C-570-068
Investigation
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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 Affirmative Determination of the 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) 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 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties.

Issues

Comment 1: Provision of Land for Less Than Adequate Remuneration (LTAR): Appropriate Benchmark
Comment 2: Provision of Special Bar Quality (SBQ) Bar for LTAR: Whether Respondent's Input Is Comparable to SBQ Bar
Comment 3: SBQ Bar for LTAR: Market Distortion Analysis
Comment 4: Affiliated Party Sales
Comment 5: Removing Value-Added Tax (VAT) from Reported Freight Data
Comment 6: Removing VAT from Reported Electricity Data
Comment 7: Application of Adverse Facts Available (AFA) Concerning Electricity

II. BACKGROUND

A. Case History

On March 14, 2018, Commerce published its *Preliminary Determination*.[1] The selected mandatory respondents in this investigation are Beijing Bell Plumbing Mfg., Ltd. (Beijing Bell) and Both-Well (Taizhou) Steel Fittings Co., Ltd. (Both-Well). In the *Preliminary Determination,* in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we aligned the final countervailing duty (CVD) determination with the final antidumping duty (AD) determination.

During May 2018, we conducted verification of the questionnaire responses submitted by Both-Well, the information submitted by the GOC with respect to the SBQ bar for LTAR program, and the no-shipment claim submitted by Beijing Bell. We issued verification reports from June through August 2018.[2] On May 25, 2018, Commerce released its Post-Preliminary Analysis Memorandum.[3] Both-Well and the GOC timely submitted case briefs concerning case-specific issues on August 20, 2018.[4] The petitioners[5] submitted a rebuttal brief on August 27, 2018.[6]

B. Period of Investigation

The period of investigation (POI) is January 1, 2016, through December 31, 2016.

III. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall select from "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B)

[1] *See Forged Steel Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 11170 (March 14, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Commerce Memoranda, "Verification of the Questionnaire Responses of the Government of the People's Republic of China: Countervailing Duty Investigation of Forged Steel Fittings from the People's Republic of China", dated June 25, 2018 (GOC Verification Report); "Verification of Beijing Bell Plumbing Mfg., Ltd.'s Claim of No Sales of Subject Merchandise to the U.S. Market During the Period of Investigation: Countervailing Duty Investigation of Forged Steel Fittings from the People's Republic of China" , dated June 28, 2018 (Beijing Bell Verification Report); and "Verification of the Questionnaire Responses of Both-Well (Taizhou) Steel Fittings, Co., Ltd.: Countervailing Duty Investigation of Forged Steel Fittings from the People's Republic of China" , dated August 7, 2018 (Both-Well Verification Report).

[3] *See* Memorandum to Gary Taverman, "Post-Preliminary Analysis of Countervailing Duty Investigation: Forged Steel Fittings from the People's Republic of China," dated May 25, 2018 (Post-Preliminary Analysis Memorandum).

[4] *See* Both-Well's letter, "Re: Forged Steel Fittings from the People's Republic of China: Submission of Case Brief," dated August 20, 2018 (Both-Well's Case Brief); and GOC's letter, "Re: GOC Administrative Case Brief in the Countervailing Duty Investigation of Forged Steel Fittings from the People's Republic of China, dated August 20, 2018 (GOC's Case Brief).

[5] The petitioners are Bonney Forge Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

[6] *See* the Petitioners' letter, "Re: Forged Steel Fittings from the People's Republic of China: Submission of Rebuttal Brief," dated August 27, 2018 (Petitioners' Rebuttal Brief).

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 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 provides that Commerce may use an adverse inference in selecting from the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, 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.[7] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the CVD investigation, a previous administrative review, or other information placed on the record.[8]

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.[9] 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.[10]

Finally, under the section 776(d) of the Act, when using an adverse inference when selecting from the facts otherwise available, 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.[11] The Act also makes clear that, when selecting from the facts otherwise 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.[12]

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[7] *See* section 776(b)(1)(B) of the Act.
[8] *See also* 19 CFR 351.308(c).
[9] *See also* 19 CFR 351.308(d).
[10] *See* Statement of Administrative Action, H.R. Doc. No. 316, 103rd Congress, 2d Session (1994) (SAA), at 870.
[11] *See* section 776(d)(1) of the Act.
[12] *See* section 776(d)(3) of the Act.

Commerce relied on facts available, including adverse facts available (AFA), for several findings in the *Preliminary Determination*. Commerce has not changed its preliminary decisions with respect to the use of facts otherwise available and AFA. For a description of these decisions, *see* the *Preliminary Determination*.[13] For further discussion regarding our AFA decision as it affects the electricity for LTAR program, *see* Comment 7 below.

IV. SUBSIDIES VALUATION

A. <u>Allocation Period</u>

Commerce made no changes to the allocation period, 15 years, and the allocation methodology used in the *Preliminary Determination*.[14] No issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology.

B. <u>Attribution of Subsidies</u>

Commerce made no changes to the methodologies used in the *Preliminary Determination* for the attribution of subsidies.[15]

C. <u>Denominators</u>

During verification, Both-Well reported a minor adjustment to the 2014 total sales value.[16] We examined this minor adjustment at verification and used the revised sales figure, where applicable, to calculate the countervailable subsidy rates for Both-Well for the final determination.[17] We also corrected the total sales values during certain years in the AUL to reflect clarifications reported in Both-Well's third supplemental questionnaire response.[18]

D. <u>Loan Interest Rate Benchmarks and Discount Rates</u>

Commerce made no changes to the loan interest rate benchmarks and discount rates used in the *Preliminary Determination.*[19]

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[13] *See Preliminary Determination*, at 6-16.
[15] *Id.* at 16-17.
[15] *Id.* at 16-17.
[16] *See* Both-Well Verification Report, at VE-1.
[17] *See* Memorandum, "Countervailing Duty Investigation of Forged Steel Fittings from the People's Republic of China: Final Determination Calculations for Both-Well (Taizhou) Steel Fittings Co., Ltd.," dated concurrently with this memorandum (Both-Well Final Calculation Memorandum).
[18] *See* Both-Well's letter, "Re: Forged Steel Fittings from China," dated March 26, 2018.
[19] *See* PDM, at 18-20.

V. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

We have made changes to our *Preliminary Determination* and our post-preliminary analysis with respect to the methodology used to calculate the subsidy rates for certain programs used by Both-Well. For further details, *see* the specific program section below and Both-Well's final determination calculation memorandum. [20] For descriptions, analyses, and calculation methodologies for these programs, see the *Preliminary Determination* and the Post-Preliminary Analysis Memorandum. Except where noted below, no other issues were raised regarding these programs in the parties' case briefs. The final program rates are as follows:

1. *Provision of SBQ Bar for LTAR*

We modified our analysis of this program[21] by including VAT in the freight expense added to the input prices. *See* Comment 5 below for further discussion. Both-Well's final subsidy rate for this program is 6.93 percent *ad valorem.*

2. *Provision of Electricity for LTAR*

We modified our analysis of this program[22] based on our verification findings.[23] *See also* Comment 6 below for further discussion. Both-Well's final subsidy rate for this program is 0.69 percent *ad valorem.*

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

We modified our analysis of this program [24] by revising certain year-specific sales values in its calculations, as mentioned above in Section IV.C. Both-Well's final subsidy rate for this program is 4.44 percent *ad valorem.*

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

We modified our analysis of this program[25] based on its verification findings, and also by revising certain year-specific sales values in its calculations, as mentioned above in Section IV.C. Both-Well's final subsidy rate for this program is 1.07 percent *ad valorem.*

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[20] *See* Both-Well Final Calculation Memorandum.
[21] For the description and analysis of this program, *see* PDM, at 23-24.
[22] *Id*. at 25-26.
[23] *See* Both-Well Verification Report, at VE-1.
[24] For the description and analysis of this program, *see* PDM, at 26.
[25] *Id.* at 27.

5. *VAT Refunds for Foreign Invested Enterprises (FIEs) on Purchases of Chinese-Made Equipment (NSA)*

We made no changes to this program.[26] Both-Well's final subsidy rate for this program is 0.19 percent *ad valorem.*

6. Grants

i. Technology Reward from Jiangyan Economic Development Zone (February 25, 2016)

We made no changes to this program.[27] Both-Well's final subsidy rate for this program is 0.01 percent *ad valorem.*

ii. Reward from Financial Bureau of Jiangyan City (April 21, 2016)

We made no changes to this program.[28] Both-Well's final subsidy rate for this program is 0.01 percent *ad valorem.*

iii. Year 2015 Technology Innovation Reward from Financial Bureau of Jiangyan City (May 12, 2016)

We made no changes to this program.[29] Both-Well's final subsidy rate for this program is 0.07 percent *ad valorem.*

The final cumulative *ad valorem* subsidy rate for these programs is 13.41 percent.

B. Programs Determined Not to Confer a Measurable Benefit to Both-Well

1. "Other Subsidies"

Commerce made no changes to its *Preliminary Determination* with regard to these programs determined not to be used by Both-Well during the POI:[30]

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

[26] For the description and analysis of this program, *see* Post-Preliminary Determination Memorandum, at 4-6.
[27] *Id.* at 6.
[28] *Id.* at 6-7.
[29] *Id.* at 7.
[30] *See* PDM, at 28.

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. The State Key Technology Fund
14. Foreign Trade Development Fund Grants
15. Export Assistance Grants
16. Export Interest Subsidies
17. Grants for Energy Conservation and Emission Reduction
18. Grants for the Retirement of Capacity
19. Grants for Relocating Production Facilities

Commerce made no changes to its *Post-Preliminary Determination* with regard to these programs determined not to confer a measurable benefit to Both-Well during the POI:[31]

1. Reward from Financial Bureau of Jiangyan City (April 21, 2016)
2. High-Technology Reward from Government (December 9, 2015)

VI. ANALYSIS OF COMMENTS

Comment 1: Provision of Land for Less Than Adequate Remuneration (LTAR): Appropriate Benchmark

Both-Well's Case Brief:

- For the final determination, Commerce should place on the record of this case a Filipino benchmark land price for undeveloped land in a rural area, rather than use the Thai land benchmark price (*i.e.*, CB Richard Ellis Research Asia Marketview Report (Asia Marketview Report)) that Commerce used in the *Preliminary Determination* to analyze the land LTAR program. Commerce's verification findings indicate that Both-Well's land was undeveloped at the time of purchase (rather than developed) and the factory's land is located in a rural area (rather than near a major city).[32]
- The Thai benchmark price is for highly developed land in an industrial park located near a major, densely-populated city (*i.e.*, Bangkok), and this benchmark is not comparable to the

[31] *Id.* at 7-8.
[32] *See* Both-Well' Case Brief, at 2 (citing to its January 18, 2018, Initial Questionnaire Response (Both-Well's IQR) at PDF pages 27-28; and its March 23, 2018, supplemental questionnaire response, at pages 1-2 and Exhibit 2).

undeveloped land which Both-Well purchased, in a location with one-fifth the population density of the Bangkok industrial park.

