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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Certain New Pneumatic Off-the-Road Tires (OTR Tires) from the People's Republic of China

I. Summary

On December 17, 2007, the Department of Commerce (the Department) issued the Preliminary Determination in this investigation.[1] Subsequent to the Preliminary Determination, the Department issued two memoranda containing our preliminary analysis of new subsidy allegations. See Post-Preliminary Analysis and CIO Memorandum.

Parties submitted two sets of case briefs and rebuttal briefs; one set was in response to the Preliminary Determination and the Post-Preliminary Analysis while the second set was in response to the CIO Memorandum. Briefs were submitted by Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied and Industrial Service Workers International Union, AFL-CIO-CLC (collectively, Petitioners), Bridgestone Americas Holding, Inc. and its subsidiary, Bridgestone Firestone North America Tire, LLC (a domestic interested party, collectively referred to as Bridgestone), the Government of The People's Republic of China (GOC), Guizhou Tire Co., Ltd. (GTC), Hebei Starbright Tire Co., Ltd. (Starbright), and Tianjin United Tire & Rubber International Co., Ltd. (TUTRIC) (either referred to separately by name or collectively as Respondents).

The Subsidies Valuation and the Analysis of Programs sections below set forth our determinations with respect to the programs under investigation as well as the methodologies applied in analyzing these programs. We have also analyzed the comments submitted by parties in their case and

[1] For purposes of this Issues and Decision Memorandum, we are using short cites to various references, including administrative determinations, court cases, acronyms, and documents submitted and issued during the course of this proceeding, throughout the document. A table of authorities, which includes these short cites as well as a guide to the acronyms, is appended to this memorandum.

rebuttal briefs in the Analysis of Comments section below. The following is a list of issues raised by the interested parties in their briefs:

A. General Issues including Applicability of the CVD Law to the PRC, Cut-Off Date, and Double Remedies

Comment A.1: Application of the CVD Law to Non-Market Economies, including the PRC
Comment A.2: Application of the CVD Law to the PRC is Consistent with the APA
Comment A.3: Whether Simultaneous Application of CVD Law in this Investigation and NME Methodology in the Parallel Antidumping Investigation Imposes Double Trade Remedies
Comment A.4: Whether December 11, 2001 is the Appropriate Date from Which the Department May Measure Subsidies in the PRC

B. Attribution of Subsidies and Cross-Ownership

Comment B.1: Attribution of Subsidies to, and Cross-Ownership of, TUTRIC/DCB

C. Whether GTC and TUTRIC are SOEs

Comment C.1: Whether GTC Is an SOE
Comment C.2: Whether TUTRIC Is an SOE

D. Government Provision of Rubber for Less Than Adequate Remuneration

Comment D.1: Whether the GOC's Provision of Rubber Is Specific
Comment D.2: Whether the GOC's Provision of Rubber Confers a Financial Contribution
Comment D.3: GOC Control of the Rubber Market
Comment D.4: Purchases of SOE-Produced Rubber Through Private Trading Companies
Comment D.5: Whether Imported Rubber Is Countervailable
Comment D.6: Rubber Benchmark
Comment D.7: Adjustments to Rubber Calculation

E. Government Policy Lending and Government Debt Forgiveness

Comment E.1: Specificity
Comment E.2: SOCBs and Financial Contribution
Comment E.3: Role of the GOC in the PRC Banking System and Whether to Use an Internal or External Benchmark
Comment E.4: Issues Regarding Building an External Benchmark
Comment E.5: Whether Government Policy Lending to GTC Is Countervailable
Comment E.6: Whether There Was a Financial Contribution to TUTRIC
Comment E.7: Whether TUTRIC's Loans from Certain Other Banks Were Forgiven

F. Starbright-Specific Issues

Comment F.1: Due Process
Comment F.2: Application of Total Adverse Facts Available
Comment F.3: Application of the CIO Methodology
Comment F.4: The Arm's Length Nature of the Transaction
Comment F.5: Whether The Purchase of Hebei Tire's Assets Was for Fair Market Value
Comment F.6: Whether Starbright Purchased "Substantially All" of Hebei Tire's Assets
Comment F.7: Whether the Department Erred in Finding that Hebei Tire's Non-Recurring Subsidies Pass Through to Starbright
Comment F.8. Whether Any Benefit Found by the Department Should Be Limited to the Difference Between the Appraised Value and the Value Paid
Comment F.9: Debt Forgiveness – Unpaid Loans and Other Primary Debt
Comment F.10: Debt Forgiveness – Loan Guarantee Obligations
Comment F.11: The Countervailability of Starbright's Granted Land Use Rights
Comment F.12: The Countervailability of Starbright's Land Leased from Local Villages
Comment F.13: Submission of New Factual Information

G. Other Countervailable Programs

Comment G.1: Whether Non-Tradeable Share Reform (NTSR) Is Specific
Comment G.2: Whether GTC Received a Benefit from the Transfer of Bonus Shares to its Tradeable Shareholders Under NTSR
Comment G.3: Whether GTC Received a Benefit from the GOC's Exemption of Stamp Taxes on Share Transfers Under NTSR
Comment G.4: Whether GTC Received a Benefit from the GOC's Exemption of Income Taxes on Income Derived under NTSR
Comment G.5: FIE Tax Exemptions
Comment G.6: Value Added Tax and Tariff Exemptions on Imported Equipment
Comment G.7: State Key Technology Renovation Project Fund

H. Government Provision of Land

Comment H.1: Whether the GOC's Provision of Land Is a Financial Contribution
Comment H.2: Cut-Off Date for Acquisition of Land-Use Rights
Comment H.3: Whether the GOC's Provision of Land Is a Recurring Benefit
Comment H.4: TUTRIC Land Countervailability
Comment H.5: Whether the GOC's Provision of Land to TUTRIC and GTC Is Specific
Comment H.6: Whether the GOC's Land-Use Rights System Operated on Market Principles During the POI
Comment H.7: Land Benchmark

I. Not Countervailable Programs

Comment I.1: VAT Export Rebates

J. Scope Comments

Comment J.1: Imported Wheel Mounted Tires Certifications
Comment J.2: OTR Agricultural Tires, Including for Highway-Towed Implements
Comment J.3: Tubes and Flaps
Comment J.4: Earthmoving, Mining, and Construction Tires

II. Background

Since the issuance of the Preliminary Determination, the Department has issued various supplemental questionnaires to the GOC, TUTRIC, GTC, and Starbright. As detailed fully in the Case History section of the notice issued simultaneously with this Issues and Decision Memorandum, the parties ultimately submitted timely responses to all of the Department's questionnaires and supplemental questionnaires.

The Department aligned the final determination in this countervailing duty investigation with the final determination in the companion antidumping duty investigation. See Alignment Notice. Between January 9 and January 16, 2008, Petitioners, Bridgestone, and all of the respondent parties submitted timely requests for a hearing pursuant to 19 CFR 351.310(c) and the Department's Preliminary Determination.

The Department conducted verification of the questionnaire responses provided by the GOC, including the national, provincial, and local governments, GTC, and TUTRIC from March 3 through March 13, 2008. The Department subsequently verified Starbright as well as the governments of Hebei Province and Xingtai municipality from April 24 through May 1, 2008

The Department issued verification reports on April 22, April 24, May 13, and May 14, 2008. See GOC Verification Report; GTC Verification Report; Guizhou Province Verification Report; TUTRIC Verification Report; Tianjin Government Verification Report; Hebei Province Verification Report; and Starbright Verification Report. The Department issued the Post-Preliminary Analysis on May 2, 2008 and the CIO Memorandum for Starbright on May 27, 2008. Parties timely filed briefs and rebuttal briefs regarding our Preliminary Determination, Post-Preliminary Analysis and CIO Memorandum. Bridgestone, on behalf of all interested parties, withdrew the request for a hearing on June 16, 2008. See Letter to the Department, "New Pneumatic Off-the-Road Tires From the People's Republic of China: Consent Withdrawal of All Hearing Requests" (June 16, 2008).

In the Preliminary Determination, we stated that we had received comments on the scope of the investigation from a number of parties and that all comments raised by the parties would be addressed in the companion antidumping investigation. On May 14, 2008, the Department issued a memorandum regarding the scope of both the AD and CVD Investigations on OTR Tires from the PRC, addressing the scope comments submitted by multiple interested parties. See Preliminary Determination: Comments on the Scope of the Investigations (Preliminary Scope Determination).

In the Preliminary Scope Determination, we made certain modifications to the scope of the investigation and invited interested parties to comment on these modifications. Interested parties submitted comments on the Preliminary Scope Determination on May 22, 2008 and rebuttal comments on May 27, 2008. Based on these comments, we have made certain clarifications to the scope of the investigation. These clarifications, as well as a complete description of all products covered by the scope of this investigation and a list of excluded products, are reflected in Appendix I: Final Scope of the Investigation, appended to the Federal Register notice on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, which is issued concurrently with this Issues and Decision Memorandum. All comments submitted on the Preliminary Scope Determination are addressed in the Scope Comments section below.

III. Subsidies Valuation

A. Date of Applicability of CVD Law to the PRC

We have determined that the date from which subsidies can be identified and measured in the PRC is December 11, 2001, the date on which the PRC became a member of the WTO. Thus, only subsidies provided on or after December 11, 2001 are included in the Programs Determined to Be Countervailable section below. The basis for this decision is fully explained in Comment A.4 below.

B. Allocation Period

In the Preliminary Determination, consistent with 19 CFR 351.524(d)(2), we used an AUL as the allocation period for non-recurring subsidies provided on or after December 11, 2001. The AUL applicable to the OTR tire industry is 14 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. No party in this proceeding has disputed this allocation period. Thus, we have continued to use a 14-year AUL in this final determination.

C. Cross-Ownership and Attribution of Subsidies

The Department's regulations at section 351.525(b)(6)(vi) state that cross-ownership exists between corporations if one corporation can use or direct the individual assets of the other corporation(s) in essentially the same way it uses its own. This section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. Section 351.525(b)(6)(iii) of the Department's regulations states that "if the firm that received the subsidy is a holding company, including a parent company with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries." The CIT has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. See Fabrique at 604.

