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Washington, D.C. 20230

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Administrative Review
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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: Decision Memorandum for the Final Results of 2016 Countervailing Duty Administrative Review of High Pressure Steel Cylinders from the People's Republic of China

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I. Summary

There is one respondent in the 2016 administrative review of the countervailing duty (CVD) order on high pressure steel cylinders (steel cylinders) from the People's Republic of China (China): Beijing Tianhai Industry Co., Ltd. (BTIC). For these final results, we analyzed the case and rebuttal briefs submitted by interested parties in this administrative review. As a result of our analysis, we made certain changes to the *Preliminary Results* and determine that BTIC received a 25.57 percent *ad valorem* net countervailable subsidy rate during the period of review (POR).[1] We address the issues raised in the "Analysis of Comments" section below.

II. Background

On July 10, 2018, the Department of Commerce (Commerce) published the *Preliminary Results* for this review. We invited parties to comment on the *Preliminary Results*. On July 25, 2018, we received a timely supplemental questionnaire response from BTIC.[2] On August 23, 2018, we

[1] *See High Pressure Steel Cylinders from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2016*, 83 FR 31951 (July 10, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).
[2] *See* Letter from BTIC, "BTIC Supplemental Questionnaire Response: Fifth Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China (C-570-978)," July 25, 2018 (BTIC July 25, 2018 SQR).

received timely-filed case briefs from Norris Cylinder Company (the petitioner), the Government of the People's Republic of China (GOC), and BTIC.[3] We received rebuttal briefs from the petitioner and BTIC on September 6, 2018.[4] The petitioner and BTIC requested that Commerce conduct a hearing in this review on August 9, 2018.[5] On September 21, 2018, the petitioner and BTIC withdrew their hearing requests.[6] On November 6, 2018, we extended the period for issuing the final results to November 30, 2018.[7]

The "Subsidy Valuation Information" and "Analysis of Programs" sections, below, describe the subsidy programs and the methodologies used to calculate the subsidy rates for these final results. Additionally, the "Analysis of Comments" section, below, contains our analysis of the comments submitted by interested parties in their case and rebuttal briefs and Commerce's responses to these issues. Based on the comments received, we made certain modifications to the *Preliminary Results*.

Below is the complete list of the issues raised in this administrative review for which we received comments:

Comment 1: Whether to Include or Reject the Russian Benchmark Prices for the Provision of Seamless Tube Steel for LTAR
Comment 2: If Including the Russian Benchmark Prices, Whether to Use a Weighted-Average World Price to Calculate the Benchmark
Comment 3: Whether to Base Benchmark Prices for Billets and Seamless Tube Steel on a Basket HTS Provision
Comment 4: Whether to Average Three Datasets Rather than Two Datasets for the Benchmark for the Provision of Seamless Tube Steel for LTAR
Comment 5: Whether to Use the Petitioner's Ocean Freight Data
Comment 6: Whether to Change the Electricity Benchmark

[3] *See* Letter from the petitioner, "High Pressure Steel Cylinders from the People's Republic of China - Case Brief of Norris Cylinder Company," August 23, 2018 (Petitioner Case Brief); *see also* Letter from the GOC, "GOC Case Brief. Fifth Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China (C-570-978)," August 23, 2018; *see also* Letter from BTIC, "BTIC Administrative Case Brief: Fifth Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China (C-570-978)," August 23, 2018.
[4] *See* Letter from the petitioner, "High Pressure Steel Cylinders from the People's Republic of China – Rebuttal Brief of Norris Cylinder Company," September 6, 2018; *see also* Letter from BTIC, "BTIC Rebuttal Brief: Fifth Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China (C-570-978)," September 6, 2018.
[5] *See* Letter from the petitioner, "High Pressure Steel Cylinders from the People's Republic of China; Request for Hearing on Behalf of Petitioner Norris Cylinder Company," August 9, 2018; *see also* Letter from BTIC, "BTIC Request for Hearing: Fifth Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China (C-570-978)," August 9, 2018.
[6] *See* Letter from the petitioner, "High Pressure Steel Cylinders from the People's Republic of China; Withdrawal of Request for Hearing on Behalf of Norris Cylinder Company," August 21, 2018; *see also* Letter from BTIC, "BTIC's Withdrawal of Hearing Request: Fifth Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China (C-570-978)," August 21, 2018.
[7] *See* Commerce Memorandum, "High Pressure Steel Cylinders from the People's Republic of China: Extension of Deadline for Final Results of the Countervailing Duty Administrative Review; 2016," November 6, 2018.

Comment 7: Whether to Calculate Separate Subsidy Rates for High-Quality Chromium Molybdenum Alloy Steel Billets and Blooms and for Standard Commodity Steel Billets
Comment 8: Whether to Apply AFA to the Export Buyer's Credit
Comment 9: Whether Commerce Properly Applied the AFA Hierarchy to the Export Buyer's Credit
Comment 10: Whether to Use BTIC's Updated Spreadsheet to Calculate the Other Subsidies

III. Scope of the Order

The merchandise covered by this order is seamless steel cylinders designed for storage or transport of compressed or liquefied gas ("high pressure steel cylinders"). High pressure steel cylinders are fabricated of chrome alloy steel including, but not limited to, chromium-molybdenum steel or chromium magnesium steel, and have permanently impressed into the steel, either before or after importation, the symbol of a U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration ("DOT")-approved high pressure steel cylinder manufacturer, as well as an approved DOT type marking of DOT 3A, 3AX, 3AA, 3AAX, 3B, 3E, 3HT, 3T, or DOT-E (followed by a specific exemption number) in accordance with the requirements of sections 178.36 through 178.68 of Title 49 of the Code of Federal Regulations, or any subsequent amendments thereof. High pressure steel cylinders covered by this order have a water capacity up to 450 liters, and a gas capacity ranging from 8 to 702 cubic feet, regardless of corresponding service pressure levels and regardless of physical dimensions, finish or coatings.

Excluded from the scope of this order are high pressure steel cylinders manufactured to U-ISO-9809-1 and 2 specifications and permanently impressed with ISO or UN symbols. Also excluded from the order are acetylene cylinders, with or without internal porous mass, and permanently impressed with 8A or 8AL in accordance with DOT regulations.

Merchandise covered by the order is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under subheading 7311.00.00.30. Subject merchandise may also enter under HTSUS subheadings 7311.00.00.60 or 7311.00.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

IV. Use of Facts Otherwise Available and Adverse Inferences

Commerce relied on "facts otherwise available," including neutral facts available (FA) and adverse facts available (AFA), for several findings in the *Preliminary Results*. Commerce made certain changes to its use of AFA as applied in the *Preliminary Results*.[8] These changes are explained further in Comment 9 below.

[8] *See Preliminary Results* and accompanying PDM at 11-23.

V. Subsidies Valuation Information

A. Allocation Period

Commerce made no changes to the allocation period or the allocation methodology used in the *Preliminary Results*.[9]

B. Attribution of Subsidies

Commerce made no changes to the attribution methodologies used in the *Preliminary Results*.[10]

C. Denominators

In accordance with 19 CFR 351.525(b), Commerce considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales, or portions thereof. As a result of updated information received from BTIC, we revised certain sales values to calculate the subsidy rates in the final results of this review.[11] The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Final Results Calculation Memorandum," prepared for these final results of review.

VI. Benchmarks and Discount Rates

Except where noted below, Commerce made no changes to the interest rate benchmarks and discount rates used in the *Preliminary Results*.[12] Interested parties raised issues with respect to the calculation of the ocean freight benchmark and the benchmark used in the Provision of Electricity for Less Than Adequate Remuneration (LTAR). Consequently, we recalculated the ocean freight benchmark and the benchmark used in the Provision of Electricity for LTAR; *see* Comments 5 and 6 respectively below.

VII. Analysis of Programs

We made certain changes to our *Preliminary Results* with respect to the methodology used to calculate the subsidy rates for certain programs. For further details, *see* the specific program section below and the final results calculation memorandum.[13] For descriptions, analyses, and calculation methodologies for these programs, *see* the *Preliminary Results*. Except where noted below, no other issues were raised regarding these programs in the parties' case briefs.

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[9] *Id.* at 5.
[10] *Id.* at 5-6.
[11] *See* BTIC July 25, 2018 SQR at Exhibit S3-1.
[12] *See Preliminary Results* and accompanying PDM at 7-11.
[13] *See* Commerce Memorandum, "Calculations for the Final Results of Review; Beijing Tianhai Industry Co., Ltd.," issued concurrently with this memorandum (Final Results Calculation Memorandum).