- When placing the Bangkok industrial park land benchmark price on the record of this case, Commerce erroneously claimed that the Thai land benchmark price was a comparable and reasonable alternative to Both-Well's land based on population density and land location.
- Because Commerce placed the wrong land benchmark price on the record of this case, Commerce should correct this error by placing on the record of this case a Filipino benchmark land price for undeveloped land in a rural area based on the Court of International Trade's (CIT's) decision in *Zhaoqing vs. United States*.[33]
- In *Zhaoqing vs. United States*, the CIT rejected the use of the Bangkok industrial park land benchmark price in favor of a Filipino undeveloped rural land benchmark price based on an analogous situation (*i.e.*, the respondent's land was undeveloped (rather than developed) at the time of purchase and located in a rural (rather than urban) setting).
- Commerce did not provide interested parties an opportunity or a deadline to submit factual information to rebut, clarify, or correct factual information Commerce placed on the record with respect to the land benchmark price. Therefore, Both-Well was prohibited from correcting Commerce's error with respect to the land benchmark price that Commerce placed on the record of this investigation.[34]

The Petitioners' Rebuttal Brief:

- Commerce used the appropriate industrial park land benchmark price in the *Preliminary Determination*, given that the contracts Both-Well provided for the land it purchased indicate that the land is located in the Jiangyan Economic Development Zone, in a major Chinese city (*i.e.*, Taizhou, Jiangsu province) and that the land is approved for industrial use.[35]
- Both-Well's argument that the population density of Jiangyan should be considered when selecting the land benchmark is based on incomplete and inaccurate information obtained from Wikipedia extracts.[36]
- Both-Well does not discuss how Jiangyan is classified by the Chinese authorities and does not provide information regarding agricultural land in either Bangkok or Jiangyan.
- Rather than rely on the photographs Both-Well provided of the land prior to its use, Commerce should consider the expected future use of the land when selecting the appropriate land benchmark price.[37]
- Information contained in the land contracts indicates that two of the four land parcels already contained some infrastructure (*i.e.*, plumbing, electricity, roads, etc.) at the time of purchase,

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[33] *Id.* at 2 (citing *Zhaoqing New Zhongya Aluminum Co., Ltd. and Zhongya Shaped Aluminum (K11) Holding Ltd. vs. United States*, 929 F. Supp. 2d 1324 (CIT 2013) (*Zhaoqing vs. United States*)).
[34] *Id.* at 3.
[35] *See* Petitioners' Rebuttal Brief, at 2.
[36] *Id.* at 3.
[37] *Id.* at 4-5.

a fact that undermines Both-Well's claim that the land parcels were totally undeveloped at the time of purchase.[38]

- Both-Well has not provided any evidence that its investment in the land's infrastructure is significant relative to the value of land it received.
- In the *Preliminary Determination,* Commerce used the Asia Marketview Report's "indicative industrial land values," which do not include factory values or added improvements.[39] Therefore, the prices that Commerce used were not for land holding fully-developed buildings in an industrial park where tenants could immediately begin manufacturing.

Commerce's Position:

We disagree with Both-Well that the Asia Marketview Report benchmark price information used in the *Preliminary Determination* is not appropriate to use for valuing Both-Well's land in this case.[40] Both-Well provided documentation in its questionnaire response that its facility includes four parcels of land, which were purchased during specific years from the local land bureau located in the Jiangyan economic development zone.[41] The land use right contracts Both-Well provided for three of the four parcels all indicate that the land at issue is not designated as rural, undeveloped land.[42] For two of those land parcels, the contacts provide details on the infrastructure (*e.g.,* water and electricity connections, etc.) in place at the time Both-Well purchased the land.[43] Regarding the other parcel, information in the land use rights contract indicates that there was some type of infrastructure in place on the land parcel at the time of purchase.[44]

Because neither Both-Well nor the GOC provided a contract with similar detail for one of those parcels, we cannot determine what sort of infrastructure existed at the time of purchase for that parcel. Record evidence only indicates that this parcel may have been farmland at the time of purchase.[45] Based on the above information, we know that three of the four land parcels are industrial land; and two of those land parcels clearly were not undeveloped rural land parcels at the time of purchase.[46] We agree with the petitioners that the photographs Both-Well provided in its March 23, 2018, rebuttal submission[47] do not represent substantial evidence for purposes of drawing conclusions with respect to the degree of the land's development or its use. Specifically, the photographs are selective, do not show the entire area of the parcel, and appear to be applicable to only that parcel.

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[38] *Id.* at 6-7.
[39] *Id.* at 7-8.
[40] *See Preliminary Determination*, at 21; *see also* Memorandum to the File, "Countervailing Duty Investigation of Forged Steel Fittings from the People's Republic of China: Asian Marketview Report," dated March 7, 2018 (Land Benchmark Memo), at Attachment 1, Exhibit 10, PDF pages 74-86.
[41] *See* Both-Well's IQR, at Exhibits E.LUR.2h and E.LUR.2i.
[42] *Id.*
[43] *Id.*
[44] *Id.* For additional business proprietary details, *see* Memorandum to the File, "Land Analysis," dated concurrently with this memorandum (Land Analysis Memo).
[45] *Id.*
[46] *Id.*
[47] *See* Both-Well's letter, "Forged Steel Fittings," dated March 23, 2018 (March 23 submission), at Exhibit 2; and Land Analysis Memo.

Therefore, it is reasonable to conclude based on the record evidence that at least three of Both-Well's four purchased land parcels, at the time of purchase, were not parcels of rural, undeveloped land, but rather were parcels of land that included infrastructure located within an industrial park in an urban area. Because the Thai land benchmark also provides a price for land similarly situated in an industrial park in an urban area, we continue to find that the Thai land benchmark is appropriate to use to value all four of Both-Well's land parcels.

Finally, we disagree with Both-Well that the CIT's decision in *Zhaoqing vs. United States* requires Commerce to use a land benchmark price that is not on the record of this case.[48] Record information indicates that three of the four land parcels at issue are not rural, undeveloped land, and contains details on the infrastructure in place for two parcels at the time of purchase.[49] Furthermore, all four parcels are located in an industrial park in an urban area based on the land contract information provided by Both-Well.[50] As the Thai land benchmark provides a price for industrial land located in an industrial park in an urban area, we find that an industrial park land benchmark such as the Thai land benchmark is appropriate to use in this case; thus, we have no basis for considering alternative land price benchmark data. In *Zhaoqing vs. United States*, the CIT remanded Commerce to use an undeveloped rural land price (*i.e.*, the Filipino land benchmark) instead of a developed urban land price (*i.e.*, the Thai land benchmark) to value undeveloped land.[51] New Zhongya (Zhongya), the respondent in that case, argued and provided record evidence demonstrating that its land "was completely undeveloped and required significant development, such as infrastructure for water and electricity, before it could be used as a production facility."[52] Zhongya also provided details regarding when construction would begin.[53] At the time, Commerce solely relied on excerpts from websites and a select few photographs that indicated otherwise.[54] In its holding, the CIT reasoned that the photographs did not clearly indicate their origin.[55] Thus, the CIT held that it was "not persuaded that the{} photographs provide{d} substantial evidence" that the land was industrial land or that the photographs depicted the land as it existed in 2006.[56]

Zhaoqing vs. United States is distinguishable from the instant case in two ways. First, the record evidence, as explained above, confirms Both-Well's urban location and demonstrates that three of Both-Well's land parcels had infrastructure at the time of purchase. Second, the photographs submitted by Both-Well do not indicate their origin, precisely what land parcel is being photographed, or that the land is depicted as it existed at the time of purchase.