As noted in the Preliminary Determination, GTC reported that it is affiliated with numerous companies. Of these, according to GTC, two are involved in the production or sale of subject merchandise: Guizhou Rubber, a producer of subject merchandise, and GTCIE, which serves as GTC's export department for OTR tires.[2] GTC owns 98.75 percent of Guizhou Rubber[3] and 100 percent of GTCIE.[4] Therefore, pursuant to 19 CFR 351.525(b)(6)(vi), we continue to find that GTC is cross-owned with GTCIE, and, pursuant to 19 CFR 351.525(c), we will continue to cumulate the benefits from subsidies provided to GTCIE with benefits from subsidies provided to GTC.

TUTRIC also reported numerous affiliations. Of these, one is Dolphin Group, described by TUTRIC as a "holding company," and another is DCB, a supplier of carbon black.[5] TUTRIC reports that the input supplier is also a subsidiary of the holding company. In our Preliminary Determination, we found that Dolphin Group and DCB were essentially the same entity and that this entity controls TUTRIC (hereinafter Dolphin Group/DCB). (The details of this analysis are business proprietary and are discussed in the TUTRIC Cross-Ownership Memorandum. Pursuant to 19 CFR 351.525(b)(6)(vi), we determined that TUTRIC is cross-owned with Dolphin Group/DCB, its parent/holding company, and, pursuant to 19 CFR 351.525(b)(6)(iii), we attributed the subsidies received by Dolphin Group/DCB to the combined sales of TUTRIC and Dolphin Group/DCB.

In its case briefs, TUTRIC argued that the record evidence demonstrates that TUTRIC, Dolphin Group and DCB are not "cross-owned" companies as envisioned by the Department's regulation. TUTRIC cites to 19 CFR. 351.525(b)(6)(vi). However, based on all the information on the record concerning these affiliated companies, we determine that TUTRIC and Dolphin Group and DCB are cross-owned pursuant to 19 CFR 351.525(b)(6)(vi). (See Comment B.1.) Pursuant to 19 CFR 351.525(b)(6)(iii), we will continue to attribute the subsidies received by Dolphin Group/DCB to the combined sales of TUTRIC and Dolphin Group/DCB.

D. Denominator

When selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considered the basis for respondents' receipt of benefits under each program at issue. We continue to find that TUTRIC's, GTC's, and Starbright's receipt of benefits under the programs found countervailable was not tied to export performance or to the production of a particular product. As such, for subsidies received by TUTRIC, GTC, or Starbright, we will

[2] A third company is involved in domestic distribution.
[3] GTC reported and we verified that Guizhou Rubber did not receive any subsidies during the POI. See GTC Verification Report at 19.
[4] At verification, we established these ownership percentages. See GTC Verification Report at 3.
[5] Carbon black is an input consumed in the production of tires.

continue to use that company's sales (and those of its cross-owned affiliates, where applicable) of all products as the denominator in our calculations. See 19 CFR 351.525(b)(3).

As discussed in Cross-Ownership and Attribution of Subsidies above, GTC is cross-owned with GTCIE, a wholly-owned trading company. As such, pursuant to 19 CFR 351.525(c), we will continue to cumulate the benefits from subsidies provided to GTCIE with benefits from subsidies provided to GTC.

Also as discussed in Cross-Ownership and Attribution of Subsidies above, we continue to find that TUTRIC is cross-owned with Dolphin Group/DCB and that these companies received subsidies that were not tied to export performance or to the production of a particular product. As such, for benefits received by Dolphin Group/DCB, we will continue to use total sales of all products by TUTRIC and Dolphin Group/DCB (less any internal sales between TUTRIC and Dolphin Group/DCB) as the denominators in our calculations. See 19 CFR 351.525(b)(6)(iii). For subsidies received by TUTRIC, we are using TUTRIC's sales pursuant to 19 CFR 351.525(b).

E. Loan Benchmarks and Discount Rates

The Department is investigating loans received by respondents from Chinese banks, including SOCBs, which are alleged to have been granted on a preferential, non-commercial basis. Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. See 19 CFR 351.505(a)(2)(i). However, the Department does not treat loans from government banks as commercial if they were provided pursuant to a government program. See 19 CFR 351.505(a)(2)(ii). Because the loans provided to the respondents by SOCBs were made under the "Government Policy Lending" program, as explained below, these loans are the very loans for which we require a suitable benchmark.

The statute directs that the benefit is normally measured by comparison to a "loan that the recipient could actually obtain on the market." See section 771(5)(E)(ii) of the Act. Thus, the benchmark should be a market-based benchmark. However, as discussed in the Preliminary Determination, there is not a functioning market for loans within the PRC. See Preliminary Determination; see also CWP from the PRC and IDM at 6; see also CFS from the PRC and IDM at Comment 10. The GOC's predominant role in the banking sector results in significant distortions that render lending rates in the PRC unsuitable as market benchmarks. Therefore, for purposes of this final determination, the Department continues to rely on an external benchmark.

The use of an external benchmark in this investigation is consistent with the Department's practice. For example, in Softwood Lumber, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. See, e.g., Softwood Lumber from Canada and IDM at "Description of Provincial Stumpage Programs: Province of Quebec;" see also CFS from Indonesia and IDM at "GOI Provision of Standing Timber for Less Than Adequate Remuneration."

Given the broad inverse relationship between per capita income levels and lending rates (see Preliminary Determination at 67901, citing to Loan Benchmark Memorandum at Attachment 3, http://www.imfstatistics.org), the Department continues to rely on inflation-adjusted interest rates in market-economy countries at a level of economic development similar to that of the PRC and the same regression-based methodology employed in CFS from the PRC. See CFS from the PRC and IDM at Comment 10; see also CWP from the PRC and IDM at 8.

Since the Preliminary Determination, the Department has made minor changes in its regression analysis in order to more accurately reflect data issues and income categorization changes from year-to-year. The first is that the initial basket of LMI countries in each year's analysis is based on the countries classified by the World Bank as LMI for that particular year. In addition, while the Department continues to determine that data from certain countries and certain years is aberrational and excludes aberrational data from the regression analysis, the Department has adjusted the regression so that a country's data is only taken out of the analysis for the year in which the data is considered aberrational. See Final Loan Benchmark and Discount Rate Memorandum.

Consistent with the regression model employed in CFS from the PRC, CWP from the PRC, and LWS from the PRC, the Department calculated inflation-adjusted benchmark lending rates for the years 2002 through 2006. See CFS from the PRC and IDM at "Benchmarks"; see also CWP from the PRC and IDM at "Benchmarks for Short-Term RMB Denominated Loans."

For short-term loans, we adjusted the interest paid by respondents on their RMB loans for inflation. The Department then compared the interest amount calculated using the appropriate short-term benchmark with respondents' interest payments (adjusted for inflation) to determine whether a benefit existed for the short-term loans received by respondents on which principal was outstanding or interest was paid during the POI.

Consistent with CFS from the PRC, the Department used a ratio of five-year to one-year swap rates as the long-term mark-up short-term rates in the Preliminary Determination. See Preliminary Determination at 71366 and Loan Benchmark Memorandum at Attachment 3. However, for the final determination, the Department has determined that it is more appropriate to use commercial bond rates as the basis for calculating the long-term mark-up over short-term interest rates. Interest rate swaps typically involve the exchange of fixed-interest for variable-interest payments and, unlike commercial bond rates, do not involve the commercial risk (i.e., default risk) normally associated with lending long-term. For this reason, consistent with CWP from the PRC, we are replacing the Federal Reserve swap rates with the Bloomberg U.S. corporate BB-rated bond rates to calculate the adjustment for long-term loans and discount rates. Thus, the Department will use Bloomberg U.S. corporate BB-rated bond rates to calculate the adjustment for long-term loans and discount rates for the years 2002-2006.[6] See Final Loan Benchmark and Discount Rate Memorandum.

[6] The Department has used Bloomberg U.S. corporate BB-rated bond rates to calculate the adjustment for long-term loans and discount rates. In calculating long-term benchmarks and discount rates, the Department has adjusted the

To calculate long-term benchmarks, we adjusted the appropriate short-term benchmark lending rate to reflect inflation in the PRC and then applied the appropriate long-term mark-up.[7] Thus, we have not made any inflation adjustment to interest paid by respondents on their long-term RMB loans. The Department then compared the interest amount calculated using the appropriate long-term benchmark with respondents' interest payments on countervailable loans to determine whether a benefit existed for the long-term loans received by respondents on which principal was outstanding or interest was paid during the POI.

The Department requires a long-term interest rate to use as a discount rate for purposes of allocating benefits received through grants and debt forgiveness programs over the length of the AUL, as well as the provision of certain land-use rights for less-than-adequate remuneration over the relevant length of each land-use agreement. To calculate the adjustment for discount rates for grants and debt forgiveness, we adjusted the appropriate short-term benchmark lending rate to reflect inflation in the PRC and then applied the appropriate long-term mark-up.[8] To calculate the adjustment for discount rates for the provision of land-use rights, we adjusted the appropriate short-term benchmark lending rate to reflect inflation in the PRC and then applied the appropriate long-term mark-up.[9]

IV. Analysis of Programs

A. Programs Determined To Be Countervailable

1. Government Provision of Rubber for Less Than Adequate Remuneration

In the Preliminary Determination, we found that the government's provision of natural and synthetic rubber inputs to the respondents was countervailable. See Preliminary Determination at 71373 and 71374. We found that the industries that used natural and synthetic rubber were "limited in number" and, hence, that the provision of natural and synthetic rubber was specific under section 771(5A)(D)(iii)(I) of the Act. We further determined preliminarily that the GOC's provision of natural and synthetic rubber through SOEs is a financial contribution within the meaning of section 771(5)(D)(iii) and that it confers a benefit under section 771(5)(E)(iv) of the Act to the extent that it is provided for less than adequate remuneration. To determine whether a benefit under section 771(5)(E)(iv) of the Act was conferred by the provision of natural rubber

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short-term rates to reflect PRC inflation.

7 We have used the Bloomberg U.S. corporate BB-rated bond rates that most closely approximate the terms of the long-term loans at issue to calculate the adjustment for long-term loans.