A. Programs Determined to Be Countervailable

1. Pension Fund Grants

We made no changes to this program.[14] BTIC's final subsidy rate for this program is 0.37 percent *ad valorem*.

2. Provision of Hot-Rolled Steel for LTAR

We modified the benchmark we used to calculate the benefit under this program, which we address below under Comment 5. BTIC's final subsidy rate for this program is 0.02 percent *ad valorem*.

3. Provision of Seamless Tube Steel for LTAR

We modified the benchmark we used to calculate the benefit under this program, which we address below under Comment 5. BTIC's final subsidy rate for this program is 19.09 percent *ad valorem*.

4. Provision of Standard Commodity Steel Billets and Blooms, and High-Quality Chromium Molybdenum Alloy Steel Billets and Blooms for LTAR

We modified the benchmark we used to calculate the benefit under this program, which we address below under Comment 5. BTIC's final subsidy rate for this program is 0.41 percent *ad valorem*.

5. Provision of Electricity for LTAR

We modified the benchmark we used to calculate the benefit under this program, which we address below under Comment 6. BTIC's final subsidy rate for this program is 1.41 percent *ad valorem*.

6. Preferential Loans for SOEs

We made no changes to this program.[15] BTIC's final subsidy rate for this program is 1.53 percent *ad valorem*.

7. Export Credit from Export-Import Bank of China: Export Buyer's Credit

We modified the AFA subsidy rate used in this program, which we address below under Comment 9. BTIC's final subsidy rate for this program is 1.53 percent *ad valorem*.

[14] *See Preliminary Results* and accompanying PDM at 23.
[15] *Id.* at 28.

8. *Other Subsidy Programs*

The list of other subsidies below reflects changes resulting from a correction to our source material, which we address below under Comment 10.

	Program Name	**Recipient Company**	**Subsidy Rate**
1	Government Subsidies of Double Independent Enterprises	BTIC	0.08%
2	Energy Audit Award of Beijing Energy Conservation and Environmental Protection Center	BTIC	0.17%
3	Patent Funding of Chaoyang District	BTIC	0.03%
4	Short-Term Export Credit Insurance Premium Support Funds	BTIC	0.01%
5	Government Subsidies for Beijing's Foreign Trade and Economic Cooperation	BTIC	0.05%
6	The National Development and Reform Commission, The Withdrawal Subsidies of the Second Batch Polluting Enterprises Adjustment	BTIC	0.34%
7	Tianjin 8.12 Explosion Interest Subsidy	Tianjin Tianhai	0.05%
8	Tianjin 8.12 Explosion Infrastructure (Doors, Windows, Glass, *etc.*) Subsidies	Tianjin Tianhai	0.09%
9	Grants for Chief Technician Studio of the Trade Technician College from Beijing Human Resources and Social Security Bureau	Jingcheng Holding	0.01%
10	Incentives for Technical Innovation	Jingcheng Holding	0.01%
11	Industry Adjustment Funds Handed in by Beijing Switchgear Factory	Jingcheng Holding	0.07%
12	Refund of Land Use Right Assignment Fees from Finance Authority for the Relocation of Jingcheng Heavy Industry Co., Ltd.	Jingcheng Holding	0.09%
13	Refund of Land Use Right Assignment Fees for Beijing Switchgear Factory	Jingcheng Holding	0.08%
14	Refund of Land Use Right Assignment Fees for Factories Located at Chaoyang District	Jingcheng Holding	0.09%
15	Job Stabilization Subsidy	Langfang Tianhai	0.02%
16	Social Insurance Subsidies for SMEs that Recruit Graduates in the Period of Job-Hunting	Langfang Tianhai	0.02%

B. Programs Found to be Not Countervailable

We did not modify the list of programs found to be not countervailable.

1. *Service Charge for Tax Collection*
2. *Compensation for Demolition and Relocation Concerning Land No. 10*

C. Programs Determined Not to Confer a Measurable Benefit During the POR

We revised the list of other subsidies that do not confer a measurable benefit. Changes to the analysis for other subsidies are addressed in Comment 10.

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

Other Subsidies:

2. *1% VAT Reduction for Sale of Used Fixed Assets (Purchased Before 2009)*
3. *2016 Beijing Municipal Bureau of Finance Holiday Sympathy to Employees Who Live in Difficult Condition*
4. *A One-time Award to Beijing Institute of Technology*
5. *Advanced Unit Bonus of Standardization of Production Safety*
6. *Award for Beijing Industry and Trade Technician College*
7. *Award for National Unity from State-Owned Assets Supervision and Administration Commission*
8. *Award for Tax Sources of 2012*
9. *Awarding for Cleaner Production*
10. *Awards for Enterprises Ensuring Industry Growth in Beijing*
11. *Bankruptcy Fund Transferred by Beijing Insulation Materials Factory*
12. *Beijing Science and Technology Star Award*
13. *Best Organization Award of Zhenxing Cup - National Youth Skills Competition*
14. *Cleaner Production Assessment Expense Allowance*
15. *Coal-fired Boilers Improvement Grants Allocated by Environmental Sanitation Bureau*
16. *Compensation for Enterprise Development Fund*
17. *Compensation Fund for Termination Labor Relations for Beijing First Machine Tool Factory*
18. *Compensation Funds for Rearranged Workers of Beijing First Machine Tool Factory*
19. *Compensation Funds for Rearranged Workers Turned over by Beijing Switchgear Factory*
20. *Disabled Employment Subsidies*
21. *Discount Interest from Beijing Bureau of Promotion*
22. *Discount Interest Payments for Production Project of Automotive Aluminum Compound Cylinders*
23. *Employment Stabilization Subsidies of Pilot Enterprises*
24. *Employment Stabilization Subsidies*

25. *Energy Audit Award of Beijing Energy Conservation and Environmental Protection Center*
26. *Energy-Saving Subsidies*
27. *Enterprise Development Fund*
28. *Equipment Subsidy*
29. *Excellent Talents Training Subsidies from Municipal Organization Department*
30. *Finance Grants for Adjustment and Withdrawal of Enterprises in Disadvantages*
31. *Finance Grants for Bankruptcy of Subsidiaries*
32. *Financial Subsidy Income*
33. *First Secretary Living Allowance of State-Owned Assets Supervision and Administration Commission*
34. *Foreign Trading Development Fund*
35. *Fund of Implementing Intellectual Property Policy*
36. *Funds Allocated by Beijing Municipal Committee of the Communist Party of China*
37. *Funds for Bankruptcy*
38. *Funds from Labor Bureau*
39. *Funds from Social Security Center*
40. *Golden Sun Project Subsidies from Ministry of Finance*
41. *Golden Sun Project Subsidies from Municipal Finance Bureau*
42. *Government Subsidies of Anti-Dumping and Anti-Subsidy*
43. *Government Subsidies of Double Independent Enterprises*
44. *Government Subsidies of International Market Development of Small-and-Medium-Sized Enterprises and Double Independent Enterprises*
45. *Grants for Beijing Insulation Materials Factory*
46. *Hidden Dangers Rectification Fund*
47. *House Allowance for Vacating Houses*
48. *Housing Allowance Allocated by Bureau of Retired Veteran Cadres*
49. *Housing Subsidies for Electrical and Mechanical Research Institute Due to its Transformation*
50. *Housing subsidies for Nonstandard Apartments and Non-Matched Houses of Difficult Municipal Enterprise*
51. *Implementation Reward of Intellectual Property Policy*
52. *Incentive for HR Department*
53. *Incentive Funds of Eliminating Yellow-Label Vehicles*
54. *Industry Adjustment Fund for Beijing Forklift Factory*
55. *Industry Adjustment Fund for Beijing Heavy-Duty Electric Factory*
56. *Industry Adjustment Fund for Beijing Switchgear Factory*
57. *Industry Adjustment Fund for Beiren Group*
58. *Industry Adjustment Fund for Electric and Mechanical General Factory*
59. *Industry Adjustment Fund Transferred by Beijing Switchgear Factory*
60. *Industry Adjustment Fund Transferred by Beiren Group*
61. *Industry Adjustment Funds from Beijing Second Machine Tool Factory*
62. *Information Fees from Personnel Bureau*
63. *Information Fees of Profession Price from Labor Bureau*
64. *Innovation Awards from State-owned Assets Supervision and Administration Commission*
65. *Institute of Chinese Academy of Sciences (Science and Technology Project)*

