within the meaning of 19 CFR 351.525(b)(6)(vi), consistent with our determination in the *Preliminary Results*.[104] Moreover, the evidence on the record indicates that both TG Tools and TG Aihe produce subject merchandise.[105] Therefore, consistent with 19 CFR 351.525(b)(6)(ii), Commerce is adjusting the sales denominator for programs used by TG Tools and/or TG Aihe to include the sales of both

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[95] *Id*. at 14 (citing Prelim. Calculation memo at 6-7).
[96] *Id*.
[97] *Id*.
[98] *Id.* (citing to IQR at Vol. I, Ex. 12 and Vol. II Ex. 12.
[99] *See* Petitioner Rebuttal Brief at 13.
[100] *Id*. (citing, e.g., *Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 37844 (August 14, 2017) and accompanying PDM).
[101] *Id*.
[102] *Id*. at 15.
[103] *Id*.
[104] *See* PDM at 10-11.
[105] *See* IQR at Vol. I, p. 4 and Vol. II, p. 5.

companies.[106] In addition, consistent with our practice, we are excluding intercompany sales between TG Tools and TG Aihe.[107] These changes are further explained in the accompanying Final Calculation Memorandum.

With regard to the denominator used for TG Group, however, Commerce is making no changes from the *Preliminary Results*. Section 351.525(b)(6)(iii) of our regulations states that for subsidies received by holding or parent companies, Commerce will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries. Consistent with the *Preliminary Results* and as explained above, we continue to find that TG Group is a holding company and former parent company of the respondent.[108] As TG Group itself did not have any sales during the POR, Commerce is continuing to attribute subsidies received by TG Group to the combined sales of TG Tools, TG Aihe, and TG R&D, in accordance with 19 CFR 351.525(b)(6)(iii). In addition, based on our established practice and as explained above, we are continuing to exclude intercompany sales.[109] Although TG Tools believes that we have incorrectly applied 19 CFR 351.525(b)(6)(iv), which relates to input suppliers, we did not apply this subsection in the *Preliminary Results*. As stated in the *Preliminary Results* and explained above, we have continued to attribute subsidies by TG Group under 19 CFR 351.525(b)(6)(iii), which is applicable to holding and parent companies.

Comment 4: Whether Commerce Erred in its Electricity for LTAR Calculation

TG Tools' Comments:

- Commerce failed to substantiate its finding that the electricity program is specific under section 1677(5A)(D).[110] The electricity tariff rates provided by the GOC "are equally applied to all end users. No specificity exists with regard to the electricity prices."[111] Commerce relied on a broad interpretation of its authority in order to apply AFA, but Commerce is required to make necessary factual findings regarding countervailability when applying AFA.[112] Although Commerce did not state how the program is specific, it can be inferred that Commerce found the program regionally specific.[113] However, there is no basis to find that the program is regionally specific, even under AFA, because the GOC did not fail to respond to any questions addressing whether electricity rates are

[106] These programs include: (1) Policy Loans for the CTL Plate Industry; (2) Preferential Income Tax Program for HNTEs; (3) Preferential Deduction of R&D Expenses for HNTEs; (4) Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries; (5) Provision of Steam Coal for LTAR; (6) Provision of Electricity for LTAR; and (7) "Other Subsidies".
[107] *See, e.g.*, *Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 37844 (August 14, 2017) and accompanying PDM at "Attribution of Subsidies" (unchanged in *Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018) and accompanying IDM).
[108] *See* PDM at 10-11.
[109] *Id*.
[110] *See* TG Tools' Case Brief at 18 (citing 19 U.S.C. § 1677(5A) and 19 U.S.C. § 1677(5A)(B),(C)).
[111] *Id*. at 19-20 (citing Letter on Behalf of the Government of China to the Dep't re: Refiling of GOC Sec. II at 79 (July 7, 2017).
[112] *Id*. at 18 (citing *Changzhou Trina Solar Energy Co. v. United States*, 264 F. Supp. 3d 1325, 1330 (CIT 2017)).
[113] *Id*. at 19.

generally applicable within the provinces.[114]