8 To calculate the adjustment for the discount rate applied to grants and debt forgiveness, we have used 15-year Bloomberg U.S. corporate BB-rated bond rates to calculate the adjustment for the discount rate applied to grants and debt forgiveness. The 15-year bond rates are the Bloomberg U.S. corporate BB-rated bond rates, which most closely approximate our 14-year AUL.

9 The 30-year Bloomberg U.S. corporate BB-rated bond rate most closely approximates the length of the relevant land-use agreements. Accordingly, we have used the 30-year rate to calculate the adjustment for the discount rate.

and synthetic rubber, the Department followed the hierarchy set forth in 19 CFR 351.511(a)(2).[10] As AFA, we rejected domestic prices in the PRC because we did not know the share of natural rubber or synthetic rubber produced and sold by SOEs in the PRC, and thus we found that the government distorted the market and we could not use actual prices in the PRC as a benchmark. Thus, we turned to the next level of the hierarchy in section 351.511(a)(2) of the Department's regulations (i.e., world market prices that would be available to purchasers in the country under investigation).[11]

For purposes of our final determination, we are continuing to find the government provision of natural and synthetic rubber inputs countervailable; however, we have made some changes to certain aspects of our analysis based on the information requested and submitted after the Preliminary Determination, results of verification, and comments from parties. We continue to find that the provision of natural and synthetic rubber by SOEs in the PRC is specific in accordance with section 771(5A)(D)(iii)(I) of the Act, because the industries to which rubber is provided are "limited in number." See GOC New Subsidy Allegations Response at 11; see also GOC Verification Report at 10. We also continue to find that the provision of these inputs by SOE producers constitutes a financial contribution in accordance with section 771(5)(D)(iii) of the Act.

For purposes of this final determination, the Department determines that majority government ownership of a rubber producer qualifies it as an "authority" within the meaning of section 771(5)(B)(i) of the Act. This is consistent with the CVD Preamble, which states that "we intend to continue our longstanding practice of treating most government-owned corporations as the government itself." See CVD Preamble at 65402. This finding is also consistent with the Department's past practice. See e.g., CWP from PRC; see also Sacks from PRC; see also Hot-Rolled Steel from India 04 AR – Preliminary. Although respondents have argued that the Department must apply a five-factor test to determine whether an SOE is a government authority, we find that conducting such a test is not necessary absent information that calls into question whether government ownership does not mean government control. If appropriate, we will reconsider the necessity of applying the five-factor test if this investigation results in a countervailing duty order and an administrative review is requested.

Consistent with LWRP from the PRC, we are finding to be countervailable any purchases of rubber from privately owned trading companies that purchase rubber from state-owned producers. For these transactions, the GOC's financial contribution (provision of a good) is made to the trading company suppliers that purchase the rubber, while all or some portion of the benefit is conferred on the OTR tire producers who purchase the rubber from the trading companies. See

[10] The potential benchmarks provided in 19 CFR 351.511(a)(2) are listed in hierarchical order by preference: 1) market prices from actual transactions within the country under investigation; 2) world market prices that would be available to purchasers in the country under investigation; or 3) an assessment of whether the government price is consistent with market principles.

[11] We calculated annual 2006 benchmarks for natural rubber and synthetic rubber based on 2006 world market prices for natural rubber and synthetic rubber as reported by the IRSG.

e.g., LWRP from the PRC and IDM at 8; see also CWP from the PRC and IDM at 10.[12] The extent to which this is the case is determined by comparing the price the respondents paid the trading companies that source SOE-produced rubber to the appropriate benchmark price, as explained below.

To determine whether a benefit has been provided, we followed the guidelines set forth in 19 CFR 351.511(a)(2) in selecting a benchmark for adequate remuneration. As noted above, the GOC provided information on the total production and consumption of natural and synthetic rubber in the PRC as well as the proportion of such rubber produced by SOEs, produced by private Chinese companies, and imported. The Department was able to verify this information. See GOC 2nd Supplemental Questionnaire Response at 10 and 11; see also GOC Verification Report at exhibit pages 2689 to 2705. Our analysis indicated that the PRC imports 75 percent of the natural rubber and nearly 50 percent of the synthetic rubber it consumes. See GOC Verification Report at 6 and 7. The Department also found that SOE producers of natural rubber and synthetic rubber make up a significant portion of the natural and synthetic rubber produced domestically. Id. at 7.

However, imports of natural rubber exceed the total domestic production of natural rubber as a percentage of natural rubber consumption in the PRC. Imports of synthetic rubber exceed the total domestic production of synthetic rubber as a percentage of synthetic rubber consumption in the PRC Thus, given the large penetration of imports of natural rubber and synthetic rubber in the PRC rubber markets and the lack of other evidence on the record to show that SOEs or government agencies through other methods had control of, or otherwise distorted, these markets during the POI, we do not find government distortion of the PRC rubber markets.[13]

Under 19 CFR 351.511(a)(2), the preferred benchmark is "market prices from actual transactions within the country under investigation" (i.e., tier-one prices). All three respondents had significant imports of natural rubber and synthetic rubber and at least one respondent had domestic purchases of privately produced domestic rubber. The Department finds these import purchases and, where available, purchases of privately produced domestic rubber to be appropriate for the basis of the natural and synthetic rubber benchmarks. Since we have determined that we can use tier-one prices for this final determination, we have used each company's monthly weighted average prices of imports of natural and synthetic rubber and, where available, of purchases of privately produced domestic natural and synthetic rubber as benchmarks.

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[12] Consistent with the approach in LWRP from the PRC, the analysis of financial contribution for inputs sourced through intermediary trading companies is appropriately focused on the transaction between the original producer and the intermediary trading company. For transactions in which the original producer is a privately owned company and the intermediary supplier is a state-owned company, the financial contribution with respect to the rubber input is not made by a government authority. Accordingly, in the instant case, we are not countervailing any purchases of natural or synthetic rubber that were originally produced by a privately owned company, even though they may have been sourced through a state-owned supplier. We may reconsider this approach, however, in future instances where there is evidence that the state-owned supplier itself received subsidies or otherwise distorted the price of the good.

[13] We make this finding based solely on the facts of this particular case. In other cases, even if there are similar levels of import penetration and SOE production as here, we may consider other indicators of market distortion in determining whether domestic prices can serve as an appropriate benchmark.

Pursuant to 19 CFR 351.511(a)(2)(iv), benchmarks should reflect "delivered prices" and should include delivery and import charges. Where necessary, we have added the same ocean freight values for natural rubber and synthetic rubber that we used in the Preliminary Determination. Where necessary, we also added in inland freight in the PRC. As discussed below in Comment D.7: Adjustments to Rubber Calculation, respondents have argued that the Department should not include import charges (i.e., import duties and VAT) since the GOC allows companies to import raw materials without paying import duty and VAT if the materials are used to produce goods which are exported. See GTC Verification Report at 17; see also TUTRIC Verification Report at 8; see also Starbright Verification Report at 8 and 9. All three respondents have reported that they did not pay import duties or VAT on certain imports of rubber used to produce tires that are exported.

Our analysis of information on the record, however, indicates that certain respondents imported a significantly greater percentage of inputs than the percentage of tires that they export. See, e.g., GTC Final Calculation Memorandum; TUTRIC Final Calculation Memorandum; and Starbright Final Calculation Memorandum. Thus, we find that certain of these respondents used imported rubber to produce tires sold in the PRC and, therefore, such imports would not have been entitled to VAT and import duty exemptions. Accordingly, we have added an element of import duties and VAT into our natural rubber and synthetic rubber benchmarks to these particular respondents' prices for natural rubber and synthetic rubber.[14] Specifically, we calculated a weighted-average import duty and VAT, where appropriate, to account for the import duty/VAT exempt imports that would not have been entitled to an import duty or VAT exemption. However, we also note that the very fact that duty-free imports exceed exports causes concern about whether the GOC's duty exemption programs meet the requirements in 19 CFR 351.519(a)(4) for a non-countervailable subsidy. Therefore, if a CVD order is issued and an administrative review requested, the Department intends to examine the GOC's import duty and VAT exemption programs.

We also note that information on the record indicates that additional duties are applicable to certain rubber imports and, where appropriate, we made adjustments for such duties. A discussion of our analysis concerning these duties is only possible by means of reference to business proprietary information. See , e.g., GTC Final Calculation Memorandum; TUTRIC Final Calculation Memorandum; or Starbright Final Calculation Memorandum.

To calculate the benefit, we compared the monthly weighted- average prices during the POI for each company's purchases of each type of rubber produced by SOEs to each company's monthly weighted-average benchmark prices, as detailed above. We summed the monthly benefits and divided this amount by each company's total sales to determine a subsidy of 0.17 percent ad valorem for GTC, 0.08 percent ad valorem for TUTRIC, and zero for Starbright.

[14] We note that in making this adjustment for VAT and import duties, we are not making any finding with respect to whether the GOC's VAT and/or import duty exemption programs themselves are countervailable under 19 CFR 351.519(a). We are only making pro-rated adjustments where the evidence on the record shows that duty-free imports exceeded export sales and only for that portion of imported natural and synthetic rubber that exceeded exports.

2. Government Policy Lending

In the Preliminary Determination,[15] we found that the GOC's provision of policy loans to the OTR Tire industry was countervailable. See Preliminary Determination, at 71366. We found that policy lending was de jure specific pursuant to section 771(5A)(D)(i) of the Act. We also determined that the program provides direct financial contributions by the GOC (i.e., government policy banks and SOCBs) pursuant to section 771(5)(D)(i) the Act. See CFS from the PRC and IDM at Comment 8. Finally, we found that this program provides benefits to the recipients equal to the difference between what the recipients paid on loans from government-owned banks and the amount they would have paid on comparable commercial loans, pursuant to section 771(5)(E)(ii) of the Act.