66. *Interest Discount from Finance Bureau*
67. *Job-Subsidy for University Students*
68. *Labour Market Survey Expenditure Allocated by Beijing Labour and Social Security Bureau*
69. *Local Education Funds from Municipal Finance Bureau*
70. *Municipal-Level Senior Research Class Funds of Beijing Human Resources and Social Security Bureau (Jingcheng Environmental Protection Cultural and Creative Industry)*
71. *Pacesetter Incentive Payments of Municipal State-Owned Assets Supervision and Administration Commission*
72. *Patent Funding of Chaoyang District*
73. *Production Project Discount Interest Payments of Aluminum Liner*
74. *Project Special Funds from Ministry of Science and Technology*
75. *Public Finance Budget Funds*
76. *Refund of Land Use Right Assignment Fees for Beijing Electric Mechanical General Factory*
77. *Refund of Land Use Right Assignment Fees for Beijing Heavy Electric Machinery Factory*
78. *Refund of Land Use Right Assignment Fees for Beijing Switchgear Factory and Jingcheng Heavy Industry Co., Ltd.*
79. *Refund of Land Use Right Assignment Fees for Beiren Group*
80. *Relocation Funds for Veteran Cadres*
81. *Return of Enterprise Income Tax for Purchasing Equities of Beijing Huade Hydraulic Industrial Co., Ltd.*
82. *Returned Fund from Taxation Administration*
83. *Scientific Research Subsidy for 3D Printing Project*
84. *Service Charge for Tax Collection*
85. *Service Charge of Tax Collection from 2012-2014*
86. *Short-Term Export Credit Insurance Premium Support Funds*
87. *Special Fund from Finance Authorities*
88. *Special Fund Grants for Energy-Saving of Binhai New District*
89. *Special Funds for State Technology Project*
90. *Special Funds for Supporting Plan Project*
91. *Special Funds of Energy-Saving and Emission Reduction*
92. *Special Personnel and Labor Supporting Funds for Beijing Jingcheng Environment Protection Co, Ltd.*
93. *Special Subsidies for SMEs Development*
94. *Special Subsidies of Energy-Saving Development*
95. *Special-Purpose Bonus*
96. *Subsidies for Electrical and Mechanical Quality Monitoring Center*
97. *Subsidies for Science and Technology Innovation Projects of 2011 from Municipal Finance Bureau*
98. *Subsidies for Scrapped Vehicles*
99. *Subsidies of Guiding the Development of Energy Saving of Chaoyang District*
100. *Subsidy for Beijing Insulation Materials Factory from Organization Department*
101. *Supporting Fund for Talent*
102. *Supporting Funds for Small-and-Medium-Sized Enterprises*

103. *Survey Fee from Population and Family Planning Commission*
104. *Sympathy Money of Beijing Veteran Cadres Bureau for the 70th Anniversary of the Victory of the Anti-Japanese War*
105. *VAT Relief for Service Fees of Tax Rebate Software*
106. *VAT Subsidy Payments of Finance Bureau of Langfang Development Zone*
107. *Vocational Education and Preschool Education Subsidies for Subsidiaries*

D. Programs Determined to be Not Used During the POR

We did not modify the list of programs found to be not used during the POR.

1. *Provision of Land and/or Land Use Rights to SOEs at LTAR*
2. *"Two Free, Three Half" Program for Foreign-Invested Enterprises (FIEs)*
3. *Enterprise Income Tax Rate Reduction in the Tianjin Port Free Trade Zone*
4. *Subsidies Provided in the Tianjin Binhai New Area (TBNA) and the Tianjin Economic and Technological Development Area*
5. *Beijing Industrial Development Fund*
6. *Loan and Interest Forgiveness for SOEs*
7. *The State Key Technology Renovation Project Fund*
8. *Circular on Issuance of Foreign Trade Development Support Fund*
9. *Rebates for Export and Credit Insurance Fees*
10. *GOC and Sub-Central Grants, Loans, and Other Incentives for Development of Famous Brands and China Top World Brands*
11. *Preferential Lending to Steel Product Producers Under the Ninth Five-Year Plan*
12. *Treasury Bond Loans*
13. *Preferential Lending to Steel Cylinders Producers and Exporters Classified as "Honorable Enterprises"*
14. *Income Tax Reductions for Export-Oriented FIEs*
15. *Preferential Tax Programs for FIEs that are Engaged in Research and Development*
16. *Income Tax Reduction for FIEs that Reinvest Profits in Export-Oriented Enterprises*
17. *Local Income Tax Exemption and reduction Programs for "Productive" FIEs*
18. *Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment*
19. *VAT Refunds for FIEs Purchasing Domestically Produced Equipment*
20. *VAT Exemptions for Central Region*
21. *Provision of Welded Tube Steel for LTAR*
22. *Export Credit from Export-Import Bank of China: Export Sellers's Credit*

VIII. Analysis of Comments

Comment 1: Whether to Include or Reject the Russian Benchmark Prices for the Provision of Seamless Tube Steel for LTAR

Petitioner Comments

- Commerce should reject the Russian benchmark price data provided by BTIC and instead rely on the world export prices provided by the petitioner, because the Russian benchmark prices do not cover the same type of tubes that BTIC purchased.
- Under 19 CFR 351.511(a)(2)(ii), Commerce will "seek to measure the adequacy of remuneration by comparing the government prices to a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question."
- The quoted prices of the Russian benchmarks are Russian domestic prices, which would not be available for BTIC to purchase in China.

BTIC Rebuttal Comments

- There is no requirement that tier-two benchmark data cover every diameter that a respondent sells, and the petitioner cites no authority for this extreme position.
- In *RZBC Group Shareholding Co. v. United States*, the U.S. Court of International Trade (CIT) explained that while factors affecting comparability must be taken into account, the benchmark selected need not be entirely specific.[16]
- In the original investigation of this case, BTIC argued that Commerce should not use seamless tube pricing data from Iran and Italy, but rather, should only use Ukrainian pricing data because it was diameter-specific. Commerce ultimately refused to use the diameter-specific Ukrainian pricing data alone.
- The petitioner provides no evidence that prices from Russian producers and traders would not be available to Chinese importers.
- The petitioner cites no precedent that the use of the Russian benchmark data obtained from Metal Expert would be contrary to Commerce's regulations.
- The Russian benchmark prices were not "price quotes" but were actual prices and are exclusive of VAT.

Petitioner Rebuttal Comments

- BTIC's purchases of seamless tube steel do not correspond to the diameter of the pipe represented in the benchmark price data that BTIC offered.

Commerce's Position: With respect to the petitioner's argument that the Russian price data do not correspond to the diameter of the seamless tube steel that BTIC purchased, we disagree. The Russian price data do not need to cover all diameters of seamless tube steel purchased by

[16] *See RZBC Grp. Shareholding Co. v. United States*, Slip Op. 16-64 at 21 (CIT 2016), citing *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1273 (Fed. Cir. 2012).

BTIC,[17] and we do not require that benchmarks are identical to respondents' purchases in every respect, such as diameter. The CIT affirmed this position in *RZBC Group Shareholding Co. v. United States* and explained that while factors affecting comparability must be taken into account, the benchmark selected need not be entirely specific.[18] Likewise, in this proceeding's investigation, we rejected BTIC's argument that we should use only seamless tube pricing data that are diameter specific from Ukraine rather than benchmark data from Iran and Italy that are not diameter specific.[19] That determination was subsequently sustained by the CIT.[20]

We further disagree with the petitioner's argument that because the data are titled "Russia: Producers' and Traders' Domestic Prices" they do not satisfy 19 CFR 351.511(a)(2)(ii) and would not be available to purchasers in China.[21] Commerce typically considers third-country domestic prices to be available to purchasers on the world market and in the investigated country, unless there is evidence on the record for us to think otherwise.[22] For example, in *Softwood Lumber from Canada*, we used monthly delivered prices of logs in Washington as a benchmark and found that they were available to log purchasers in British Columbia.[23]

When Commerce has found a price to be not available to purchasers on the world market, it is usually due to a lack of relevant infrastructure or a geographic obstacle; the *Preamble* uses the example of Latin American electricity not being available in Europe.[24] In *Melamine from Trinidad and Tobago*, we found that U.S. natural gas was not available because there is no natural gas pipeline between the U.S. and Trinidad and Tobago, and in *Cold Rolled-Steel from Russia*, we found that no imported natural gas (which would represent a world market price) is