- Commerce failed to utilize the correct sales denominator in calculating the benefit conferred by the provision of electricity as it failed to include the sale of TG Aihe. Excluding TG Aihe's sales in the denominator of the calculation results in an inflated margin. [115]
- In the *Preliminary Results*, Commerce stated that TG Tools failed to provide electricity usage information tying purchases to user categories, and applied facts available by choosing the category and voltage class with the highest benchmark price.[116] However, Commerce did not make a finding warranting an adverse inference as there were no deficiencies found with TG Tool's reporting nor supplemental questions issued.[117] In order to apply neutral facts available, Commerce should use an average of the user categories reported by TG Tools.[118]

Petitioner's Comments:

- Commerce's specificity finding was based on AFA due to the GOC's repeated failure to provide necessary information.[119] TG Tools is incorrect when it states that Commerce made a *de facto* regional subsidy finding.[120] Instead, Commerce presumed specificity as a properly applied adverse inference.[121] Similar arguments were dismissed by Commerce in *Solar Cells from China*.[122] As Commerce has not implied a regional subsidy in reaching its AFA determination, TG Tools' contention that Commerce failed to find the alleged regional subsidy to be specific is futile.[123]
- TG Tools' proposed sales combined denominator does not exclude intercompany sales between TG Tools and TG Aihe and, therefore overstates the total value.[124]
- Commerce's preliminary finding directly contradicts TG Tools' assertion that the company properly submitted record evidence regarding the user rates it falls within for electricity purchases during the POR.[125] As noted by Commerce, although TG Tools reported several electricity usage categories, the information supplied by the company did not indicate which of these categories related to which purchases.[126] Commerce requested this electricity usage information in its initial questionnaire, and courts have held that respondents are responsible to provide comprehensive responses to Commerce's

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[114] *Id*.
[115] *Id*. at 15-16 (citing IQR at Vol. I, at 24).
[116] *Id*. at 16-17.
[117] *Id*.
[118] *Id*. at 17-18.
[119] *See* Petitioner Rebuttal Brief at 16.
[120] *Id*. at 17.
[121] *Id*. at 18.
[122] *Id*. (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017) and accompanying IDM at Comment 10).
[123] *Id*. at 19.
[124] *Id*.
[125] *Id*. at 20.
[126] *Id*.

inquiries.[127] If Commerce does decide to adjust its methodology, it should use information on the record to select the appropriate benchmarks.[128]

Commerce's Position:

We agree with the petitioner that we properly applied an adverse inference for the specificity determination. As noted in the *Preliminary Results*, the GOC did not provide all the requested information and therefore, we found that the GOC did not act to the best of its ability to comply with our requests for information.[129] Because of this failure to comply, we found the program to be specific under section 771(5A)(D) of the Act. Thus, contrary to the argument set forth by TG Tools, this was not a "*de facto*" finding of regional specificity.

TG Tool's argument conflates our specificity finding with our benchmark determination, described below. Because the GOC did not provide requested information as to whether the electricity rates included in the electricity schedules submitted by the GOC were determined on the basis of market principles, Commerce applied facts available with an adverse inference to the determination of the appropriate benchmark. Specifically, because the GOC provided the provincial electrical tariff schedules, Commerce relied on this information for the application of facts available and, in order to make an adverse inference, Commerce identified the highest rates amongst these schedules for each reported electrical category and used those rates as the benchmarks in the benefit calculations.

As the selected highest electricity rates for each category are spread across electricity schedules from different provinces, TG Tools argues that Commerce has made an inference that the provision of electricity for LTAR is a regionally or geographically-specific program. TG Tools misconstrues our reliance on the highest electricity rate from any of the provincial schedules as a determination on program specificity. Indeed, the selection of electricity benchmark rates is based on the GOC's failure to cooperate, which resulted in Commerce's need to identify electricity benchmarks based on facts available with an adverse inference. Commerce's decision to use regional rates for the provision of electricity for LTAR does not reflect a determination by Commerce that the program is regionally or geographically specific; rather, the GOC's failure to cooperate means that both our specificity determination and our benchmark determination must rely on the facts available on the record, with appropriate adverse inferences. Commerce attempted to obtain information regarding how Chinese provincial schedules are calculated and why they differ, which could have contributed to our analysis of an appropriate benchmark for the benefit calculation in this program. The GOC's failure to respond to our questions on how electrical tariff schedules are established in China is precisely the reason why Commerce is applying AFA in this case with respect to the selection of an electricity benchmark. Therefore, Commerce has not made a determination, inferred or otherwise, related to this program being a regionally or geographically-specific program. The fact that the GOC refused to answer questions related to regional electricity rate differences, including differences between industries, means that Commerce is unable to carry out its analysis.