For purposes of our final determination, we are continuing to find the government policy lending program to be countervailable; however, we have made some changes to certain aspects of our analysis based on the information submitted after the Preliminary Determination, results of verification and comments from parties.[16] We continue to find that this loan program is de jure specific pursuant to section 771(5A)(D)(i) of the Act. Parties have made comments with respect to the specificity of this program. (See Comment E.1 below.) We note that information on the record of this investigation shows that the GOC encourages the tire industry. Specifically, the GOC Catalogue states that the "Production of advanced belt tire radial, its supporting materials and equipment production" is an encouraged national project. SETC Circular 716 identifies the production of "meridian tyres" (i.e., radial tires) as a national priority under the GOC 10th Five-Year Plan and states that "we should . . . reasonably direct the contribution of public funds . . . so as to . . . guarantee the realization of the target . . . ." In addition, the GOC 11th Five-Year Plan calls for increasing the development of important spare parts for the automobile industry. Finally, the implementing regulations refer to the GOC Catalogue as the "important basis for funding investment directions, etc."

We also note that information on the record shows that the provinces of Guizhou and Hebei and the city of Guiyang (in Guizhou) target OTR Tire producers in those areas and that provincial goals and objectives are in conformity with the central policy goals and objectives. Specifically, the central-level plans set goals regarding macroeconomic policies and "provide a vision for economic development, market and regulatory activities, social administration, and the provision of public services." See GOC New Subsidy Allegations Response at13 and 19. The GOC explained that the provincial and city five-year plans are drafted based on the goals and objectives of the central-level plans. Id. at 21-22. In other words, local governments (i.e., provinces and cities) must align their policies with stated central government policies and carry out those policies to the extent that such measures affect their locality. As such, central-level plans should

[15] The Department initiated on Policy Lending to the Chinese Tire Industry and Preferential Loans to SOEs. In the Preliminary Determination, we examined these programs as Government Policy Lending and continue to do so for this final determination.

[16] We have determined that TUTRIC received debt forgiveness with respect to certain of its outstanding loans pursuant to 19 CFR 351.508. See Government Debt Forgiveness to TUTRIC below. As such, we have not made any determination regarding, or calculated a benefit for, TUTRIC under Government Policy Lending.

be considered a central government policy or program that local governments adopt and implement through their own five-year plans. See, also, CFS from the PRC – Amended Preliminary at 17492.

For example, the Guizhou 10th Five-Year Plan (2001-2005) singled out GTC for technology renovation for two meridian (i.e., radial) tire lines (OTR tires can be radial tires, as well as "bias ply" tires). See GOC New Subsidy Allegations Response at Exhibit GOC-NEW-4-6. The Guizhou 10th Five-Year Plan also states that "policy bank loans and loans from abroad should continue to be allocated according to the plans." Id. In addition, business proprietary information provided in GTC's supplemental response indicates GTC's importance in earlier five-year plans. See GTC Preliminary Calculation Memorandum.

Regarding Hebei Province, the Hebei Province 11th Five-Year Plan for Technology lists automobile parts and the rubber industry as "key projects," and the Hebei Province: Implementation Guidelines for the 11th Five-Year Plan directs commercial banks to support "key projects." See Bridgestone New Subsidy Allegations Clarification at Exhibits 18 and 17, respectively. The Hebei Province 9th Five-Year Plan also mentions that the "automobile and components" industry will, among other industries, be "developed greatly and stronger," see GOC New Subsidy Allegations Response at Exhibit GOC-NEW-4-8, and the 10th Five-Year Plan states that "auto parts," among other industries, "shall be supported," id at Exhibit GOC-NEW-4-9.

Therefore, the Department continues to find that the loans provided to GTC and Starbright (after the CIO) and their cross-owned affiliates from SOCBs were made pursuant to government policies to provide loans to the tire industry. The record indicates GTC explicitly has been a key target for economic development by Guizhou province and Guiyang city since at least the eighth five-year plan. Furthermore, although we do not need to reach the issue of de facto specificity, we note that, according to the translated excerpts provided by the GOC, the number of such specifically targeted enterprises is limited. For example, the GOC translated section 6 of the Guizhou 10th Five-Year Plan, "Traditional industry shall be improved through high technology." This section mentions only three other companies besides GTC. In addition to making clear the importance of GTC in the economic development of the province, the plan also is clear that loans are one means of development. Furthermore, the Guizhou 10th Five-Year Plan states explicitly, as noted above, the general directive that "policy loans" should be allocated according to the plans.

In contrast to the Guizhou province and Guiyang city plans, the plans for Hebei Province do not mention particular enterprises or particular projects. They do, however, refer to particular industries targeted for development. As discussed above, Hebei Province refers to the auto parts and rubber industries.[17] Also as discussed above, each of these provinces provides direction in documents implementing their five-year plans for the use of loans to "guide" and "assist" targeted

[17] The radial tire project discussed in the Guiyang municipality plan is discussed within the context of identifying automobile parts as a key industry. See Bridgestone October 1, 2007 Submission. Thus, given the parallels among the central and provincial five-year plans, it appears the GOC and provincial and municipal governments consider radial tires, which include OTR tires, to be part of the automobile parts industry.

industries. Thus, we continue to determine that government policy lending to the tire industry is de jure specific pursuant to section 771(5A)(D)(i) of the Act.

We continue to determine the program provides direct financial contributions by the GOC (i.e., government policy banks and SOCBs) pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) the Act. Although the respondents have argued that such loans are not government financial contributions, we find for the same reason we found in CFS from the PRC that SOCBs are government authorities.[18]

Finally, this program provides benefits to the recipients equal to the difference between what the recipients paid on loans from government-owned banks and the amount they would have paid on comparable commercial loans, pursuant to section 771(5)(E)(ii) of the Act. Parties submitted extensive comments on the selection of a loan benchmark. These are fully addressed in Comment E.4, below.

GTC reported long-term loans from SOCBs and government policy banks outstanding during the POI. All the reported loans were approved and disbursed after December 11, 2001, the date the Department has determined to be the date from which the Department will identify and measure subsidies in the PRC. In addition to these long-term loans, GTC and its cross-owned affiliates had short-term loans, approved and disbursed in 2005 and 2006 with balances outstanding during the POI. For Starbright, we only examined loans that were provided directly to Starbright after its CIO (see Final Starbright Calculation Memorandum). To calculate the subsidy benefit for all of these loans, we used the interest rates described in the Loan Benchmarks and Discount Rate section above and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit to GTC and Starbright by the appropriate sales denominator to calculate subsidy rates of 1.87 percent and 0.56 percent ad valorem for GTC and Starbright, respectively.

3. Government Debt Forgiveness to TUTRIC

TUTRIC's and DCB's long-term loans were originally disbursed in the 1980s and 1990s.[19] During the period 1998 to 2002, after the original repayment due dates for these loans had passed, TUTRIC/DCB and the SOCBs renegotiated the material terms of some loans, including the repayment period. Under the renegotiated terms, some SOCB lenders agreed to accept repayment of outstanding principal within a defined period of time ending in 2003-2004.[20] However, TUTRIC/DCB failed to make any payments on some of these renegotiated loans and made only partial payment on others. Thus, the repayment terms of these loans were not met by the end of the renegotiated repayment period. Moreover, there is no evidence on the record that the SOCBs continued to expect repayment to be made after the renegotiated repayment period had expired.

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[18] See CFS from the PRC and IDM at Comment 8.

[19] Most of the details about these loans are business proprietary; for a more complete discussion, see Final TUTRIC Calculation Memorandum.

[20] Certain lenders did not renegotiate the terms of their loans after those loans were originally disbursed. Thus, the repayment date for these loans lapsed before our December 11, 2001 cut-off date. We consider these to have been forgiven when the loan's repayment date passed, and as such the debt forgiveness occurred prior to December 11, 2001 and therefore, is not countervailable.

Although TUTRIC continued to carry the outstanding principal and some accumulated interest payable on its books, statements made at verification indicate that it had done so largely to "manage its profit and loss statement" (e.g., presumably for tax and other purposes). Much of the information relied upon in our analysis is BPI. (See Final TUTRIC Calculation Memorandum.)

a. BOC/Cinda Loans

Certain BOC loans provided to TUTRIC and DCB which had been renegotiated were transferred to Cinda, a state-owned asset management company tasked with disposing of non-performing loans. See TUTRIC May Case Brief at 41. We are resorting to facts available because necessary information with regard to the transfer of TUTRIC/DCB's debt to Cinda is not on the record. Pursuant to section 776(b) of the Act, we find that neither the GOC nor TUTRIC cooperated to the best of its ability. Based in part on an adverse inference, we find that the TUTRIC/DCB debts owed to the BOC, which were subsequently transferred to Cinda and then Avenue Asia, were forgiven when the renegotiated payoff period for these loans ended and TUTRIC/DCB had not met the repayment requirements. This occurred after our December 11, 2001 cut-off date.

Some debts owed by TUTRIC/DCB to the BOC were transferred from the BOC to Cinda, a state-owned asset management company and subsequently from Cinda to Avenue Asia, a private capital group. Despite our repeated requests to TUTRIC and the GOC for information on the BOC's transfer of TUTRIC's loans to Cinda, neither TUTRIC nor the GOC provided complete information. Rather, TUTRIC stated that it had no "access to any agreements between BOC and Cinda or between Cinda and Avenue Asia,"[21] and GOC stated these transactions were highly confidential, proprietary and the parties "have not consented to the GOC to disclose this information."[22] However, this information is necessary for our determination, because the transfer of TUTRIC debts by the BOC to Cinda, and then to Avenue Asia, is directly relevant to the question of whether these debts were forgiven, who forgave these debts, and when they were forgiven.