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[17] *See* Letter from BTIC, "BTIC Benchmark Submission: Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China (C-570-978)," June 4, 2018 at Exhibit 2 (BTIC Benchmark).
[18] *See RZBC Group Shareholding Co. v. United States*, Slip Op. 16-64 at 21.
[19] *See High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) and accompanying Issues and Decision Memorandum (IDM) at Comment 8.
[20] *See Beijing Tianhai Indus. Co. v. United States*, 52 F. Supp. 3d 1351, 1369 (CIT 2015) ("although Commerce must use benchmark prices for merchandise that is *comparable* to a respondent's purchases to satisfy the regulation, there is nothing that requires that it use prices for merchandise that are *identical* to a respondent's purchases") (emphasis in original), citing *Archer Daniels Midland Co. v. United States*, 968 F. Supp. 2d 1269, 1278 (CIT 2014) ("Commerce . . . is required only to select benchmarks that are comparable, not identical").
[21] *See* BTIC Benchmark at Exhibit 2.
[22] *See e.g., Biodiesel from the Republic of Indonesia: Final Affirmative Countervailing Duty Determination*, 83 FR 53471 (November 16, 2017) and accompanying IDM at Comments 6 and 7 (using prices published by the Malaysian Palm Oil Board and palm oil futures prices published by Bursa Malaysia Derivates, without discussing whether these prices were available for export).
[23] *See Certain Softwood Lumber Products from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 19657 (April 28, 2017) and accompanying PDM at 63, unchanged in *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) (*Softwood Lumber from Canada*), and accompanying IDM at Comment 47 ("19 CFR 351.511(a)(2)(ii) requires only that the world market price be available to 'purchasers in the country in question,' and does not require a specific demonstration that the mandatory respondents in particular would have made these world market purchases . . .").
[24] *See Countervailing Duties; Final Rule*, 69 FR 65348, 65377 (November 25, 1998) (*Preamble*).

available in Russia because all the natural gas pipelines in Russia are one-directional, outward.[25] In this case no such obstacle exists to prevent the export of seamless tube steel from Russia to China. Moreover, the record lacks any evidence that the Russian price data, identified as prices from Russian producers and traders, would not be available to Chinese importers. Therefore, we find that the Russian price data from Metal Expert provide a suitable source for calculating a tier-2 benchmark in accordance with 19 CFR 351.511(a)(2)(ii).

Comment 2: If Including the Russian Benchmark Prices, Whether to Use a Weighted-Average World Price to Calculate the Benchmark

Petitioner Comments

- If Commerce uses the Russian benchmark prices, it should weight average those prices with the UN Comtrade data to reflect world prices more accurately.
- Commerce revised its benchmark calculation from a simple average to a weighted average in *Citric Acid from China Remand*.[26]
- In *RZBC Group Shareholding Co. v. United States 2015*, the CIT stated that when Commerce has data points that can be weight averaged, Commerce should do so to achieve an accurate world market price.[27]

BTIC Rebuttal Comments

- The Russian benchmark price data on the record do not include quantities and, therefore, are not reported in a manner that is uniform to the UN Comtrade data, making true weight averaging impossible.
- The fact that the Russian benchmark prices represent different grades of seamless tubes comparable to those used by BTIC while UN Comtrade dataset represents a broad basket category of seamless tubes requires Commerce to simple average rather than weight average the datasets.
- In *Mechanical Tubing from China*, Commerce used a simple average of weightable and non-weightable datasets to construct a benchmark.[28]
- In *Wind Towers from China*, Commerce stated that when it does not have information on the record to weight average benchmark prices properly, the best methodology is to

[25] *See Melamine from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination*, 80 FR 68849 (November 6, 2015) (*Melamine from Trinidad and Tobago*) and accompanying IDM at 9; *see also Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016) (*Cold Rolled-Steel from Russia*) and accompanying IDM at Comment 5.

[26] *See RZBC Group Shareholding Co., Ltd., RZBC Co., Ltd., RZBC Imp. & Exp. Co., Ltd., and RZBC (Juxian) Co., Ltd. v. United States*, Slip Op. 15-83 (CIT 2015), "Final Results of Redetermination Pursuant to Court Remand," (December 3, 2015) (*Citric Acid from China Remand*).

[27] *See RZBC Group Shareholding Co. v. United States*, Slip Op. 15-83 (CIT 2015) (*RZBC Group Shareholding Co. v. United States 2015*).

[28] *See Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017) (*Mechanical Tubing from China*) and accompanying IDM at Comment 4.

calculate a simple average.[29] Commerce used the same methodology in *Mechanical Tubing from China* and *Tool Chests from China*.[30]
- Blending or weight averaging the disparate datasets in this case would yield a distorted or skewed result.
- Commerce used a weighted-average benchmark in *Citric Acid from China Remand* because simple averaging resulted in a distorted benchmark based on the unique facts of that case.[31]

Petitioner Rebuttal Comments

- Commerce should follow precedent set in *Citric Acid from China Remand* and simple average the Russian benchmark prices with the UN Comtrade data information, and then use the UN Comtrade data to weight the price in the overall calculation.
- On numerous occasions, Commerce explained that it prefers to use weighted averages when the parties report price and quantity in a uniform manner.
- Commerce weight averages benchmark data to achieve accurate world market prices whenever it has the requisite data points.

Commerce's Position: We agree with BTIC that we should continue to calculate a simple average of the petitioner's and BTIC's datasets. As an initial matter, and as we explained in *Mechanical Tubing from China*, "the Act and {Commerce's} regulations do not specify which approach to take when we derive an average for benchmarking purposes and that, by necessity, {Commerce} exercises discretion in determining an appropriate approach given the facts in any given case."[32] Here, unlike the UN Comtrade data submitted by the petitioner, the Metal Expert Russian price data provided by BTIC does not contain quantities; this makes a conventional weighted average calculation impossible. The petitioner advocates calculating a simple average of price quotes from the Metal Expert Russian price data provided by BTIC with the petitioner's UN Comtrade data from which the Russian prices have been extracted.[33] The resulting figure would then be reintegrated back into the UN Comtrade data and weight averaged with the rest of the UN Comtrade data. In *Citric Acid from China Remand*, we calculated a weighted average of simple and weighted-average datasets in a similar manner to this.[34] However, due to the unique facts of that case, the CIT found that not to do so would have created distorted results.

[29] *See Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from China*) and accompanying IDM at Comment 15.
[30] *Id.*; *see also Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56582 (November 29, 2017) (*Tool Chests from China*) and accompanying IDM at Comment 5; *see also Mechanical Tubing from China* at Comment 4.
[31] *See RZBC Group Shareholding Co. v. United States*, 100 F. Supp. 3d 1288, 1311 (CIT 2015) "When Commerce averaged the steam coal data, high prices from low quantity shipments swelled the benchmarks considerably. … In view of this distortion, Commerce should have addressed the choice before it."
[32] *See Mechanical Tubing from China* at Comment 4.
[33] *See* Petitioner Case Brief at 4-5.
[34] *See Citric Acid from China Remand* at 3, 5.

The *Citric Acid from China Remand* is an outlier regarding this issue. In more recent cases, Commerce typically calculates a simple average of weight-averaged and simple-averaged datasets submitted by interested parties, where such datasets are otherwise appropriate to use. For example, in *Tool Chests from China* and *Mechanical Tubing from China*, Commerce calculated a simple average of weighted and unweighted-datasets.[35] Further, Commerce has explicitly declined to calculate a weighted average of the LTAR benchmark sources in previous cases, such as *Mechanical Tubing from China*.[36] Therefore, in accordance with Commerce practice and 19 CFR 351.511(a)(2)(ii), we find that a simple average of the submitted benchmarks is the appropriate method to calculate the benchmarks using the datasets on the record, particularly given the fact that using a conventional weighted average would be impossible here, as discussed above.