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[127] *Id*. at 20-21 (citing *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 258 (2001)).
[128] *Id*. at 21-22.
[129] *See* PDM at 24-26.

With regard to the sales denominator used by Commerce in its calculation for this program, we agree with TG Tools, in part. As explained in Comment 3 above and consistent with 19 CFR 351.225(b)(6)(ii), Commerce is adjusting the sales denominator for programs used by TG Tools and/or TG Aihe to include the sales of both companies (net of intercompany sales).

We agree with TG Tools' arguments regarding our use of facts available for the electricity benchmarks. Although the information linking the company's electricity purchases to the relevant user categories does not exist on the record of this proceeding, Commerce did not make a finding supporting the use of an adverse inference. Instead, Commerce indicated that it would fill the gap in the record by applying facts otherwise available.[130] However, by choosing the benchmark category with the highest rate, Commerce did not select neutral facts available, but instead chose information adverse to the company. Therefore, for these final results, we are continuing to apply facts otherwise available, but are altering our methodology to use an average of the user categories as reported by TG Tools in the company's initial questionnaire response.[131]

Comment 5: Whether Commerce Improperly Rejected Xeneta Ocean Freight Benchmark Data

TG Tools' Comments:

- Commerce improperly rejected TG Tools' freight benchmark source, Xeneta, in favor of Maersk data, because it stated that the Xeneta data are not actual quotes.[132] In support, Commerce cited to the preliminary determination in *Aluminum Foil,* in which Commerce rejected the Xeneta data because they did not represent actual price quotes, but the rationale for rejecting the Xeneta data in *Aluminum Foil* changed for the final determination.[133]
- TG Tools' benchmark submission describes the Xeneta methodology and demonstrates that the data represent actual price quotes and also that the data include origin terminal handling charges for shipments between Asian ports.[134]
- The Maersk data relied on by Commerce does not include source data and is from 2014, whereas the Xeneta data is sourced and is contemporaneous with the POR.[135]

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[130] *See* Memorandum, "Preliminary Affirmative Countervailing Duty Expedited Review Results: Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Preliminary Results Calculations for Jiangsu Tiangong Tools Company Limited," dated March 15, 2018 at 9.
[131] *See* Final Calculation Memorandum at 2.
[132] *See* TG Tools' Case Brief at 20.
[133] *Id*. at 20-21 (citing *Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 37844 (August 14, 2017) and accompanying PDM; *Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274, (March 5, 2018) and accompanying IDM (*Aluminum Foil* IDM).
[134] *Id*. at 21.
[135] *Id*. at 20.

Petitioner's Comments:

- The regulations require information used to assess the adequacy of remuneration to be publicly available but TG Tools requested proprietary treatment of the Xeneta data.[136]
- Even if Commerce were to set aside restrictions on the use of proprietary data for valuing benchmarks, Commerce has previously found that the Xeneta data do not reflect actual price quotes and that the Maersk data do represent actual price quotes.[137]
- The steam coal benchmark prices preliminarily used by Commerce represent worldwide exports of steam coal, yet the Xeneta ocean freight data are only for freight within Asia, which significantly understates the worldwide ocean freight values.[138]
- By contrast, the Maersk data includes rates from various countries that better represent monthly world market costs for ocean freight that are appropriately paired with monthly world market prices for steam coal.[139]

Commerce's Position:

We agree with the petitioner that we should continue to use the Maersk data for the freight benchmark for steam coal. In the *Aluminum Foil* final, no party contested the preliminary decision that the Xeneta data were not actual price quotes; rather, the parties merely presented alternative arguments for rejecting the data, which Commerce incorporated for purposes of the final determination.[140] Specifically, we stated that because "the Xeneta data inconsistently include handling charges" we would not use it for the final determination.[141]

Section 351.511(a)(2)(iv) of our regulations instructs that, when measuring the adequacy of remuneration under tier two (world market prices that would be available to purchasers in the country under investigation), Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Therefore, it is Commerce's practice to include handling charges in the freight benchmark. Although TG Tools claims that the Xeneta rates include handling charges, the record indicates that different types of handling charges are included in some routes, but not all, which is inconsistent with our practice.