Use of Facts Available, with an Adverse Inference

Section 776(a) of the Act provides that the Department shall use the facts otherwise available if, among other things, necessary information is not on the record or an interested party withholds information that has been requested by the Department. We find that necessary information with regard to the transfer of TUTRIC/DCB's debt to Cinda is not on the record, and we further find that TUTRIC and the GOC withheld requested information regarding the transactions between the BOC and Cinda and between Cinda and Avenue Asia. Specifically, on January 9, 2008, we asked TUTRIC and GOC to provide all agreements between the BOC and Cinda, and between Cinda and Avenue Asia, regarding TUTRIC's BOC debt sales. See the Department's January 9, 2008 Supplemental Questionnaire to the TUTRIC and GOC, respectively. TUTRIC responded that it only has access to its own information and could not access the agreements made by BOC, Cinda

[21] See TUTRIC 2nd Supplemental Questionnaire Response at 10.
[22] See GOC 2nd Supplemental Questionnaire Response at 4. See, also, GOC 4th Supplemental Questionnaire Response at 8.

and Avenue Asia. See TUTRIC 2nd Supplemental Questionnaire Response at 10. The GOC responded that these transactions "involve highly confidential, proprietary data of the parties involved. The parties to the transactions have not consented to allow the GOC to disclose this information at this time." See GOC 2nd Supplemental Questionnaire Response at 4. Pursuant to section 782(d) of the Act, we provided the GOC with an opportunity to remedy their deficient responses. See the Department's February 13, 2008 Supplemental Questionnaire to the GOC at question 9. The GOC responded that the parties to the transactions have not consented to allowing the GOC to disclose this information, and although "the GOC has an ownership interest in these entities, the GOC does not interfere with their decision-making and operations of these entities." See GOC 4th Supplemental Questionnaire Response at 8. Because this information is crucial to the Department's evaluation of whether TUTRIC's and DCB's debt was forgiven, we are relying on the facts otherwise available with respect to the transfer of TUTRIC's and DCB's debt to Cinda.

Section 776(b) of the Act provides that if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an adverse inference in selecting from the facts available. The CAFC has interpreted the "best of its ability" standard as requiring respondents to put forth their maximum efforts. See Nippon Steel at 1382. We find that neither the GOC nor TUTRIC put forth its maximum efforts in responding to our requests for information. The record indicates that the GOC owns and controls Cinda. It is insufficient for the GOC to claim that Cinda has "not consented to allowing the GOC to disclose this information." Because the record evidence regarding what happened to TUTRIC's and DCB's debt after it was transferred to Cinda is incomplete and unverified, as an adverse inference we are not considering any information regarding these loans pertaining to the period after these loans were transferred to Cinda.

In sum, we have determined that these loans were forgiven since TUTRIC/DCB did not meet the terms of the renegotiated loans and there is no other evidence on the record supporting a reasonable expectation that TUTRIC would repay this debt. Accordingly, we find that the TUTRIC/DCB debts owed to the BOC, which were subsequently transferred to Cinda and then Avenue Asia, were forgiven in 2004, which was when the renegotiated payoff period ended. This is after the December 11, 2001 cutoff date. This debt forgiveness is specific under section 771(5A)(D)(iii)(I) of the Act, as the decision not to collect was limited to TUTRIC and DCB and constitutes a financial contribution under section 771(5)(D)(i) of the Act. A benefit exists under 19 CFR 351.508(a) equal to the amount of renegotiated loan forgiven. Certain of the information used in the Department's analysis is business proprietary. (For a full discussion of our analysis, see TUTRIC Final Calculation Memorandum.)

b. Debts to Certain Other Banks

For other renegotiated debt, TUTRIC did not meet the repayment requirements of the renegotiation agreements and the lender did not enforce the terms of the renegotiation agreement. Therefore, we determine that the SOCB lenders had no reasonable expectation that the renegotiated loan amounts would be repaid. Thus, in accordance with 19 CFR 351.508(a), we find that TUTRIC's debt was forgiven as of the date that TUTRIC was required to repay, in full, the renegotiated loan amounts.

This debt forgiveness constitutes a financial contribution under section 771(5)(D)(i) of the Act, and is specific under section 771(5A)(D)(iii)(I) of the Act, as it was limited to an enterprise (i.e., to TUTRIC). A benefit exists equal to the amount of renegotiated loan forgiven under 19 CFR 351.508(a).

To measure the benefits of debt forgiveness attributable to loans made to TUTRIC, we first conducted the "0.5 percent test," using TUTRIC's sales from the relevant year for the loans forgiven in that year. See 19 CFR 351.524(b)(2). As a result, we found that debt forgiveness was greater than 0.5 percent of relevant sales and was properly allocated over the AUL applied in this investigation. Using the methodology described in 19 CFR 351.524(d) and the discount rates described in the Subsidies Valuation section above, we calculated the benefit allocable to the POI. We then divided this benefit by the POI sales of TUTRIC. With respect to the TUTRIC/DCB loans forgiven, we also conducted the 0.5 test and divided the total amount forgiven by TUTRIC/DCB's combined sales in the relevant year. We found that debt forgiven was greater 0.5 percent and was properly allocated over the AUL. Using the methodology described in 19 CFR 524(d) and the discount rates described in the Subsidies Valuation section above, we calculated the benefit allocable to the POI and divided this benefit by the combined POI sales of TUTRIC/DCB. We summed the two calculated rates together to determine a countervailable subsidy rate for TUTRIC's debt forgiveness of 6.14 percent ad valorem.

4. Government Debt Forgiveness and the Provision of Land to Starbright Pursuant to Its Change in Ownership

Change in Ownership Analysis

On May 28, 2008, the Department issued the CIO Memorandum, analyzing Starbright's 2006 purchase of the assets of Hebei Tire. Applying the Department's CIO methodology as detailed in the Practice Modification Notice, we concluded the 2006 transaction did not extinguish any non-recurring subsidies provided to Hebei Tire prior to the transaction, because Starbright had not demonstrated the transaction was at arm's length and for fair market value. We also determined Hebei Tire had been the recipient of non-recurring subsidies prior to the transaction, specifically debt forgiveness. We also determined that Starbright had been the direct recipient of land use rights provided at less than adequate remuneration.

For this final determination, we are maintaining our preliminary determination that the 2006 transaction did not extinguish prior non-recurring subsidies to Hebei Tire. See Comments F.3 – F.8 below for the Department's response to comments regarding our analysis of the transaction and the methodology applied. See Final CIO Memorandum for a discussion of business-proprietary information relevant to our analysis.

Based on our analysis, we determine the following subsidies are attributable to Starbright pursuant to the 2006 CIO.

a. Debt Forgiveness from State-Owned Banks to Hebei Tire

In the CIO Memorandum, we found that the forgiveness of Hebei Tire's loans by state-owned banks was countervailable. See CIO Memorandum at 12. For purposes of our final determination, we are continuing to find loan forgiveness from state-owned banks to Hebei Tire countervailable. See Comment F.11. This debt forgiveness constitutes a financial contribution under section 771(5)(D)(i) of the Act, and is specific under section 771(5A)(D)(iii)(I) of the Act, as it was limited to a specific enterprise (i.e., to Hebei Tire only). A benefit exists equal to the amount of principal and accrued interest forgiven under 19 CFR 351.508(a).

To measure the benefits of debt forgiveness attributable to Starbright in the POI, we first conducted the "0.5 percent test," using the 2006 Hebei Tire sales before the CIO and the 2006 Starbright sales after the CIO ("2006 combined sales"). See 19 CFR 351.524(b)(2). As a result, we found that debt forgiveness was greater than 0.5 percent of relevant sales and was properly allocated over the AUL applied in this investigation. Using the methodology described in19 CFR 351.524(d) and the discount rates described in the Subsidies Valuation section above, we calculated the benefit allocable to the POI. To calculate the countervailable subsidy rate, we divided the benefits allocable to the POI by the 2006 combined sales. On this basis, we determine a countervailable subsidy rate for Starbright of 2.60 percent ad valorem.

b. Debt Forgiveness of Hebei Tire's Loan Guarantee Obligations

In the CIO Memorandum, we found obligations arising from the provision of loan guarantees represented a form of debt forgiveness to Hebei Tire and that this debt forgiveness was countervailable. See CIO Memorandum at 13. For purposes of our final determination, we are continuing to find these obligations constitute countervailable debt forgiveness. See Comment F. 10. This debt forgiveness constitutes a financial contribution under section 771(5)(D)(i) of the Act, and is specific under section 771(5A)(D)(iii)(I) of the Act, as it was limited to specific enterprises (i.e., Hebei Tire, co-guarantors, primary borrower). A benefit exists equal to the amount of principal and accrued interest forgiven under 19 CFR 351.508(a).

As discussed in Comment F.10 below, for the first of two sets of guarantees, we are dividing the liability of each court judgment, by which Hebei Tire was found liable for the loans underlying the guarantees, by the number of parties held jointly liable in order to derive the amount of benefits. Because the court judgments plainly indicate that Hebei Tire and the other entities were determined to be jointly liable for the amounts, it is appropriate to divide the amounts. See, e.g., the English translation of Civil Judgment 83 at Attachment A of the Starbright June Case Brief. Because there are no such judgments regarding the second set of guarantees, we are countervailing the entire amount.

To measure the benefits from this debt forgiveness attributable to Starbright in the POI, we first conducted the "0.5 percent test," using the 2006 combined sales. See 19 CFR 351.524(b)(2). As a result, we found that the unpaid amounts arising from the loan guarantees were greater than 0.5 percent of relevant sales and were properly allocated over the AUL. Using the methodology described in19 CFR 351.524(d) and the discount rates described in the Subsidies Valuation section above, we calculated the benefit allocable to the POI. To calculate the countervailable subsidy rate, we divided the benefits allocable to the POI by the 2006 combined sales. On this basis, we determine a countervailable subsidy rate for Starbright of 9.23 percent ad valorem.

c. *Government Provision of Land to SOEs for Less than Adequate Remuneration – Starbright's Granted Land Use Rights*

In the CIO Memorandum, we found that Starbright's granted land use rights were countervailable. See CIO Memorandum at 14. We determined that this subsidy was specific in accordance with section 771(5A)(D)(i) of the Act because Starbright obtained its granted land use rights as part of a government policy of SOE reform. We also found a financial contribution under section 771(5)(D)(iii) of the Act because we determined the granted land use rights were a provision of a good or service. With respect to benefit, we preliminarily determined that a benefit existed under 19 CFR 351.511(a) to the extent that these rights were provided for less than adequate remuneration. For purposes of our final determination, we are continuing to find Starbright's granted land use rights countervailable, for the reasons discussed in the CIO Memorandum and in Comment F.11 below.