Regarding Both-Well's argument that Commerce should consider other factors when selecting the land benchmark, such as population density, we find that the type of land and its state of development are the more important considerations when selecting land price benchmarks.

48 *See Zhaoqing vs. United States*, 929 F. Supp. 2d at 1327-29.
49 *See* Both-Well's IQR, at Exhibits E.LUR.2 and E.LUR.2i.
50 *Id.*
51 *See Zhaoqing vs. United States*, 929 F. Supp. 2d at 1329.
52 *Id.* at 1327.
53 *Id.* at 1327-28.
54 *Id.* at 1328.
55 *Id.*
56 *Id.*

However, we note that in this case, Both-Well is located near a major city (*i.e.*, Taizhou), which is not inconsistent with the Thai land benchmark. The Thai land benchmark is also based on land located near a major city (*i.e.*, Bangkok). Therefore, Commerce in this case is using a land benchmark which closely resembles the respondent's land at issue.

We also disagree with Both-Well that it was not provided with the opportunity to submit land benchmark price information or factual information to rebut the land benchmark price information which Commerce relied on in the *Preliminary Determination*. Commerce's regulations provide interested parties in a CVD investigation an opportunity to submit factual information to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), 30 days before the scheduled date of the preliminary determination.[57] However, Both-Well did not submit any factual information (land benchmark price information or otherwise) for consideration in the *Preliminary Determination*.

On March 9, 2018, we placed on the record the Asia Marketview Report benchmark land price information (*i.e.*, Thai land benchmark) that was used to value land in the *Preliminary Determination*. In the cover memorandum,[58] we stated that "pursuant to 19 CFR 351.301(c)(3)(iv), interested parties had 10 days from the issuance of this memorandum to submit publicly available information to rebut, clarify, or correct" the land benchmark price information.[59] We ultimately extended this deadline to March 23, 2018, in response to two requests from Both-Well for Commerce to extend this deadline, which indicated its awareness of this opportunity to submit such information.[60]

Although Both-Well timely submitted comments on the Thai land benchmark, it chose not to submit alternative price information.[61] Rather, in its comments, it requested that Commerce place on the record alternative price information for consideration in the final determination. In its case brief, Both-Well explains that the reason it requested Commerce to place on the record alternative price information rather doing so itself was because the regulation cited in the Land Benchmark Memo did not allow interested parties to submit factual information to rebut factual information placed on the record by Commerce.[62]

We acknowledge that the Land Benchmark Memo inadvertently cited to 19 CFR 351.301(c)(3)(iv) rather than to 19 CFR 351.301(c)(4). Section 351.301(c)(4) stipulates that when Commerce places information on the record, which can occur at any time, Commerce will provide parties an opportunity to submit factual information to rebut, clarify, or correct that information within a time limit set by the agency. Despite Both-Well's claims that it was not afforded such an opportunity, the memorandum clearly stated that "interested parties had 10 days from the issuance of the memorandum to submit publicly available information to rebut, clarify,

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[57] 19 CFR 351.301(c)(3).
[58] *See* Land Benchmark Memo.
[59] The Land Benchmark Memo was placed in the ACCESS system on March 9, 2018; therefore, the deadline to submit rebuttal information was March 19, 2018.
[60] *See* Memorandum to the File, "Extension for Comments on Benchmark Information," dated March 16, 2018; and Memorandum to the File, "Extension for Comments on Benchmark Information," dated March 22, 2018.
[61] *See* Both-Well's March 23 submission.
[62] *See* Both-Well's Case Brief, at 3.

or correct the land benchmark price information" attached to the memorandum.[63] By the time Both-Well presented this argument it had already had two opportunities to provide factual information to measure the adequacy of remuneration, *i.e.*, first, according to 19 CFR 351.301(c)(3) and second, pursuant to the Land Benchmark Memo, notwithstanding the inadvertent error. Even after Both-Well requested two extensions of this deadline, Both-Well, nevertheless, chose not to submit rebuttal factual information nor requested from Commerce a third opportunity to submit this information. If Both-Well was uncertain whether it could submit rebuttal factual information, it could have sought clarification from Commerce. For these reasons, we disagree with Both-Well that it did not have an opportunity to submit rebuttal factual information relevant to the land benchmark for consideration in the final determination.

Comment 2: Provision of Special Bar Quality (SBQ) Bar for LTAR: Whether Respondent's Input Is Comparable to SBQ Bar

Both-Well's Case Brief:

- Commerce incorrectly found in the *Preliminary Determination* that Both-Well received a subsidy for SBQ bar for LTAR.[64]
- Both-Well uses hot-rolled round bar (HRRB), rather than SBQ bar, to produce the subject merchandise, and this claim is supported through documentation[65] Commerce examined at verification for the HRRB used by Both-Well to produce the subject merchandise.
- Because HRRB is a different product from SBQ bar and HRRB for LTAR is not a program alleged by the petitioner, in the final determination Commerce should find that Both-Well did not use the SBQ bar for LTAR program.
- Commerce's verification findings confirm that Both-Well only uses HRRB to produce the subject merchandise.[66]
- The U.S International Trade Commission (ITC) Report indicates that normal bar (*i.e.*, HRRB) may also be used to produce the subject merchandise.[67]
- The fact that the two steel inputs can be used interchangeably to make the subject merchandise does not mean they are the same steel type.
- Commerce has not provided interested parties an opportunity or a deadline to submit factual information to rebut, clarify, or correct factual information Commerce placed on the record with respect to this input.