Comment 3: Whether to Base Benchmark Prices for Billets and Seamless Tube Steel on a Basket HTS Provision

BTIC Comments

- Commerce should not use a basket HTS category to value billets and seamless tube steel because these categories are too broad and unspecific to produce an appropriate benchmark for these inputs.
- There is no evidence on the record that HTS subcategory 7304.59 covers the seamless tube steel used by BTIC.
- Section 771(5)(E)(iv) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.511(a)(2)(ii) have generally led Commerce to select the most product-specific benchmarks possible for LTAR program calculations.
- Commerce has previously rejected basket HTS categories in favor of more product-specific benchmarks in previous cases.
- Commerce should use the most specific benchmark source on the record for the seamless tube steel benchmark, which is the Metal Expert data submitted by BTIC. The benchmark data from Metal Expert is for the same grade and sizes that BTIC uses.
- The petitioner provided the surrogate value memorandum from the original antidumping duty investigation to support its use of HTS subcategory 7304.59 for seamless tube steel. However, the HTS provision used in that memorandum was 7304.59.3800.
- Commerce should reject UN Comtrade data for HTS 7224.90 because this data is not specific to BTIC's billets and encompasses a broad class of steel products, described as "Steel, alloy; semi-finished products."
- The term "semi-finished steel products" is a generic one that describes and encompasses several different grades of steel products, at different levels of finishing.
- The Metal Expert and Steelguru data proposed by BTIC are specific to billets.

Petitioner Rebuttal Comments

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[35] *See Tool Chests from China* at Comment 5; *see also Mechanical Tubing from China* at Comment 4.
[36] *See Mechanical Tubing from China* at Comment 4.

- Commerce should continue to use the UN Comtrade data as the benchmarks for billets and seamless tube steel.
- Commerce has used basket HTS provisions to measure the adequacy of remuneration and has rejected the arguments advanced by BTIC in multiple administrative reviews.
- In *Citric Acid from China AR12*, Commerce rejected arguments against using a six-digit basket HTS.[37]
- In accordance with Commerce precedent upheld by the CIT, the petitioner submitted total world export prices for HTS 7304.59, sourced from UN Comtrade data, which is comparable to BTIC's various tube purchases and covers all types of tubes purchased by BTIC.

BTIC Rebuttal Comment

- A review of all sub-categories under HTS 7304.59 reveals that this tariff provision includes tubes of various grades and types and every conceivable diameter, not just those quoted in the petitioner's brief, thus, it is inappropriate for benchmark purposes.

Commerce's Position: With respect to BTIC's assertions that the UN Comtrade data submitted by the petitioner is not usable because it is not specific to the inputs in question, we disagree. The petitioner provided monthly UN Comtrade data for quantity and value of world exports of HTS 7304.59 as a benchmark for the seamless tube steel and HTS 7224.90 for billets. Specifically, HTS code 7304 covers "Steel, alloy n.e.s. in heading no. 7304; (excluding cold-drawn or cold-rolled), tubes and pipes of circular cross-section," and HTS 7224 covers "steel alloy; semi-finished products."[38] As such, the UN Comtrade data provide export prices for all sizes of seamless tube steel and billets purchased by BTIC. Though the UN Comtrade data includes seamless tube steel sizes that were not used in the production of subject merchandise, the Metal Expert Russian prices for seamless tube steel also do not entirely correspond to the pipe used in the production of subject merchandise. Therefore, while the UN Comtrade prices are a somewhat broad benchmark for seamless tube steel, the Metal Expert Russian prices are a somewhat narrow and incomplete benchmark.

Despite BTIC's claim that the UN Comtrade benchmark is too broad, there is no record information that demonstrates that export data for HTS 7304.59 and 7224.90 are in any way inappropriate as benchmarks for billets and seamless tube steel inputs. Under 19 CFR 351.511(a)(2)(ii), "there is no requirement that the benchmark used in Commerce's LTAR analysis be identical to the good sold by the foreign government… In fact, the imposition of such a requirement would likely disqualify most, if not all, potential benchmarks under consideration in a LTAR analysis."[39] In other words, there is no requirement that the attributes of Commerce's benchmarks, such as pipe size, be identical to the respondent's input purchases; to the contrary,

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[37] *See Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid from China AR12*) and accompanying IDM at 87-91.
[38] *See* Letter from the petitioner, "Benchmark Data Submission of Petitioner Norris Cylinder Company," June 4, 2018 (Petitioner Benchmark) at 5.
[39] *See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009) and accompanying IDM at Comment 12.

such a requirement would detract from the calculation of a truly world market price. Further, we have previously used a six-digit HTS category as a benchmark. In *Citric Acid from China AR12*, we rejected arguments advocating an eight-digit HTS benchmark and upheld our use of a six-digit HTS benchmark.[40]

After reviewing the record and in consideration of the arguments raised by interested parties, we continue to find that the UN Comtrade data provided by the petitioner represents an appropriate benchmark source in this case for billets and seamless tube steel. Moreover, the respondent did not identify a compelling reason that we ought not to use the UN Comtrade data. Though imperfect, the UN Comtrade data helps us obtain the most robust world market price possible given the information available on the record. As such, we find that it is most appropriate to rely on all submitted datasets for billets and seamless tube steel, including UN Comtrade. While none of the datasets is ideal, they do not contain flaws or deficiencies so serious that any of them should be rejected in their entirety. Therefore, in accordance with 19 CFR 351.511(a)(2)(ii), we find that it is appropriate to calculate a simple average of UN Comtrade and Metal Expert price data for seamless tube steel and UN Comtrade, Metal Bulletin Research, Metal Expert, and Steelguru data for billets.

Comment 4: Whether to Average Three Datasets Rather than Two Datasets for the Benchmark for the Provision of Seamless Tube Steel for LTAR

BTIC Comments

- If Commerce continues to rely on UN Comtrade data for seamless tube steel, Commerce should average the sources as three datasets, not two – two from Metal Expert and one from UN Comtrade.
- Commerce's averaging methodology for developing the benchmark for the Provision of Seamless Tube Steel for LTAR unreasonably diluted the Metal Expert prices by not treating them as equal to the UN Comtrade data, which distorted the benchmark world price.
- Each of the prices from Metal Expert should have been counted as their own dataset, rather than combined as one, even though they were both from Russia.
- In the Provision of Seamless Tube Steel for LTAR, Commerce did not follow 19 CFR 351.511(a)(2)(ii) when averaging each price on the record together and treated this input benchmark different than the benchmarks for other inputs within this case.
- Commerce has averaged each benchmark price on the record for a particular input in many previous cases including *Wind Towers from China*, in which Commerce found each dataset within a source is its own dataset to be averaged.[41]

Petitioner Rebuttal Comments

- If Commerce continues to rely on the Metal Expert prices provided by BTIC, Commerce should not distort the average price by counting Russian data twice using a simple average.

[40] *See Citric Acid from China AR12* at 87-91.
[41] *See Wind Towers from China* at Comment 15.

Commerce's Position: We agree with the petitioner that we should continue to consider the Metal Expert Russian price data provided by BTIC as one dataset. BTIC claims that in *Wind Towers from China*, we considered multiple datasets from a single source as multiple datasets in our simple-average calculation, and we should do likewise in this review.[42] However, unlike this instance, those datasets were for different countries from the same source. In this review, BTIC submitted its proposed benchmark as one dataset from one source, Metal Expert, from one country, Russia, which covered different ranges of seamless tube steel, 15-50 mm and 57-159 mm.[43] The presence of multiple variables in a dataset, such as size ranges, does not necessarily require each variable to have its own separate dataset. The UN Comtrade data that the petitioner submitted could also potentially be disaggregated.[44] It includes seamless tube steel of different sizes from different countries, yet it was also submitted as one dataset.[45] Commerce has previously used benchmark data incorporating various sizes and countries.[46] Thus, there is no compelling argument to disaggregate the Russian benchmark dataset because disaggregating it will distort our simple average calculation. Further, we determine that the Russian benchmark should continue as one dataset to keep it on the same terms as the UN Comtrade dataset because both datasets include seamless tube steel of different sizes.

Comment 5: Whether to Use the Petitioner's Ocean Freight Data

BTIC Comments

- Commerce should disregard certain ocean freight data that the petitioner submitted because this data is an estimate and does not represent actual pricing.
- Commerce should not use Maersk's 2016 figures for January, February, March, April, May, June, July, November, and December or producer price index (PPI) figures because there is no source data from Maersk (except for Los Angeles to Shanghai, for August through December 2016) and these are estimates. Instead, for these nine months, Commerce should use ocean freight data from Descartes.

Petitioner's Rebuttal Comments

- Commerce should continue to use the petitioner's ocean freight data.
- The petitioner supplied all information available using Commerce's standard methodology. The petitioner used Maersk's international shipping quotes where the Maersk website provided such information and for missing months, the petitioner used an international freight shipping specific PPI to fill in the gaps for the missing months. Commerce has consistently accepted this methodology in the past.