In order to calculate the benefit, we first multiplied the benchmark land acquisition rate (adjusted to the POI) by the total area of Starbright's tract. We then made adjustments for the price paid by Starbright to derive the total benefit. We allocated the total unallocated benefit across the term of the land agreement using the standard allocation formula in 19 CFR 351.524(d) and the discount rates, discussed above in the Subsidies Valuation section under Loan Benchmarks and Discount Rate, to determine the amount attributable to the POI. We then divided the POI benefit by the 2006 combined sales to calculate a countervailable subsidy rate for Starbright of 0.71 percent ad valorem.

d. *Government Provision of Land to SOEs for Less than Adequate Remuneration – Starbright's Land Leased from Local Villages*

In the CIO Memorandum, we invited all interested parties to comment on the countervailability of the land Starbright leases from local villages. See CIO Memorandum at 15, n.62. After reviewing arguments from both sides and the information on the record, the Department has determined that the land Starbright leases from local villages is countervailable. As discussed below in our response to Comment F.13, we find that the local village committees are "authorities" within the meaning of section 771(5)(B) of the Act. See, also, LWRP from the PRC and IDM at Comment 5. Accordingly, we find a financial contribution under section 771(5)(D)(iii) of the Act because the provision of land is a provision of good or service. See Comment H.1. With respect to benefit, we determine that a benefit exists under 19 CFR 351.511(a) to the extent that the leased land was provided for less than adequate remuneration. Finally, we find that the provision of leased land is specific in accordance with section 771(5A)(D)(i) of the Act because Starbright assumed the leases for these village tracts as part of its asset purchase of Hebei Tire, which was part of a government program to reform SOEs.

In order to calculate the benefit, we first multiplied the benchmark land rental rate (adjusted to the POI) by the total area of the countervailable land. We then made adjustments for rental fees paid by Starbright to derive the total POI benefit. We divided the POI benefit by the 2006 combined sales to calculate a countervailable subsidy rate for Starbright of 0.90 percent ad valorem

5. Stamp Tax Exemption on Share Transfers under NTSR

In the Post-Preliminary Analysis, we found aspects of the GOC's NTSR to be countervailable with respect to GTC. See Post-Preliminary Analysis.[23] Specifically, we found that the GOC's waiver of stamp taxes otherwise due upon the transfer of bonus shares was countervailable. For purposes of our final determination, we continue to find that the waiver of stamp taxes under NTSR is countervailable.

Neither GAMC, a GOC-controlled asset management company and GTC's sole non-tradeable shareholder, nor GTC's other shareholders paid a stamp tax to the PRC tax authority when GAMC transferred bonus shares to GTC's other shareholders, contrary to the normal requirements applicable to transfers of shares in the PRC. We find that the waiver of stamp taxes constitutes a financial contribution in the form of revenue foregone within the meaning of section 771(5)(D)(ii) of the Act. Moreover, we found that by foregoing this revenue, the GOC conferred a benefit to the respondent in the form of tax savings to the extent that the stamp tax was not paid, pursuant to section 771(5)(E) of the Act.

Regarding specificity, the GOC claimed that NTSR was not limited to enterprises or industries, or groups thereof. Nonetheless, the record of this investigation shows that the underlying criterion for participation in NTSR is that listed companies must have NTS, regardless of whether those NTS were issued by SOEs, FIEs, or private enterprises. Accordingly, we continue to find that the NTSR, including the stamp tax exemption, is specific within the meaning of section 771(5A)(D)(i) of the Act, in that it is limited to only those that participated in the NTSR.

Accordingly, for purposes of our final determination, we are continuing to find the GOC's waiver of the stamp tax to be countervailable. To calculate the benefit, we divided the total amount of stamp tax waived during the 2006 NTSR by GTC's sales for 2006. As a result, we found that the amount provided in 2006 was less than 0.5 percent of relevant sales and should be expensed. To calculate the countervailable subsidy rate, we divided the benefits attributable to the POI by the total value of GTC's total sales during the POI. On this basis, we determine the countervailable subsidy rate to be 0.01 percent ad valorem for GTC.

With regard to income tax exemption, there is no evidence on the record that any of the bonus shares generated income subject to income tax during the POI; therefore, we find there is no potential benefit during the POI. If a CVD order is issued and an administrative review is requested, we expect to examine whether these NTSR income tax exemptions are countervailable.

[23] Under NTSR, non-tradeable shareholders transferred "bonus shares" to a company's tradeable shareholders. Petitioners also alleged that there was an additional financial contribution to the extent that stamp taxes and income taxes were not collected pursuant to the transfer. We only treated foregone stamp taxes as a financial contribution.

6. Tax Subsidies to FIEs in Specially Designated Geographic Areas, and Local Income Tax Exemption and Reduction Programs for "Productive" FIEs

In the Preliminary Determination, we found that Tax Subsidies to FIEs in Specially Designated Geographic Areas, and Local Income Tax Exemption and Reduction Programs for "Productive" FIEs were countervailable. See Preliminary Determination at 71371. TUTRIC is an FIE that is located in a coastal economic development zone and participated in these two programs during the POI. See Preliminary Determination at 71370. The FIE tax reduction and exemption is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). Further, we determined that these tax programs are specific in accordance with sections 771(5)(D)(i) and (iv) of the Act because these tax programs are limited as a matter of law to certain enterprises located in designated geographical regions, and to "Productive" FIEs.

For purposes of our final determination, we are continuing to find these two tax programs countervailable, for the reasons just described. At TUTRIC's verification, we examined TUTRIC's 2006 tax returns and confirmed its corporate income tax was reduced from 30 percent to 24 percent, and that TUTRIC's local income tax of 3 percent was exempted due to its special FIE status. See TUTRIC Verification Report at 18.

To calculate the benefit from these programs to TUTRIC, we treated the income tax reduction and exemption claimed by TUTRIC as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the tax rate paid on the tax return filed during the POI to the rate that would have been paid by TUTRIC otherwise (24 versus 30 percent, zero versus three percent, respectively) and multiplied the difference by TUTRIC's taxable income from the income tax return filed during the POI. In accordance with 19 CFR 351.525(b)(6)(i), we attributed the benefit received to the total sales of TUTRIC. On this basis, we determine a countervailable subsidy of 0.13 percent ad valorem for TUTRIC for Tax Subsidies to FIEs in Specially Designated Geographic Areas, and 0.06 percent ad valorem for TUTRIC for Local Income Tax Exemption and Reduction Programs for "Productive" FIEs.

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

In the Preliminary Determination, we found that the exemptions of VAT and tariffs on purchases of imported equipment during the POI conferred a countervailable subsidy. These exemptions provided a financial contribution in the form of revenue forgone by the GOC. They provided a benefit to the recipients in the amount of the VAT and tariffs saved. See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). Since only certain domestic enterprises were eligible to receive VAT and tariff exemptions under this program, as well as FIEs, we found this program to be specific under section 771(5A)(D)(iii)(I) of the Act. See also CFS from the PRC and IDM at Comment 16.

For purposes of our final determination, we are continuing to find the VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries countervailable; however, we have made some changes to certain aspects of our analysis based on the information submitted after the Preliminary Determination, results of verification and comments from parties.

Specifically, GTC and TUTRIC each reported additional imports of equipment made under this program. (See GTC Verification Report and TUTRIC Verification Report.) Therefore, we have recalculated the benefit under this program for GTC and TUTRIC. Since these VAT and tariff exemptions were for the purchase of capital equipment, we are treating these exemptions as non-recurring benefits in accordance with 19 CFR 351.524(c)(2)(iii). See PET Film from India 3rd AR. To measure the benefits of each grant that are allocable to the POI, we first conducted the "0.5 percent test" for each grant. See 19 CFR 351.524(b)(2). We divided the total amounts of VAT and import duty exempted in each year by the relevant year's sales. If the amount of the exempted VAT and import duty provided in one year was greater than 0.5 percent of relevant sales, we allocated the benefit over the AUL. Where we found the benefits were less than 0.5 percent of the relevant year's sales during the POI, we expensed the benefit in the year of receipt. For those exemptions that were allocated over the AUL, we used the discount rate described above in the Subsidies Valuation section, and we use the methodology described in 19 CFR 351.524(d)(1). We divided the benefit from these exemptions allocable to the POI by each company's total sales. On this basis, we determine a countervailable subsidy of 0.25 percent ad valorem for GTC and 0.44 percent ad valorem for TUTRIC.

8. State Key Technology Renovation Project Fund

In the Preliminary Determination, we determined that the State Key Technology Program provided countervailable subsidies to GTC within the meaning of section 771(5) of the Act. We found that these grants were a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. See 19 CFR 351.504(a). We further determined that the grants provided under this program were limited as a matter of law to certain enterprises, i.e., large-sized state-owned enterprises and large-sized state holding enterprises among the 512 key enterprises, 120 pilot enterprise groups and the leading enterprises in industries, and, hence, are specific under section 771(5A)(D)(i) of the Act.

For purposes of our final determination, we are continuing to find the State Key Technology Program to be countervailable, for the same reasons as in the Preliminary Determination. Where necessary, we have applied the relevant changes discussed above in the Subsidies Valuation section. Certain aspects of the assistance provided to GTC under this program are business proprietary. For a full discussion, see GTC Final Calculation Memorandum.

Consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as "non-recurring." To measure the benefits of each grant that are allocable to the POI, we first conducted the "0.5 percent test" for each grant. See 19 CFR 351.524(b)(2). We divided the total amounts approved in each year by the relevant sales for those years. As a result, we found that a grant provided in one year was greater than 0.5 percent of relevant sales and was properly allocated over the AUL.

To calculate the countervailable subsidy rate, we divided the benefits attributable to the POI by the total value of GTC's sales during the POI. On this basis, we determine the countervailable subsidy rate to be 0.15 percent ad valorem for GTC.

B. Programs Determined To Be Not Countervailable

1. Provision of Electricity

In the Preliminary Determination, we determined that the GOC's provision of electricity does not confer a countervailable subsidy to OTR tire producers because the information on the record gave no indication of provision of electricity to the respondents at less than adequate remuneration pursuant to their status as SOEs or FIEs. On this basis, we preliminarily determined that the GOC's provision of electricity does not confer a countervailable subsidy. See, also, CWP from the PRC – Preliminary at 63883.