Moreover, our regulations state that tier two benchmarks should represent "world market" prices.[142] By contrast, the Xeneta freight charges are specific to Asian routes and do not reflect the broader data from the global routes reflected in the Maersk data.

Although TG Tools claims that the Maersk data is unsubstantiated, it was the exact data previously utilized by Commerce in *PRC CORE* and is comparable to the raw data presented by

[136] *See* Petitioner Rebuttal Brief at 22-23.
[137] *Id.*
[138] *Id.* at 23.
[139] *Id.* at 23-24.
[140] *See Aluminum Foil* IDM at Comment 26.
[141] *Id.*
[142] *See* 19 CFR 351.511.

TG Tools.[143] Further, Commerce has found in numerous cases that Maersk data represent actual market prices.[144]

When selecting among alternative sets of data, the courts have held that Commerce has considerable discretion when one data set is equally or more reliable than others.[145] Although the Maersk data is from 2014, the more contemporaneous Xeneta data suffer from numerous defects, outlined above, that outweigh its contemporaneity. Therefore, Commerce continues to find that the Maersk data is more reliable than the Xeneta data, and will continue to use the Maersk data for the freight benchmark for steam coal.

Comment 6: Whether VAT Should be Included in Benchmarks

TG Tools' Comments:

- Commerce added a 17 percent value-added tax (VAT) in its steam coal benchmark in measuring the benefit derived from alleged LTAR purchases.[146] Commerce should remove this benchmark calculation in the final results, because the VAT is not an allowable adjustment under Commerce's regulations and it distorts the final margin.[147]
- According to Commerce's regulations, Commerce will adjust any tier-two benchmark into a "delivered" price "to reflect the price that a firm actually paid or would pay if it imported the product," and, further "this adjustment will include delivery charges and import duties"[148]
- Commerce cannot add VAT based on an ambiguous statute and regulatory language that clearly precludes such a methodology.[149] Commerce's regulations unambiguously exclude VAT from the allowable adjustments of delivery charges and import duties.[150]
- TG Tools received a 100 percent VAT refund on its LTAR input purchases when it exported merchandise or sold them on the domestic market. Whether a firm recovers VAT after delivery of the input is, therefore, material in calculating the "market-determined price." Inclusion of VAT in the benchmarks is unsupported by substantial evidence on the record and is not in accordance with law.[151]

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[143] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) and accompanying IDM (*PRC CORE*).
[144] *See, e.g.,* Aluminum Foil IDM; *Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7515 (February 13, 2006) and accompanying IDM at Comment 8.
[145] *See, e.g.*, *Wuhan Bee Healthy Co., Ltd. v. United States,* 374 F. Supp. 2d. 1299, 1304 (CIT 2005).
[146] *See* TG Tools' Case Brief at 22 (citing Prelim. Calc. Mem. at 5).
[147] *Id.* at 23.
[148] *Id.* (citing 19 C.F.R. § 351.511(a)(2)(iv)).
[149] *Id.* at 24 (citing *Chevron v. Natural Resources Defense Council*, 467 U.S. 837, 843 (1984)).
[150] *Id.*
[151] *Id.* at 25.

Petitioner's Comments:

- TG Tools' argument that Commerce should not include 17 percent VAT in its world market benchmark price for steam coal is directly contrary to well-settled practice.[152] While TG Tools agrees that Commerce must adjust input benchmarks to reflect the price that a firm actually paid or would pay if it imported the product, it claims that the regulations' reference to "delivery charges" and "import duties" necessarily excludes the addition of VAT.[153] Commerce has previously rejected this argument and should continue to do so.[154]
- Although TG Tools argues that Commerce's definition of "import duty" excludes VAT, the company concedes that Commerce does not define "delivery charge." Thus, even if Commerce does not consider VAT an import duty, there is no basis to claim it is not a delivery charge.[155]
- The plain language of the regulation does not require that VAT be either a delivery charge or an import charge to be added to the benchmark.[156] Although 19 CFR 351.511(a)(2)(iv) requires the inclusion of delivery charges and import duties, it does not expressly exclude the addition of other necessary adjustments.[157] Instead, the provision indicates that Commerce use delivered prices that reflect the price a firm actually paid or would pay if it imported the product, and if the record supports other adjustments to reach an appropriate delivered price, the regulation would require that they be made.[158]
- TG Tools and TG Aihe both reported paying VAT on their input purchases of steam coal. In order to make a proper "apples-to-apples" comparison of "VAT-loaded" input purchases, Commerce properly utilized a steam coal benchmark inclusive of VAT, consistent with past practice.[159]
- Although TG Tools argues that VAT should not be included because the company received a 100 percent VAT refund, Commerce has previously rejected this argument.[160] Moreover, TG Tools' claim of a 100 percent VAT refund is without support on the record.[161] Because TG Tools reported paying VAT in its steam coal purchases, Commerce must continue to add VAT to the benchmark prices for a proper comparison.[162]

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[152] *See* Petitioner Rebuttal Brief at 25.
[153] *Id*.
[154] *Id*.
[155] *Id.* at 26.
[156] *Id*.
[157] *Id*.
[158] *Id*.
[159] *Id*. at 27 (citing *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 4, 2008) (*Line Pipe from the PRC)* and accompanying IDM at Comment 8).
[160] *Id*. at 28 (citing *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 14668 (March 17, 2014) (*Kitchen Racks from the PRC)* and accompanying IDM at Comment 2).
[161] *Id*. at 29.
[162] *Id*.

Commerce's Position:

We agree with the petitioner that the steam coal benchmark price should include VAT in order to make an accurate comparison. Under 19 CFR 351.511(a)(2)(iv), Commerce will adjust the comparison price to reflect the price that the firm actually paid or would pay if it imported the product, including import duties and taxes. In keeping with these regulation, the benchmark would include all import duties and taxes incurred in delivering the product to the respondent's factory gate.

Although TG Tools claims that VAT should not be included because this amount is refunded to the company, we disagree. The only support TG Tools provides for its argument is an unsupported statement where the company stated that it received a 100 percent VAT refund on its LTAR input purchases. The company did not reference evidence on the record to show that it did not pay VAT on imported goods at the time of purchase, nor did it provide any supporting evidence that the VAT paid on imported inputs is refunded. Absent such record evidence, we cannot speculate as to whether TG Tools did not pay VAT on imported goods at the time of purchase, or that any VAT it did pay was ultimately refunded. Therefore, for these final results, we have continued to include VAT in the benchmark price for steam coal. This approach is consistent with our established practice.[163]

Comment 7: Whether Commerce Should Revise its Policy Loan Calculations

Petitioner's Comments:

- Commerce did not properly calculate the countervailable benefits received by TG Tools and TG Aihe from the Policy Loans to the CTL plate industry program. In the preliminary calculations, Commerce used inaccurate values to reflect the outstanding principal on certain loans received by the companies and erred in determining the benchmark interest payments associated with these loans.[164]
- Commerce did not compare the amount of interest paid to a comparable commercial loan due to miscalculation of the benchmark interest payment to TG and its cross-owned affiliates, and should correct this calculation error.[165]

TG Tools' Comments:

- The appropriate calculation for any additional benefit should be made using the sales denominator that comports with an accurate cross-ownership determination regarding TG Tools and TG Aihe.[166]

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[163] *See, e.g.*, *Line Pipe from the PRC* and accompanying IDM at Comment 8; *Kitchen Racks from the PRC* and accompanying IDM at Comment 2.
[164] *See* Petitioner's Case Brief at 1-3.
[165] *Id*. at 2-3 (citing Preliminary Results Memo at 27-28).
[166] *See* TG Tools Rebuttal Brief at 2.

Commerce's Position:

We agree with the petitioner that we made certain inadvertent errors in the policy loans calculations. Commerce inadvertently used incorrect values reflecting the outstanding principal on certain loans. In addition, our preliminary calculations also inadvertently omitted the benchmark interest rate for certain loans for TG Aihe. We have corrected these calculations for the final results.[167] With regard to TG Tools' argument, as explained above in Comment 3, we have adjusted the sales denominator for loan for TG Tools and/or TG Aihe to include the sales of both companies (net of intercompany sales).