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[42] *Id.*
[43] *See* BTIC Benchmark at Exhibit 2.
[44] *See* Petitioner Benchmark at Exhibit 1.
[45] *Id.*
[46] *See Tool Chests from China* at Comments 5 and 6.

Commerce's Position: Both the Maersk Shipping Line and Descartes data sources reasonably reflect market prices. However, we are using Maersk's 2016 data from August through December, which was obtained from actual price quotes, rather than the 2016 Maersk data from January through July, which the petitioner developed using a PPI-derived calculation.[47] Accordingly, for purposes of these final results, we are using a simple average of the two commercially available world market prices (*i.e.*, Descartes and Maersk) on the record of this administrative review, consistent with 19 CFR 351.511(a)(2)(ii), during POR months August through December.[48] For the other seven POR months, we have relied only on Descartes. This is consistent with *Tool Chests from China*, in which we used the same methodology to calculate ocean freight.[49]

Comment 6: Whether to Change the Electricity Benchmark

BTIC Comments

- Commerce should revise its benchmark for the Provision of Electricity for LTAR.
- Commerce mis-categorized Zhejiang Province's electricity tariff rates resulting in an incorrect and inflated benefit.
- The placement of the "high price" Zhejiang Province category in the normal benchmark category was specifically rejected by Commerce in both *Tool Chests from China* and *Aluminum Foil from China*.[50]
- In *Tool Chests from China*, Commerce noted that "{w}ith respect to the Zhejiang schedule, the usage category translated as "High" was translated as "Peak" for the other schedules, which can be seen by comparing the Chinese characters from the original schedules… {s}imilarly, the usage category translated as "Peak" in the Zhejiang schedule was translated as "Pinnacle" for the other schedules."[51]
- The Zhejiang Province electricity tariff schedule does not contain any category named "normal." Of the four categories in the Zhejiang Province electricity tariff schedule, the only category that could possibly be interpreted as the "normal" category is the "electricity degree price" category, which was used as the normal category in *Tool Chests from China* and *Aluminum Foil from China*.
- Commerce should revise its electricity benchmark to use a normal rate of 0.6966 from Zhejiang Province, peak rate of 1.1002 from Jiangsu Province, and a high peak rate of 1.1146 from Zhejiang Province.

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[47] *See* Petitioner Benchmark at Exhibits 6 and 7. Maersk price quotes were also not available for November and December of 2016 in all quoted routes except for Los Angeles to Shanghai, which was available from August through December 2016.
[48] *See TMK IPSCO v. United States*, 222 F. Supp. 3d 1306, 1319-1321 (CIT 2017) (Sustaining Commerce's decision to use an average of two freight quotes).
[49] *See Tool Chests from China* at Comment 7.
[50] *Id.* at Comment 10; *see also Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018) (*Aluminum Foil from China*) and accompanying IDM at Comment 22.
[51] *See Tool Chests from China* at Comment 10.

Commerce's Position: The Zhejiang Province schedule lists electricity rates in four categories: "Electricity Degree Price," "Peak Price," "High Price," and "Low Price."[52] In the *Preliminary Results*, we used what was labelled in the Zhejiang Province electricity schedule as "Low" and "Peak" prices as the valley and peak prices, respectively, of our benchmark prices. Because Zhejiang Province does not identify a price labeled as "Normal," for the *Preliminary Results* we used what Zhejiang Province labelled as the "High" price as the normal price in our benchmark calculations. Commerce previously used Zhejiang's "Electricity Degree price" as the normal price in *Aluminum Foil from China*.[53] Additionally, we observed that the Electricity Degree price is numerically between the low and high prices, where one would expect the normal price to be located.[54] Therefore, we are using the "Electricity Degree price" as the normal price for these final results in accordance with prior Commerce practice. However, we intend to request more information about this issue in future proceedings.

Finally, for determining the existence and amount of the benefit, Commerce continues to apply AFA to this program in selecting the highest electricity tariff rate for each price category from China's various electricity tariff schedules.[55] We disagree with BTIC that the revised normal rate of 0.6966 from the Zhejiang schedule is the highest normal rate in the large industrial category; the highest normal rate for this category is now 0.7402 from the Shenzhen 1/1/16-5/31/16 schedule.[56] Though covering half of the year, it is the highest normal rate in accordance with our AFA methodology and, therefore, the appropriate benchmark rate. The other changes identified above affected the highest electricity tariff rate in several other price categories. For a description of these effects, please see the "Final Results Calculation Memorandum," prepared for these final results.

Comment 7: Whether to Calculate Separate Subsidy Rates for High-Quality Chromium Molybdenum Alloy Steel Billets and Blooms and for Standard Commodity Steel Billets

Petitioner Comments

- Commerce should calculate separate benchmarks for standard commodity steel billets (standard billets) and for high-quality chromium molybdenum alloy steel billets and blooms (CrMo billets).
- Commerce has benchmark information on the record for two separate and distinct programs.

[52] *See* GOC December 27, 2017 IQR at Exhibit II-D-4-Q.
[53] *See Aluminum Foil from China* at Comment 22.
[54] *See* GOC December 27, 2017 IQR at Exhibit II-D-4-Q.
[55] *See Preliminary Results* and accompanying PDM at 13-15.
[56] *See* Final Results Calculation Memorandum at Attachment 2.

- In the original investigation, the petitioner alleged these items as two separate programs to ensure an accurate calculation of the subsidy rates.
- CrMo billets are of much higher quality and are widely used in the production of subject merchandise, whereas standard billets are of lower quality and cannot be used in producing steel cylinders that can safely withstand the requisite high pressures.

BTIC Rebuttal Comments

- The petitioner has not identified any factual or evidentiary circumstance that is different in this review as compared to the investigation.
- The investigation involved this same program, and BTIC reported both types of billets separately in both proceedings. Commerce expressly determined that a single benchmark was appropriate in the original investigation.
- Commerce should continue to use a single benchmark.

Commerce's Position: In the original investigation of *Steel Cylinders from China*, the petitioner alleged the Provision of Standard Commodity Steel Billets and Blooms, and the Provision of High-Quality Chromium Molybdenum Alloy Steel Billets and Blooms for LTAR as two separate programs in the petition. We initiated our investigation on these two programs separately and sent initial questionnaires on these programs separately. We then combined these two programs in the *Preliminary Determination* of the original investigation because the GOC did not maintain separate records for those inputs and we could not locate separate benchmark prices for CrMo billets.[57] In this administrative review, we have continued to address the Provision of Standard Commodity Steel Billets and Blooms and High-Quality Chromium Molybdenum Alloy Steel Billets and Blooms for LTAR as one program and issued the initial questionnaire and the *Preliminary Results* addressing the provision of billets as one program.

Regarding the petitioner's claim that chromium molybdenum billets and standard billets should be treated as separate programs due to the chromium molybdenum billets' superior quality and degree of use in the production of subject merchandise, we disagree.[58] Although the petitioner argues that the qualitative differences of the two inputs is such that the two inputs should be treated as two separate programs, the petitioner has not relied on any record evidence to substantiate its claim.[59] As a result, the record is silent regarding whether the differences in quality and use alleged by the petitioner are accurate, and in the absence of any such evidence we see no reason to deviate from the methodology set out in the prior segment of this proceeding. Therefore, because the petitioner's claim was not substantiated with record evidence, we have not treated these inputs in a different manner than we did in the investigation.

We further note that, with respect to our conduct of this review, we composed our questionnaire premised upon the treatment of the provision of billets as one program, and we received responses that, likewise, presented this to us as one program. Neither party requested or

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[57] *See High Pressure Steel Cylinders from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 76 FR 64301, 64305 (October 18, 2011).
[58] *See* Petitioner Case Brief at 5-6.
[59] *Id.*

submitted comments on potentially treating the provision of two different types of billets as two separate programs until after the *Preliminary Results*. Thus, the questionnaires, questionnaire responses, benchmark information, and other documents necessary to the administration of this proceeding have approached this as one program. At this stage in the proceeding, absent record evidence to substantiate the petitioner's claim, we have determined to maintain this approach.