At verification, we also reviewed the published rate schedules submitted for the provinces of Guizhou and Hebei and the municipality of Tianjin. We verified that each respondent paid the electricity rate set forth in the rate schedule for its level of kilowatt consumption and that it received no discounts or rebates. See Guizhou Province Verification Report at 1-2 and GTC Verification Report at 15-16; Starbright Verification Report at 7 and 21; and Tianjin Government Verification Report at 1-3 and TUTRIC Verification Report at 14-15 and 21. Accordingly, we continue to find that the provision of electricity to the respondents is not countervailable.

2. VAT Export Rebates

We determine that the VAT export rebates received upon the export of OTR tires does not confer a countervailable benefit because the amount of VAT levied on sales of OTR tires in the domestic market (at a rate of 17 percent) exceeded the amount of VAT exempted upon the export of OTR tires (at a rate of 13 percent). See 19 CFR 351.517(a). The Department's verifications of GOC and TUTRIC confirmed that the VAT refund amount was not excessive; therefore, we find this program to be not countervailable. See e.g., GOC Verification Report at 3; see also TUTRIC Verification Report at 17 and 18; see also CWP from the PRC and IDM at 16.

3. Provision of Water To FIEs

In our Post -Preliminary Analysis, we determined that TUTRIC and DCB paid water rates according to the established rates for water users within the same category. Therefore, we preliminarily determined that the provision of water to TUTRIC/DCB was not specific in accordance with section 771(5A)(D) of the Act.[24] This information was verified. See TUTRIC Verification Report at 14 and 22, and Tianjin Government Verification Report at 4-5. Therefore,

[24] In the Preliminary Determination, we noted that GTC is not an FIE and as such has reported that it is not eligible for this program. We also noted that Starbright stated that it pumps water from its own wells, and therefore the company is not provided water by the GOC. See Preliminary Determination at 71375. We verified both statements. See Starbright Verification Report at 5 and GTC Verification Report at 19.

we continue to find that the provision of water to TUTRIC and DCB is not specific and, therefore, is not a countervailable subsidy.

4. Provincial/Municipal Technology Programs

In our Post -Preliminary Analysis, we preliminarily determined that Provincial/Municipal Technology Programs are not de jure specific under section 771(5A)(D)(i) of the Act. We continue to find that the programs are not de jure specific under section 771(5A)(D)(i) of the Act. We also note that the record information did not demonstrate that these grants were de facto specific. As there was insufficient time remaining in this investigation to reopen the record for new factual information regarding these small grants, we intend to further examine grants disbursed under this program if a CVD order is issued and an administrative review is requested.

C. Programs Determined To Not Confer A Benefit During The POI

1. Municipal Major Technical Innovation Program

As discussed in our Post -Preliminary Analysis, we found that although GTC received a grant under this program, the program rate was negligible (0.00 percent when rounded to the nearest hundredth decimal place) and, therefore, we find that GTC received no benefit during the POI.

2. Special Fund for Environmental Protection of 2004

As discussed in our Post -Preliminary Analysis, we found that although GTC received a grant under this program, the program rate was negligible (0.00 percent when rounded to the nearest hundredth decimal place) and, therefore, we find that GTC received no benefit during the POI.

D. Programs Determined To Be Not Used

Except as noted below, we determine that GTC, Starbright, and TUTRIC did not apply for or receive benefits during the POI under the following programs.

1. Government Provision of Land To SOEs (GTC and TUTRIC)

In the Preliminary Determination, we found that the provision of land-use rights to GTC was countervailable. See Preliminary Determination at 71368. Specifically, we determined that certain of the land-use rights provided to GTC were provided after the cut-off date, and that the allocated land use rights GTC received are available only to SOEs and, as such, are specific under section 771(5A)(D)(i) of the Act. In addition, we determined that the GOC's provision of land-use rights provided a financial contribution within the meaning of section 771(5)(D)(iii) of the Act and a benefit pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a). We did not make a finding regarding the provision of land-use rights for either TUTRIC or Starbright, indicating that we needed more information before rendering a determination. For TUTRIC, we stated that we needed more information to evaluate whether it received the allocated land-use rights provided to SOEs or whether it received granted land-use rights, and the timing of the provision of such rights. With respect to Starbright, we determined that additional information was needed because its land-use rights appeared to be interconnected with its CIO in 2006. See Preliminary Determination at 71370.

In the Preliminary Determination, we invited parties to comment on the issue of land-use rights and the appropriate benchmark to use in evaluating the countervailability of land-use rights. We received submissions on this issue on January 7, 2008. During the course of verification of GTC and TUTRIC, we examined these companies' land-use rights agreements and discussed the agreements with the relevant government authorities. See Guizhou Province Verification Report at 11-13, Tianjin Government Verification Report at 6-7, GTC Verification Report at 11-15, and TUTRIC Verification Report at 12-14 and 20. During the Starbright verification, we examined its land-use agreements as part of the larger issue of its CIO. See Starbright Verification Report at 5-6 and 20, and Hebei Province Verification Report at 4-6 and 12. Subsequent to the verifications, the Department issued its CIO Memorandum. In that analysis, we preliminarily determined that Starbright received a countervailable subsidy from the government's provision of land-use rights for LTAR. See CIO Memorandum at 14.

As discussed in more detail above, in Government Debt Forgiveness and the Provision of Land to Starbright Pursuant to Its Change in Ownership above and in Comments F.11-F.12, in this final determination, we are continuing to find that Starbright received countervailable benefits from the provision of land to SOEs for LTAR. Because Starbright's land agreements are connected to its CIO, our determination of the countervailabiliy of Starbright's land-use rights is fully discussed in Government Debt Forgiveness and the Provision of Land to Starbright Pursuant to Its Change in Ownership and in Comments F.11-F.12. With respect to GTC and TUTRIC, they were able to establish at verification that the only land-use agreements in effect for each company during the POI were approved prior to the December 11, 2001 cut-off date. See GTC Verification Report at 11-15 and TUTRIC Verification Report at 12-14 and 20. For land-use transactions, we are not countervailing any transactions whose essential terms and conditions are established prior to the December 11, 2001 cut-off date. The date of the land use contract is normally the date on which we will consider that the essential terms and conditions for a land-use rights contract in China are established. The evidence on the record of this case shows that GTC's and TUTRIC's land use contracts were dated prior to the December 11, 2001 cut-off date. Therefore, for purposes of this final determination, we are finding that the Government Provision of Land-Use Rights was not used by GTC and TUTRIC.

2. Loan Forgiveness For SOEs[25]

3. Foreign Currency Retention Scheme

[25] We have found company-specific debt forgiveness for TUTRIC under the Government Debt Forgiveness for TUTRIC program and debt forgiveness for Starbright under the Government Debt Forgiveness and the Provision of Land to Starbright Pursuant to Its Change in Ownership program to be countervailable.

4. Provision Of Land For Less Than Adequate Remuneration To FIEs

5. Preferential Tax Policies For Enterprises With Foreign Investment (Two Free, Three Half Income Program)

6. Preferential Tax Policies For Export-Oriented FIEs

7. Corporate Income Tax Refund Program For Reinvestment Of FIE Profits In Export-Oriented Enterprises

8. Tax Benefits For FIEs In Encouraged Industries That Purchase Domestic Origin Machinery

9. VAT Rebate For FIE Purchases Of Domestically Produced Equipment

10. Funds For Outward Expansion Of Industries In Guangdong Province

11. Export Interest Subsidy Funds For Enterprises Located In Guangdong And Zhejiang Provinces

12. Grants To Loss-Making SOEs

13. Exemption For SOEs From Distributing Dividends To The State

14. Preferential Tax Policies For Advanced Technology Foreign Invested Enterprises

15. Preferential Tax Policies For Knowledge Or Technology Intensive FIEs

16. Preferential Tax Policies For High Or New Technology FIEs

17. Preferential Tax Policies For Research And Development By FIEs

18. Provincial Support In Antidumping Proceedings

19. Grants To The Tire Industry For Electricity

20. Discounted Loans For Export-Oriented Enterprises

E. Program Determined To Be Terminated

Exemption from Payment of Staff and Worker Benefits for Export Oriented Industries

The Department determined that this program was terminated on January 1, 2002, with no residual benefits. See CFS from the PRC.

V. <u>Analysis of Comments</u>

A. General Issues including Applicability of the CVD Law to the PRC, Cut-Off Date, and Double Remedies

Comment A.1: Application of the CVD Law to Non-Market Economies, including the PRC

The GOC and GTC contend that the Department does not have lawful authority to apply the CVD law to a NME (in this case, to GTC's exports from the PRC) under U.S. trade remedies law and the SCM Agreement. Rather, the GOC and GTC argue that only Congress has such authority, per the Federal Circuit's holding in Georgetown Steel and as affirmed by congressional action, or lack thereof, since that decision. (GTC explicitly endorses the arguments filed by the GOC in the GOC's May Case Brief and May Rebuttal Brief.)

In Georgetown Steel, the GOC argues, the Federal Circuit found that the CVD law does not apply to NMEs, based on the court's review of "the purpose of the countervailing duty law, the nature of non-market economies, and the actions Congress has taken in other statutes that specifically address the question of exports from those economies." Georgetown Steel at 1314. In CFS from the PRC, the Department issued a memo which interpreted the Georgetown Steel decision as affirming that the Department has discretion not to apply the CVD law to NME countries. See Georgetown Steel Memorandum at 2. However, the GOC argues that the Department did not provide any legal support for this conclusion and erred in its determination that Georgetown Steel provided the agency with discretion to apply or not apply the CVD law to NMEs. In particular, GTC notes that the Federal Circuit examined both the statute and congressional intent in finding that Congress chose AD law (not CVD law) as the proper method for addressing unfair imports from state-controlled economies. Moreover, the court noted that if the AD law did not adequately protect the U.S. market from NMEs selling at unreasonably low prices, then Congress must create additional remedies. Thus, the GOC argues, not only did the Federal Circuit find that the CVD law cannot be applied to NMEs, but it also did not express deference to the Department in interpreting the statute. Rather, the GOC and GTC argue, the Georgetown Steel decision indicates that Congress intended the AD laws to be the exclusive remedy for subsidization of NME producers and any subsequent legal authority to apply the CVD law to NMEs rests with Congress.