Comment 8: Whether Commerce Should Revise its Import Tariff and VAT Exemptions Calculation

Petitioner's Comments:

- Commerce should make adjustments to calculations of VAT exemption benefits on imported equipment provided to TG Tools and TG Aihe.[168] Commerce's preliminary calculations did not account for the impact of import tariff exemptions on the total amount of VAT due.[169] VAT in China is paid inclusive of import duties, and the amount of the exempted import duty should be added to the value of the imported equipment to determine the benefit of the VAT exemption amount.[170]

TG Tools' Comments:

- Commerce's regulations clearly state that "{i}n calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit."[171] As VAT is identified as a tax in 19 CFR 351.102(b)(28), the adjustment proposed by the petitioner is invalid.[172]
- The GOC cannot forgo revenue it is not owed. Under the statute, a countervailable subsidy can only be found if an authority provides a financial contribution.[173] In the *Preliminary Results*, Commerce found that these exemptions are a financial contribution in the form of revenue foregone, which is defined as "foregoing or not collecting revenue that is otherwise due."[174] Even if import duties were an allowable inclusion for the calculation of VAT, import duties that were never due could not be considered revenue foregone.[175] Under the logic proposed by the petitioner, any importation of equipment

[167] *See* Final Calculation Memorandum at 2.
[168] *See* Petitioner Case Brief at 5.
[169] *Id.*
[170] *Id.* (citing TG Tools Preliminary Calculation Memo at Attachment I).
[171] *See* TG Tools Rebuttal Brief at 3 (citing 19 CFR 351.503(e)).
[172] *Id.*
[173] *Id.* at 4 (citing Article XVI of the GATT 1994; and, 19 U.S.C. § 1677(5)(B)).
[174] *Id.* (citing 19 U.S.C. § 1677(5)(D)(ii)).
[175] *Id.*

eligible for most-favored-nation (MFN) tariff treatment must also have the difference between that rate and the non-MFN included in the VAT calculation.[176]

- Moreover, the petitioner's allegations fail to account for the end of VAT exemptions on January 1, 2009.[177] In the *Preliminary Results*, Commerce found that the GOC discontinued VAT exemptions under this program in 2009, and thus, any benefit found under this program after that date cannot include a benefit related to VAT. To the extent that any adjustments are made to this calculation, Commerce should reduce the benefit by the amount of VAT exemption inappropriately included.[178]

Commerce's Position:

We agree with TG Tools, in part. Under this program, TG Tools received two benefits: one in the form of exempted import duties, and the second in the form of exempted VAT.[179] In the *Preliminary Results*, we calculated a benefit for this program which included both the import duties and VAT exempted under this program, consistent with our practice.[180] Under the methodology suggested by the petitioner, however, we would add an additional amount to the exempted VAT calculation because the reduction in import duties creates a second level effect in which the VAT liability is lower than it would have been if the import duties had not been exempted. Essentially, the petitioner argues that the reduced price (for which a benefit has already been calculated) results in a lower tax burden that should also be considered a benefit. However, 19 CFR 351.503(e) clearly states that "{i}n calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit."; thus, the petitioner's methodology is contrary to the regulatory language. Therefore, we will continue to calculate the benefits of this program as in the *Preliminary Results*.

As to TG Tools' argument that we cannot include any exempted VAT from 2009 onward, we disagree. The information submitted by TG Tools in its questionnaire response clearly showed a difference in the amount of VAT duty owed by the company, and the amount actually paid.[181] Therefore, Commerce was correct to calculate the benefit of this exempted VAT, and will continue to do so for these final results.

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176 *Id.* at 5.
177 *Id.*
178 *Id.* at 5-6.
179 *See* PDM at 29-30.
180 *See, e.g.*, *PRC CORE* and accompanying IDM; *Certain Polyethylene Terephthalate Resin from India and the People's Republic of China: Countervailing Duty Order (India) and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (People's Republic of China)*, 81 FR 27978 (May 6, 2016).
181 *See* IQR at Volume I, Exhibit 10, and Volume II, Exhibit 10.

VIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish this final determination and the final subsidy rates in the *Federal Register*.

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Agree Disagree

7/13/2018

X

Signed by: GARY TAVERMAN

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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