GOC's Case Brief:

- There is insufficient record evidence to initiate or allege that Both-Well's purchases of A-105

[63] *See* Land Benchmark Memo.
[64] *See* Both-Well's Case Brief, at 4.
[65] This documentation includes bar purchase orders, mill test certificates, chemical composition documents, yield and tensile strength documents, and hardness and elongation documentation for the actual HRRB Both-Well used to produce the subject merchandise.
[66] *See* Both-Well's Case Brief, at 4.
[67] *Id*. at 5 (citing to *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*), at 1-8 and 1-12).

carbon steel round bar (*i.e.*, HRRB) was sold for LTAR.[68]

- Neither the petition[69] nor the petitioner's new subsidy allegation submission[70] alleges that any steel input other than SBQ bar was sold for LTAR.
- Because Both-Well did not purchase SBQ bar, Commerce's preliminary decision is unsupported by substantial evidence. In the final determination Commerce must find that Both-Well did not use the SBQ bar for LTAR program.

The Petitioners' Rebuttal Brief:

- Commerce properly compared the value of the steel bar that Both-Well uses to values of SBQ bar.[71]
- Because there is no precise definition of what is commonly known in the United States as "SBQ bar" or in other countries as "engineering steel," the characteristics of the steel must be considered and utilized to define SBQ bar.
- The steel that Both-Well uses to produce the subject merchandise, ASTM grade A-105, has the same essential characteristics of SBQ bar.
- The defining characteristic of SBQ bar is that it is strong but at the same time very "clean" steel (*i.e.*, a steel that lacks high quantities of impurities that can lead to cracking, brittleness, or failure in high-stress applications.[72]
- Commerce's decision on this matter cannot be determined by the respondent's choice of nomenclature to describe its steel material input.

Commerce's Position:

As an initial matter, the Act requires Commerce to include in its analysis not only potential subsidy programs that are properly alleged, but also potential subsidy programs that Commerce discovers during the course of a proceeding.[73] Therefore, regardless of whether the input used by Both-Well was alleged by the petitioners, it was reported as used by Both-Well.[74] Both-Well and the GOC both responded to our subsidy questionnaire with respect to the input used by Both-Well.[75] Therefore, under section 775 of the Act, Commerce may properly include the potential subsidy resulting from this input in its investigation as a discovered subsidy, even if it was not alleged.

Moreover, we find that the material grade and specifications are the best means to determine whether the respondents are using the input alleged in the petition to manufacture their forged

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[68] *See* GOC's Case Brief, at 4-5.

[69] *Id.* at 4 (citing to Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: Forged Steel Fittings from the People's Republic of China, Italy, and Taiwan," dated October 5, 2017 (Petition Volume I)).

[70] *Id*. at 3-5 (citing to Petitioners' Letter, "Forged Steel Fittings from the People's Republic of China: New Subsidy Allegations," dated January 29, 2018 (NSA Submission)).

[71] *See* Petitioners' Rebuttal Brief, at 9.

[72] *Id*. at 9 (citing to March 9, 2018, Submission at 3-5 and Exhibit 4).

[73] *See* section 775 of the Act.

[74] *See* Both-Well's IQR, at pdf page 25-27.

[75] *Id.; see also* GOC's January 19, 2018, IQR (GOC's IQR), at 54-70.

steel fittings, because industry terms for one product can vary from country to country. Therefore, we agree with the petitioners that nomenclature is an unreliable method in determining whether two bar material inputs are the same or similar inputs. Because industry terms for one product can vary from country to country or company to company, we have chosen to use the material grade and specifications to determine whether Both-Well used the input alleged in the petition to manufacture its forged steel fittings.

We stated in the *Preliminary Determination* that the terms "SBQ bar" and "engineering steel" cover the bar material (*i.e.*, hot-rolled carbon steel round bar manufactured to A-105 specifications) that both the petitioners and Both-Well use to manufacture forged steel fittings.[76] In light of the arguments presented in the respondent's and the GOC's case briefs, we re-examined the record to determine whether the inputs used by Both-Well and the petitioners are the same or comparable. In particular, we re-examined Both-Well's February 27, 2018, supplemental questionnaire response in which Both-Well provided a description and a mill certificate for its raw material input, "A-105 carbon steel round bar."[77] We also re-examined the petitioners' March 9, 2018, submission, in which the petitioners compared their raw material input to the input described in the Both-Well February 27 SQR.[78]

We agree with the petitioners that the respondent's claim of only using "a kind of ordinary" HRRB that is comparable to rebar is not supported by the mill certificate Both-Well provided. We note that both the petitioners and Both-Well use bar material that meets the ASTM A-105 specification and this steel grade is one of the grades mentioned in the scope as necessary to produce the subject merchandise. Therefore, Both-Well's characterization of the HRRB input as a lower-grade input than SBQ bar is irrelevant.