Comment 8: Whether to Apply AFA to the Export Buyer's Credit Program

GOC and BTIC Comments

- Commerce should change its Export Buyer's Credit determination.
- BTIC's customers did not use this program.
- Commerce's application of AFA to the Export Buyer's Credit program is unlawful.
- BTIC's declarations from all its U.S. customers demonstrate that BTIC did not use this program. Commerce used the same type of evidence in *Solar Panels from China AR13* to establish the non-use of Export Buyer's Credit.[60]
- Any failure of the GOC to provide information pertains only to countervailability and not to use.
- In *Pistachios from Iran*, Commerce found that if record information indicates that the respondent did not use the program, Commerce will find the program was not used, regardless of whether the foreign government participated to the best of its ability.[61]
- In *Fine Furniture 2012*, the CIT established that the GOC and a respondent firm should not be treated as a joint entity in situations where the respondent is cooperative, and the government is non-cooperative. Though permissible under the Act, in such situations the use of AFA "is disfavored and should not be employed when facts not collaterally adverse to a cooperative party are available."[62]
- In *Changzhou Trina Solar Energy Co.*, the CIT established that it is inappropriate for Commerce to apply AFA to deter the government's non-cooperation when relevant evidence exists elsewhere on the record.[63]
- There is enough information available to determine usage. The GOC's failure to provide certain information is no different than the GOC's failure to provide information regarding certain grant programs.
- Usage could still be determined by the GOC's questionnaire response, review of the Export-Import Bank of China's (China Ex-Im Bank) computer systems, and declarations of non-use from BTIC's customers.

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[60] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 46904 (July 19, 2016) (*Solar Panels from China AR13*) and accompanying IDM at Comment 1.

[61] *See Countervailing Duty New Shipper Review: Certain In-shell Roasted Pistachios from the Islamic Republic of Iran*, 73 FR 9993 (February 25, 2008) (*Pistachios from Iran*) and accompanying IDM at Comment 2; *see also Final Results of Countervailing Duty Administrative Review: Certain In-shell Roasted Pistachios from the Islamic Republic of Iran*, 71 FR 27682 (May 12, 2006); *see also Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) and accompanying IDM at Comment 6.

[62] *See Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254 (CIT 2012) (*Fine Furniture 2012*).

[63] *See Changzhou Trina Solar Energy Co. v. United States*, Slip Op. 17-106 at 9 (CIT 2017) (*Changzhou Trina Solar Energy Co.*).

Petitioner Rebuttal Comments

- Commerce should continue to apply AFA to the Export Buyer's Credit.
- The GOC has repeatedly failed to provide Commerce with the requested information.
- Under sections 776(a)(2)(A) and (2)(C) of the Act, Commerce may use facts otherwise available when an interested party withholds information requested by Commerce or significantly impedes a proceeding.
- In *Solar Panels from China AR15,* and on other occasions, Commerce stated that absent the requested information, claims regarding non-use are not verifiable and without an understanding of the involvement of third-party banks, respondent companies' claims are not verifiable.[64]
- The GOC's questionnaire responses are insufficient evidence of non-use.
- A review of the China Ex-Im Bank's computer system would be insufficient to verify non-use. The China Ex-Im Bank has a history of not providing full information to Commerce during verification.
- In *Solar Panels from China AR15,* the respondent provided declarations from affiliated and unaffiliated U.S. customers that they received no funding from the China Ex-Im Bank. Commerce determined that "absent the requested information the GOC's and respondent company's claims of non-use of this program are not verifiable.'"[65]
- Declarations by BTIC's customers are insufficient to verify non-use.
- The GOC and BTIC rely on outdated precedent to support their positions.
- On appeal in *Fine Furniture 2014*, the Court of Appeals for the Federal Circuit affirmed that a CVD rate for a cooperating importer could be based on adverse inferences drawn against a non-cooperating foreign government.[66]
- Commerce did not claim in its *Preliminary Results* that its application of AFA was meant solely to deter the GOC's non-cooperation. Commerce explained that without information from the GOC regarding the program, it is impossible to verify claims of non-use.

Commerce's Position: For these final results, we continue to find that the record does not support finding non-use of the Export Buyer's Credit program for BTIC. In the current review and in other proceedings in which we have examined this program, we have found that the China Ex-Im Bank, as the lender, is the primary entity that possesses the supporting information and documentation necessary for us to fully understand the operation of the program, which is prerequisite to our ability to verify the accuracy of the responding companies' claims of non-use of this program.[67] We find that the GOC has not provided the requested information and documentation for us to develop a complete understanding of this program, *e.g.*, the application process, internal guidelines and rules governing the program, interest rates used during the POR,

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[64] *See Solar Panels from China AR15* at 23-24.
[65] *Id.* at 16.
[66] *See Fine Furniture (Shanghai) Ltd v. United States*, 748 F.3d 1365, 1373 (Fed. Cir. 2014) (*Fine Furniture 2014*).
[67] *See, e.g., 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 at Comment 6.

and whether the China Ex-Im Bank uses third-party banks to disburse/settle export buyer's credits.[68] Such information is crucial to our understanding of the administration of this program and how its credits flow to and from foreign banks and the China Ex-Im Bank. Absent the requested information, the GOC's and the respondent company's claims regarding non-use are not verifiable. Moreover, without an understanding of the involvement of third-party banks, the respondent company's (and their customers') claims are also not verifiable.

With respect to arguments that AFA should not be applied to this program, we continue to find that the GOC withheld necessary information that was requested and significantly impeded this proceeding. Thus, we must rely on facts otherwise available in issuing these final results, pursuant to sections 776(a)(2)(A) and (C) of the Act.[69] Moreover, we determine that the GOC failed to cooperate to the best of its ability to comply with our request for information. Specifically, the GOC withheld information that was reasonably available to it. As such, we find that an adverse inference is warranted in the selection of facts available, pursuant to section 776(b) of the Act. As AFA, we continue to determine that this program provides a financial contribution, is specific, and provides a benefit within the meaning of sections 771(5)(D), 771(5A), and 771(5)(E), respectively, of the Act.[70]

Furthermore, we note that we are not finding the respondent's customers' declarations of non-use to be unreliable because we declined to verify them. Rather, we find the respondent's customers' declarations of non-use to be unverifiable because, without a complete understanding of the operation of the program, which could only be achieved through a complete response by the GOC to our questions on this program, verification of the respondent's customer's declarations of non-use would be meaningless.[71]

In response to BTIC's argument that the declarations from customers claiming non-use of the program are sufficient to establish non-use, similar to documents provided in *Solar Panels from China 2013*, we find that the facts of this case are different. In this review, we are unable to verify the accuracy of these documents because the primary entity that possesses such supporting records is the China Ex-Im Bank. Further, we now have information on the record that demonstrates that the GOC updated certain measures of the program, but the GOC refused to provide the updated measures.[72] Because the GOC withheld critical information regarding this program, we are unable to determine how the program now operates, and, thus, we cannot verify BTIC's declarations as submitted.[73]

The GOC argues that any failure of theirs to provide information pertains only to countervailability of the Export Buyer's Credit program and not the question of use or non-use.

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[68] *See Preliminary Results* and accompanying PDM at 15-16.
[69] *Id.* at 16.
[70] *Id.* at 28.
[71] *See Aluminum Foil from China* at Comment 6.
[72] *See* Letter from the GOC, "GOC Third Supplemental Questionnaire Response: Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China. C-570-978," June 5, 2018 at 1-2.
[73] *See e.g. Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017) and accompanying IDM at Comment 17.

We disagree with the GOC. Our complete understanding of the operation of this program is a prerequisite to our reliance on the information provided by the BTIC regarding non-use. Therefore, without the necessary information that we requested from the GOC, the information provided by BTIC is incomplete for reaching a determination of non-use.[74] Accordingly, information regarding the operation of this program and the respondent's usage would come from the GOC.