The material specification sheets in the petitioners' March 9 Response support our previous determination that hot-rolled carbon steel round bar manufactured to A-105 specifications is one type of the SBQ bar material mentioned in the Petition.[79] Specifically, these material specification sheets show that ASTM A-105 is one of five specifications – including ASME B-16.11, ASTM A-370, ASTM A-29, and ASTM A-751 – that are considered to be "special quality" or "forging quality" bar in the petitioners' normal course of business.[80] Furthermore, the ASTM A-105 specification is included in both the original and revised scope of this investigation as being descriptive of covered merchandise.[81] In the Petition, the petitioners state

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[76] *See* PDM, at 7-8. Commerce cited to the ITC Publication 4743, which indicates that HRRB is a type of SBQ bar.
[77] *See* Both-Well's letter, "Forged Steel Fittings from China," dated February 27, 2018 (Both-Well February 27 SQR), at 2-3 and at Exhibit S2-4.
[78] *See* Petitioners' letter, "Forged Steel Fittings from the People's Republic of China: Information in Response to Both-Well's February 27 Supplemental Questionnaire Response," dated March 9, 2018 (Petitioners' March 9 Response).
[79] *Id*. at Exhibit 7-8.
[80] *Id*. at Exhibit 1.
[81] *See* Petition Volume I, at 4-5; *see also* Petitioners' letter "Forged Steel Fittings from China, Italy, and Taiwan: Revised Scope," dated October 19, 2017, at PDF page 2; *see also* "Enforcement and Compliance Office of AD/CVD Operations Countervailing Duty Investigation Initiation Checklist, dated October 25, 2017, at Attachment I; *see also* Memorandum, "Forged Steel Fittings from China, Italy, and Taiwan: Second Preliminary Scope Decision Memorandum," dated May 7, 2018, at 2-3.

that "forged steel fittings are typically made from steel made to ASTM A-105 or similar standards."[82]

Based on record evidence, we continue to find that the steel input that Both-Well used to produce the subject merchandise is covered by the allegation in the Petition. Even if it is not covered, we have information on the record indicating that the steel input used by Both-Well is subsidized, and section 775 of the Act clearly indicates that potential subsidies that are discovered, but not alleged, should be included in the proceeding. Consequently, we continue to find that Both-Well received a benefit in purchasing ASTM A-105 HRRB, as compared to the American Metal Market prices for carbon steel, which also meets the specifications of SBQ bar.[83]

We also disagree with Both-Well that it did not have an opportunity to submit factual information on this matter. On March 7, 2018, we placed on the record *ITC Publication 4743*, upon which we relied in the *Preliminary Determination.*[84] This document is the ITC's decision memorandum accompanying its preliminary determination *Federal Register* notice and is part of the record of this case.[85] In accordance with 19 CFR 351.301(c)(4), interested parties had 10 days from the placement of such information on the record to submit publicly available information to rebut, clarify, or correct this information.

Comment 3: SBQ Bar for LTAR: Market Distortion Analysis

GOC's Case Brief:

- Commerce's market distortion findings are unsupported by substantial record evidence and not in accordance with the law, as record evidence demonstrates that neither the crude steel nor the bar material markets are distorted by government actors.
- This case is distinguishable from others where Commerce did develop and provide evidence of actual government involvement that resulted in distortion.
- In this case, an overwhelming number of producers in this market are not state-owned or controlled companies and there is no evidence on the record that these producers are following prices driven by the government-owned or controlled producers.

The petitioners submitted no rebuttal comments on this issue.

Commerce's Position:

In the *Preliminary Determination* we found that the Chinese bar material sector is distorted, and we relied on a Tier 2 benchmark pursuant to 19 CFR 351.511(a)(2)(ii), consistent with similar

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[82] *See* Petition, Volume I, at 5.
[83] *See* Petitioners' letter, "Forged Steel Fittings from the People's Republic of China: Submission of Benchmark Data," dated February 6, 2018, at Exhibit 8; and Both-Well Final Calculation Memorandum.
[84] *See ITC Publication 4743.*
[85] *Id.*

past determinations.[86] The CVD Preamble provides guidance on this point, stating that government involvement in a market may, in certain circumstances, have a distortive effect on the price of a good even when the government provider accounts for less than a majority of the market.[87] The GOC's arguments regarding this matter have been previously addressed and rejected by Commerce.[88] Out of country benchmarks are required in such instances because the use of in-country private producer prices would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government presence).[89]

As in prior cases involving steel products from China,[90] Commerce has determined the GOC exercises significant control and influence in the broader economy, and in the steel industry specifically. This analysis, placed on the record of this proceeding, explains and supports our findings of the GOC's significant and distortive role in the steel industry, which includes SBQ bar.[91] Commerce has found that all steel prices in China are distorted and that government control extends not only to state-owned steel companies but to "private" companies as well.[92] With regards to SBQ bar, the GOC has reported that state-owned enterprises (SOEs) accounted for a substantial share of bar material production in China (*i.e.*, 28 percent) during the POI. This percentage is similar to SOE share percentages observed in other cases in which Commerce declined to use in-country input benchmarks due to the distortive effect caused by the market share held by state-owned producers of the input at issue.[93] Moreover, the very low share of the

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[86] *See 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) (*Line Pipe from China*), and accompanying Issues and Decision Memorandum (IDM) at Comment 5; and *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 32075 (July 11, 2018) (*Soil Pipe Fittings from China)*, and accompanying IDM at Comments 1 and 2.
[87] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998).
[88] *See, e.g., Soil Pipe Fittings from the China*, and accompanying IDM at Comment 1; *Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Kitchen Racks from China*), and accompanying IDM at Comment 8; *Line Pipe from China*, and accompanying IDM at Comment 5; and *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 IDM at Comment 7.
[89] *See CWP from China* IDM at Comment 7.
[90] *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)* (Market Distortion Memo), 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. Although we stated in the PDM that these memoranda were placed on the record concurrently with the *Preliminary Determination*, these memoranda were inadvertently not included in the attachment to the Market Distortion Memo. We have since corrected this error and included these memoranda on the record of this case. *See also* Memorandum to the File, "Forged Steel Fittings from the People's Republic of China: Information to Complete the Record," dated September 19, 2018 (Market Distortion Correction Memo).
[91] *Id.*
[92] *Id.*
[93] *See*, *e.g.*, *Soil Pipe Fittings from China* and accompanying IDM at Comment 1 and *Certain Passenger Vehicles and Light Truck Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission, in Part; 2014-2015*, 82 FR 42287 (September 7, 2017) (*Vehicle and Truck Tires from China)* and accompanying PDM at 16 (unchanged in *Certain Passenger Vehicles and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2014-2015*, 83 FR 11694 (March 16, 2018)).

domestic market that is supplied by imports is further evidence that the government plays a predominant role through its involvement in the market.[94] These facts, taken as a whole, lead us to reasonably conclude that domestic prices of SBQ bar in China are distorted and cannot be used as Tier 1 benchmarks.

The GOC has also asserted that an overwhelming number of producers in this market are not state-owned or controlled companies and that there is no evidence on the record that these producers are following prices driven by the government-owned or controlled producers. However, the Market Distortion Memo addressed this very point.[95] "Private" steel prices in China are distorted because of the significant presence of the government in the steel sector. The GOC's measures of control over the steel sector extend beyond its control over SOEs and affect non-state owned enterprises as well.[96] The GOC has forced mergers and acquisitions, has restrained the growth of the private sector, and has propped up failing enterprises.[97] The Market Distortion Memo thus concluded that "private" prices in the Chinese steel market are distorted, and this finding is not dependent upon the level of government ownership in the market for any particular steel product.

On this basis, we continue to find that it is appropriate to use Tier 2 benchmarks, as described under 19 CFR 351.511(a)(2)(ii), when determining whether benefits were conferred under the provision of SBQ bar for LTAR program.

Comment 4: Affiliated Party Sales

Both-Well's Case Brief:

- In the *Preliminary Determination*, Commerce correctly included Both-Well's sales to its affiliates in the reported sale values for 2014, 2015, and 2016, over which subsidies were properly allocated.[98]
- Commerce's verification findings separate Both-Well's affiliated party sales from its total reported sales figures for 2014 through 2016, and incorrectly implies that the sales values over which subsidies are to be allocated should exclude these sales.
- Both-Well's sales to its affiliates should not be excluded from the subsidy calculation because the resulting subsidies would be incorrectly allocated to the product that actually received the subsidy.
- Commerce should not exclude Both-Well's sales to affiliates pursuant to 19 CFR 351.525 (b)(6)(i) and (iv).

The petitioners submitted no rebuttal comments on this issue.

[94] *Id. See also*, GOC IQR at 59.
[95] *See* Market Distortion Correction Memo, Attachment I, section entitled, "ii. Other Prices in China," at pdf 32-35.
[96] *Id.* at pdf 33-34.
[97] *Id.*
[98] *See* Both-Well's Case Brief, at 6.

Commerce's Position:

We agree with Both-Well that its sales to affiliates should not be deducted from the reported sale values for 2014, 2015, and 2016, and we have not done so in our final calculations. Commerce normally excludes affiliated party sales if there has been a finding of cross-ownership between the entities. In Both-Well's case, no finding of cross-ownership with its affiliates was made. Therefore, the inclusion of Both-Well's sales to its affiliates in the total sales figures is in harmony with Commerce's normal practice and 19 CFR 351.525(b)(6)(i) and (iv).

Comment 5: Removing Value-Added Tax (VAT) from Reported Freight Data

Both-Well's Case Brief:

- By removing the VAT from the reported freight expenses, Commerce incorrectly added a tax-exclusive freight amount to a tax-inclusive sales value, and then subtracted that subtotal amount from a tax-inclusive benchmark rate to derive the subsidy amount in the *Preliminary Determination.*
- To correct this error, Commerce should not exclude the VAT amount from the freight expenses prior to adding the freight amount to the sales value in the above-described calculation.

The petitioners submitted no rebuttal comments on this issue.

Commerce's Position:

We agree with Both-Well that the VAT was incorrectly removed from the reported freight expenses. Pursuant to 19 CFR 351.511(a)(2)(iv), Commerce will measure adequate remuneration by adjusting the comparison price to reflect the price that a firm actually paid, including delivery charges and import duties. In keeping with our normal practice, in our final determination, we have included the VAT in the reported freight expenses.[99]

Comment 6: Removing VAT from Reported Electricity Data

Both-Well's Case Brief:

- VAT should not be excluded from the electricity data reported for the electricity program because to do so would create an unfair comparison with the benchmark electricity price, which includes VAT.
- In the *Preliminary Determination*, Commerce calculated electricity prices for Both-Well which did not include VAT. These prices were then compared to the benchmark, but because the benchmark electricity prices include VAT, the comparison is inaccurate.
- Commerce should use the corrected electricity data which includes VAT, as verified, to recalculate Both-Well's electricity prices in order to make a more accurate comparison to the benchmark.

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[99] *See* Both-Well's Final Determination Calculation Memorandum.

The petitioners submitted no rebuttal comments on this issue.

Commerce's Position:

We agree with Both-Well. The electricity benchmark price that was used by Commerce is VAT-inclusive.[100] Therefore, in the final determination, in order to ensure that the benchmark price and the electricity price actually paid by Both-Well are on the same basis, we have included VAT in the electricity prices paid by Both-Well.[101]

Comment 7: Application of Adverse Facts Available (AFA) Concerning Electricity

GOC's Case Brief:

- Commerce's application of AFA concerning electricity is unsupported by record evidence.
- Commerce's assertions that the GOC failed to provide requested information for its analysis of financial contribution and specificity are nothing more than an excuse to continue Commerce's institutional application of AFA to the electricity for LTAR program.
- The GOC provided complete responses to Commerce's electricity-related questions.
- When the GOC stated that the National Development and Reform Commission (NDRC) no longer directs or determines electricity prices in provinces in China, Commerce incorrectly concluded that the GOC failed to cooperate with respect to NDRC's role in determining pricing should any province not comply with the directed price changes.
- Contrary to Commerce's claim, the GOC did provide detail on how the suggested price reductions in the Appendix to Notice 748 were derived.
- Commerce continues to incorrectly conclude that the notices issued by the NDRC (*i.e*., 748, 3105, and 3169) direct provinces to reduce prices by amounts specific to provinces and provide specific formulae by which price adjustments must be made, despite acknowledging that the pricing values issued by the NDRC are not mandatory.
- Commerce continues to ignore information in the notices issued by the NDRC that the prices are not set by the NDRC or that the suggested price reductions in the notices are not mandatory.
- In support of its claim that the provinces do not implement the price reductions issued by the NDRC which Commerce asserts are mandatory, the GOC cites to its questionnaire response where it stated that the Jiangsu province in 2016 did not follow the NDRC's suggested price reduction and instead made its own pricing decision.
- GOC's assertion that the provincial authorities determine the pricing adjustment according to market principles and merely report their pricing values to the NDRC for record-keeping purposes does not constitute a basis for Commerce finding that the GOC withheld