The GOC and BTIC cite *Pistachios from Iran*, which dates from 2008, to support its argument that if record evidence indicates that a respondent did not use a program, Commerce should find non-use regardless of whether the foreign government cooperated.[75] However, in *Fine Furniture 2014*, the U.S. Court of Appeals for the Federal Circuit (CAFC) affirmed that a CVD rate for a cooperating respondent could be based on adverse inferences drawn against a non-cooperating foreign government.[76] The CAFC affirmed that certain information can be provided only by the government and that Commerce can take an action that adversely affects a respondent if the government fails to provide requested information:

> Fine Furniture is a company within the Country of China, benefitting directly from subsidies the {GOC} may be providing, even if not intending to use such subsidy for anticompetitive purposes. Therefore, a remedy that collaterally reaches Fine Furniture has the potential to encourage the {GOC} to cooperate so as not to hurt its overall industry. Unlike in *SKF*, Commerce in this case did not choose the adverse rate to punish the cooperating plaintiff, but rather to provide a remedy for the {GOC's} failure to cooperate.[77]

Additionally, the CAFC held that:

> The purpose of {section 776}(b) {of the Act}, according to the {SAA}, which 'shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the {URAA},' 19 U.S.C. 3512(d), is to encourage future cooperation by 'ensur{ing} that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully'… Additionally by authorizing Commerce to provide a reasonable estimate based on the best facts available, accompanied by a reasonable adverse inference used in place of missing information, this statute provides a mechanism for remedying sales at less than fair value to aid in the protection of U.S. industry . . . ."[78]

[74] *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 IDM at Comment 2 (concluding that "without the GOC's necessary information, the information provided by the respondent companies is incomplete for reaching a determination of non-use.").
[75] *See Pistachios from Iran* at Comment 2.
[76] *See Fine Furniture 2014*, 748 F.3d at 1373.
[77] *Id*.
[78] *Id.*

Therefore, in making our determination, on the basis of AFA, that BTIC used the Export Buyer's Credit Program, we have not relied on BTIC's customers' declarations of claimed non-usage submitted by BTIC because the GOC declined to provide information that would enable Commerce to understand the operation of the program after the 2013 amendments to the program. Instead, we continue to determine usage of this program based on AFA and to find that the collateral impact on BTIC of our application of AFA based on the GOC's failure to cooperate is consistent with section 776(b) the Act and CAFC precedent.

Comment 9: Whether Commerce Properly Applied the AFA Hierarchy to the Export Buyer's Credit Program

GOC and BTIC Comments

- If AFA is found appropriate in this circumstance, the 10.54 percent rate that Commerce applied to this program cannot be corroborated and is unreasonable.
- Commerce used the incorrect AFA rate and AFA rate hierarchy step.
- Commerce has established a different AFA rate selection hierarchy for administrative reviews, than for investigations, in which Commerce applies step two in the hierarchy pursuant to section 776(d) of the Act. Step two in a review uses a rate from a similar program in any segment of the same proceeding, in this case, another loan program examined under this CVD order.
- Commerce has used step two in every other administrative review of a CVD order covering China that involves the application of AFA to the Export Buyer's Credit.
- If Commerce properly followed its AFA hierarchy for administrative reviews it would use the rate from Preferential Loans for SOEs from this proceeding, which is 1.53 percent.

GOC Comment

- The 10.54 percent AFA rate is unreasonable because it is mathematically impossible for a U.S. company to receive a U.S. dollar loan under this program and so receive an *ad valorem* rate that is higher than the U.S. dollar benchmark interest rate in this case, *i.e.*, 0.56 percent. Thus, 0.56 percent is the cap of liability for this program, just as a there is a 25 percent cap on the countervailable subsidy rate applied to income tax programs in the AFA context.

Petitioner Rebuttal Comments

- Commerce selected the correct AFA rate and should continue to apply the 10.54 percent AFA rate to the Export Buyer's Credit.
- Step two is not the correct step of the AFA hierarchy to apply because there is no non-*de minimis* rate calculated for a cooperating company for a similar program within any segment of this proceeding.
- Preferential Loans for SOEs and the Export Buyer's Credit are dissimilar because, while they are both loans, the Export Buyer's Credit provides loans to foreign customers of BTIC while Preferential Loans for SOEs are paid directly to BTIC.

- Without verifiable information from the GOC or BTIC regarding the Export Buyer's Credit, Commerce is unable adequately to consider whether this program is similar to another program and must rely on the best information available regarding similar programs pertaining to China.

Commerce's Position: We recognize that the AFA hierarchy for administrative reviews differs from the AFA hierarchy for investigations, and that we inadvertently relied on the investigation AFA hierarchy for the *Preliminary Results*. Section 776(d)(1)(A)(i) and (ii) of the Act provides the statutory basis for Commerce's AFA hierarchies. It states that in a CVD case Commerce will "use a countervailable subsidy rate applied for the same or similar program in a countervailing duty 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 the administering authority considers reasonable to use." In applying this section of the Act, we have distinguished between the AFA hierarchy for administrative reviews and for investigations and provided further detail on their respective steps.[79] In *Solar Panels from China AR15*, we stated:

> When selecting AFA rates for an administrative review, we first determine if there is an identical program from any segment of the proceeding and use the highest calculated rate for the identical program (excluding *de minimis* rates). If no such identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) within the same proceeding and apply the highest calculated rate for the similar/comparable program, excluding *de minimis* rates. If no such similar program exists within the same proceeding, we then determine if there is an identical or similar/comparable program (based on the treatment of the benefit) in another countervailing duty proceeding involving the same country and apply the highest calculated rate, excluding *de minimis* rates. When there is no comparable program, we apply the highest calculated rate from any non-company specific program in any CVD case involving the same country, but we do not use a rate from a program if the industry in the proceeding cannot use that program.[80]

Applying the AFA hierarchy to this proceeding, we determine that there are no rates calculated for the Export Buyer's Credit in any segment of this proceeding. Accordingly, we proceed to the second step in which we select a calculated non-*de minimis* rate for a similar program in the same proceeding. We observe that we have calculated a subsidy rate of 1.53 percent for the Preferential Loans for SOEs program. Further, it is similar to the Export Buyer's Credit in that both programs are loan programs sharing the same type of benefit. Regarding the petitioner's claim that we should use step three of the AFA hierarchy because Preferential Loans for SOEs is not similar to the Export Buyer's Credit, we disagree. Commerce has previously determined that programs were similar to the Export Buyer's Credit based upon the comparison programs being loan programs.[81] Therefore, because Preferential Loans for SOEs and the Export Buyer's Credit

[79] *See, e.g., Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 26954 (June 11, 2018) and accompanying IDM at 5 (*Chlorinated Isocyanurates from China AR15*); *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-74 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate"); *see also Solar Panels from China AR15* at 7.
[80] *See Solar Panels from China AR15* at 25.
[81] *Id.* at 26; *see also Chlorinated Isocyanurates from China AR15* at 12.

are both loan programs, they are similar, and thus, step two of the AFA hierarchy for administrative reviews constitutes the appropriate step in this instance.

Further, we disagree with the petitioner's claim that we must use step three rather than step two of the AFA hierarchy because there is no verifiable information on the Export Buyer's Credit. Regardless of whether step two or step three is used, the program for which we are seeking an AFA rate, the Export Buyer's Credit, remains the same. The petitioner does not demonstrate how using a comparison program from another proceeding would increase the relevance. Moreover, the petitioner's reliance on *Corrosion-Resistant Steel from China*, in which Commerce went outside the proceeding to obtain a calculated AFA rate, is misplaced, because that was an investigation, and Commerce followed the hierarchy applicable to investigations.

Finally, we disagree with the GOC's claim that 0.56 percent is the cap of liability for this program. The GOC's argument in this regard is dependent upon an understanding of the program that we do not possess, due to the GOC's failure to provide the requested information. As such, the record does not contain information to support the GOC's suggested calculation methodology. Therefore, for purposes of these final results, we are applying a rate of 1.53 percent as an AFA subsidy rate for this program, which we obtained from a similar program in the same proceeding in accordance with Section 776(d) of the Act.

Comment 10: Whether to Use BTIC's Updated Spreadsheet to Calculate the Other Subsidies

BTIC Comment

- Commerce should use the updated Excel spreadsheet that BTIC submitted in its first supplemental questionnaire response to calculate the rates resulting from other subsidies.

Commerce's Position: We agree with BTIC that the revised Excel version of the Other Subsidies Chart submitted in their first supplemental questionnaire response is the appropriate and relevant data for the calculation of the subsidy rates for other subsidies received by Jincheng Holding.[82] Accordingly, for the final results we have updated the calculations of the other subsidies received by Jincheng Holding with these data.[83]

[82] *See* Letter from BTIC, "BTIC First Supplemental Response: Fifth Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China (C-570-978)," June 6, 2018 at 18-19 and Exhibit S1.17.
[83] *See* Final Results Calculation Memorandum at Attachment 2.

IX. Conclusion

Based on our analysis, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this administrative review in the *Federal Register*.

☒ ☐

_________ __________
Agree Disagree

11/30/2018

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