[100] *See e.g.*, *Line Pipe from the People's Republic of China* and accompanying IDM at Comment 8; and *Kitchen Racks from China* and accompanying IDM at Comment 2.
[101] *See* Both-Well Final Calculation Memorandum.

information with respect to NDRC's role in pricing or applying AFA in determining financial contribution and specificity.
- Commerce's continued assertion that the NDRC directs and mandates pricing for each province is not supported by the record evidence provided by the GOC.
- Commerce should reverse its AFA finding with respect to the electricity for LTAR program.

The petitioners submitted no rebuttal comments on this issue.

Commerce's Position:

In the *Preliminary Determination*, we applied AFA, pursuant to section 776(a)(2)(A)[102] of the Act, along with an adverse inference, pursuant to section 776(b) of the Act, in making our determination regarding this program for purposes of finding a financial contribution and specificity because the GOC withheld information that was requested for our analysis.[103] Specifically, we stated in the *Preliminary Determination* that the GOC failed to 1) explain the roles of, and the nature of cooperation between, the NDRC and the provinces in deriving electricity price adjustments; 2) explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves; and 3) comply with our repeated requests for electricity pricing information. In addition, the GOC failed to adequately explain or show via documentation how the increases/decreases in cost elements led to retail price increases/decreases with regards to Jiangsu province (which is where the respondent Both-Well is located). As stated in the *Preliminary Determination*, the GOC did not ask for additional time to gather and provide such information.

We also applied AFA in the selection of the benchmark for determining the benefit as a result of the GOC failing to provide 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.

We disagree with the GOC's arguments. As we explained in the *Preliminary Determination*, the GOC did not provide complete responses to Commerce's questions regarding the alleged provision of electricity for LTAR.[104] Specifically, we explained in the *Preliminary Determination* that the various questions asked of the GOC throughout the course of this investigation requested information needed to determine whether the provision of electricity by the GOC constituted a financial contribution within the meaning of section 771(5)(D) of the Act and whether such a provision was specific within the meaning of section 771(5A) of the Act.[105] We explained further that in order for Commerce to analyze the financial contribution and specificity of this particular program, it was necessary for the GOC to provide information regarding the roles of provinces, the NDRC, and any cooperation between the provinces and the

[102] The reference in the PDM to section 776(a)(1)(A) of the Act is a mistake; it should have referred to section 776(a)(2)(A) of the Act.
[103] *See* PDM, at 14.
[104] *Id.* at 11-14.
[105] *Id.*

NDRC in electricity price adjustments.[106] Moreover, in the *Preliminary Determination*, we explained that Commerce requested the information in order to determine the process by which electricity prices and price adjustments are derived, to identify entities that manage and impact price adjustment processes, and to examine cost elements included in the derivation of electricity prices in effect throughout China during the POI.[107] As we explained in the *Preliminary Determination*, the GOC did not provide all of 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.[108] As a result of the GOC's failure to cooperate by not providing the requested information, Commerce was unable to analyze the basis on which the electricity rates included in the electricity schedules submitted by the GOC were determined. Accordingly, 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 making an adverse inference, pursuant to section 776(b), Commerce identified the highest rates amongst these schedules for each reported electrical category and used those rates as the benchmarks in the benefits calculations.[109]

With respect to the GOC's claim in its case brief that it provided complete responses to Commerce's electricity-related questions, we disagree.

First, although the GOC stated in its questionnaire response that the NDRC no longer directs or determines electricity prices in Chinese provinces, this statement alone does not provide Commerce with an understanding of how or why the NDRC's role in pricing may have changed. Absent a detailed response to these questions, it is not possible for Commerce to find that the GOC provided a complete response.

Second, the GOC claims it provided the requested detail on how the suggested price reductions in the Appendix to Notice 748 were derived, however, the Appendix at issue simply lists the price reductions without any explanation of how those price reductions were derived, as requested in follow-up questions Commerce issued to the GOC.[110] This information is critical for determining the role of the NDRC in electricity pricing decisions.

Third, the GOC claims that Commerce continues to incorrectly conclude that the notices issued by the NDRC (*i.e.*, 748, 3105, and 3169) direct provinces to reduce prices by amounts specific to provinces and provide specific formulae by which price adjustments must be made. However, the GOC fails to mention that it did not provide any documentary evidence to suggest otherwise, in response to follow-up questions Commerce issued to the GOC on this matter.[111]

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[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] *Id.*
[110] *See* GOC's February 27, 2018, supplemental questionnaire response, at 8-16.
[111] *Id.*

Finally, regarding the GOC's claim that the Jiangsu province in 2016 did not follow the NDRC's suggested price reduction and instead made its own pricing decisions, the GOC provided no information to support this statement.

The requested information not provided by the GOC is key to our understanding of the NDRC's role in establishing, implementing, and enforcing electricity pricing at the local provincial level. Because the GOC did not provide the information requested, we continue to find that the record lacks the information necessary to conduct our analysis such that the application of facts available pursuant to section 776(a) of the Act is warranted. Furthermore, we continue to find that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. As a result, an adverse inference is warranted in selecting from the facts available under section 776(b) of the Act.

Therefore, consistent with the *Preliminary Determination*, we continue to 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. Given that the GOC also 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, we continue to find, consistent with the *Preliminary Determination*, that applying AFA in selecting the benchmark for determining the existence and amount of the benefit is warranted.

VII. RECOMMENDATION

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

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Agree Disagree

10/1/2018

X

Signed by: GARY TAVERMAN

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