The GOC further argues that Georgetown Steel remains controlling precedent, since subsequent action by Congress has not yielded explicit authority to apply the CVD law to NMEs. The GOC notes that when Congress reenacts a statute without any change or incorporates sections of the prior law into the new law, it is presumptively aware of an administrative or judicial interpretation of that statute and has adopted that interpretation. See Merrill Lynch at 383, n.66. The GOC further states that, under rules of statutory construction, Congress will make its intent specific if it enacts legislation intended to modify the interpretation of a judicially created concept. See Midatlantic Nat'l Bank at 501. GTC notes that since Georgetown Steel, Congress has amended the AD and CVD laws but has not taken such opportunities to authorize the Department's application of the CVD law to NMEs, and has thereby directly or indirectly accepted the court's analysis in Georgetown Steel. Instead, the OCTA and URAA illustrate congressional efforts to address the potential subsidization of imports from NMEs by strengthening only the U.S. AD law provisions. The OCTA amended certain AD provisions by establishing a NME methodology that uses surrogate purchase prices to value factors of production, but did not similarly modify the CVD provisions to apply to NMEs. See OCTA at 1184. Thus, the GOC and GTC argue that Congress intended the NME methodology for calculating ADs to wholly address any market distortions created by subsidization. The URAA included changes to both U.S. AD and CVD law, but none of the modifications addressed the application of CVD law to NMEs. More importantly, the GOC and GTC note that in the SAA, Congress referred to Georgetown Steel as representing the "reasonable proposition that the CVD law cannot be applied to imports from nonmarket economy countries." See SAA at 926. Finally, the GOC and GTC note that current congressional efforts to make the CVD statute applicable to NMEs have not reached fruition, thereby demonstrating that the Department is not yet authorized to conduct CVD investigations of imports from NMEs. Thus, the GOC concludes, the legal basis for this investigation remains the same as it was in 1986, namely that the Department does not have statutory authority to apply the CVD law to NMEs.

The GOC and GTC also argue that the Department's reasoning in applying the CVD law to the PRC is flawed insofar as it obliges the Department to adopt the conflicting view that market prices both can and cannot exist in the PRC. The GOC and GTC argue that the Department cannot "lawfully have it both ways" in finding that Chinese prices are sufficiently market-based such that it can measure subsidies, while simultaneously claiming that it cannot use Chinese prices to measure subsidies due to pervasive government influence. The GOC and GTC also submit that Petitioners provided no credible evidence to support their allegations.

In particular, the GOC and GTC state that Petitioners' allegations are premised on the idea that the GOC's control over the market for certain goods or services provided to OTR tire producers (e.g. lending, land-use rights, and rubber) results in a non-market price for that input and thus no ability to determine a reliable market price benchmark. However, the GOC and GTC argue, if Petitioners' arguments were allowed, then there could not be any benchmark to measure the alleged effect of governmental intervention since there would be no way to measure the alleged subsidy with reference to a market benchmark reflecting supply and demand conditions within the PRC. The GOC submits that this consideration underpinned the Department's long practice of not applying the CVD law to NMEs, and accordingly there is no reason to depart from that practice. For instance, the GOC notes that in Carbon Steel Wire Rod from Poland (one of the investigations litigated in Georgetown Steel), the Department found that a NME's resources are not allocated by market but rather by central planning, and consequently it is "meaningless to look for misallocation of resources caused by subsidies" because "(t)here is no market process to distort or subvert." Carbon Steel Wire Rod from Poland at 19375. The Department further stated that resource misallocation in a NME results not from subsidies but from central planning (though it may seem otherwise when compared to a market economy) and concluded that "subsidies have no meaning outside the context of a market economy." Id. Moreover, the GOC and GTC note that the Department's position that Chinese domestic prices are not usable benchmarks because they are distorted by government intervention is the very reason given in Georgetown Steel to explain why the CVD law could not be applied to NMEs.

The GOC and GTC maintain that every time the Department adopts an external benchmark that does not and cannot reflect what a market price in China would be, "the Department confirms it has not and cannot reasonably measure purported Chinese 'subsidies.'" GOC May Case Brief at 11 and GTC May Case Brief at 9. As an example of this purported contradiction, the GOC refers to the Department's calculations in measuring the alleged loan subsidy in the Preliminary Determination (and in CFS from the PRC) and states that the "average" rate benchmark (computed from different currencies, economies, monetary policies, and economic conditions) cannot represent what a Chinese market rate, for the Chinese currency, would be absent government intervention. The GOC states that the Department's loan methodology results in a false market comparison because it only measures the extent to which inflation-adjusted RMB interest rates in the PRC rate diverge from the "average" of certain third-country rates as adjusted by the Department (rather than from interest rates for other currencies in "comparable" countries).

The GOC and GTC further contend that the Department's imposition of the CVD law against Chinese respondents directly conflicts with the Department's evaluation of the PRC as a transitioning NME in the Georgetown Steel Memorandum. While the Georgetown Steel Memorandum describes the present-day PRC economy as "more flexible" and liberalized than the old "Soviet-style economies" at issue in Georgetown Steel, the GOC views the Department's reliance on third country benchmarks in its CVD calculations as indicative that the Department finds little practical distinction between the PRC and other NMEs. The GOC also claims the Department did not provide any source of evidence that U.S. law recognizes different types of NMEs countries and should apply different rules to different types of NMEs.

The GOC and GTC concludes that it is paradoxical for the Department to find that the PRC economy is market-oriented enough to permit measurement of subsidies and application of the CVD law, but not liberalized enough to allow normal value to be based on sales or costs in an AD investigation relating to the PRC. For instance, in Lined Paper from the PRC – AD, GTC notes that the Department's determination that the PRC is a NME in the parallel AD investigation stems from its view that the PRC "does not operate on market principles of cost or price structures, so that sales of merchandise in the country do not reflect the fair market value of the merchandise." See August NME Status Memorandum and IDM at Comment 2 (quoting section 771(18)(A) of the Act). Yet, the GOC and GTC submit, the Department's reasoning describes the same circumstances that initially led Congress to restrict the remedy against unfair pricing from NMEs to only AD duties. Thus, GOC argues that if the Department continues to find that the PRC market is liberalized enough to permit the application of the CVD law, then the PRC must also be liberalized enough to allow the use of market economy methodologies in the parallel AD investigation. The GOC suggests that the Department recognized this contradiction in the Georgetown Steel Memorandum when it stated "modification of some aspects of the Department's current NME antidumping policy and practice may be warranted, such as the conditions under which the Department might grant an NME respondent market economy treatment." Georgetown Steel Memorandum at 11.

The GOC and GTC further argue that the Department's application of the CVD law to the PRC, while continuing to treat it as a NME in the parallel AD investigation, violates the APA and results in "double counting" of the same alleged subsidies under both CVD and AD law. These specific issues are discussed in Comment A.2 and Comment A.3 below.

Finally, the GOC argues that respondents' efforts to cooperate with the Department have been negatively affected by due process violations during this investigation. Specifically, the GOC refers to the Department's purportedly unlawful initiation of investigations regarding certain programs alleged by the Petitioners and the cancellation of the Hebei Province verification. With respect to issues regarding Hebei Province and Hebei Starbright, the GOC reserves its right to brief those issues at a later date.

In countering Petitioners' and Bridgestone's arguments, the GOC and GTC maintain that the Department's imposition of CVD law against a NME is unlawful because it violates Department precedent and the statute, and results in double remedies. The GOC and GTC state that, per Georgetown Steel, it is not possible to measure countervailable subsidies in a NME. The GOC and GTC further note the Department's conflicted stance insofar as each time the Department relies on an external benchmark that cannot reflect Chinese market prices, it also affirms that it cannot reliably measure alleged subsidies in the PRC. In response to Petitioners' argument that the Department should remove references to the Chinese market when computing benchmarks, the GOC and GTC state that Petitioners' view bears out the "logical bankruptcy of the Department's decision to apply CVD law to subsidies it cannot meaningfully or accurately measure." GTC May Rebuttal Brief at 5.

TUTRIC also contests the Department's discretionary authority to initiate this or any other CVD investigation against the PRC. TUTRIC argues the statutory intent behind the Act, as amended by the URAA, was to prevent the application of the CVD laws to NME exports, the practice of which was upheld in Georgetown Steel. See URAA at 4813, and Georgetown Steel. After Georgetown Steel, Congress was aware of the Department's practice but opted not to statutorily enable the application of the CVD law to NME countries in subsequent amendments to the U.S. trade laws. TUTRIC further states that the Department continued its practice of not applying the CVD law to NMEs even after the Act was amended to its present form. See Sulfanilic Acid from Hungary. (Indeed, TUTRIC notes, the recently proposed legislation authorizing CVD measures to be used against NMEs illustrates that such actions are not permitted under the current version of the law.) Thus, TUTRIC argues that, absent new legislation, the Department is not statutorily authorized to apply the CVD law to the PRC while continuing to treat it as a NME for AD purposes.

TUTRIC first argues that the CVD law is not applicable to NMEs according to the context and structure of the current Act, as amended. TUTRIC notes that the Department, relying on CFS from the PRC and its related Georgetown Steel Memorandum as support, found in the Preliminary Determination that it has discretion to apply the CVD law to NMEs because the Act did not expressly prohibit it. However, TUTRIC contends the Department erred in this interpretation because, when looking at the entire statute and using the canons of statutory construction, the fact that the term "NME" was excluded from sections 701 and 771(5) and (5A) of the Act but included in other sections shows clear congressional intent that the Department not be authorized to apply the CVD law to NMEs. Whether Congress' intent is clear is determined from the use of "traditional tools of statutory construction" (Chevron at 843), including "an examination of the statute's text, legislative history, and structure." Bell Atlantic at 1047. Under Chevron, if the court (or the Department in this case) uses the tools of construction and determines that Congress "had an intention on the precise question at issue, that intention is the law and must be given effect." See Chevron at 843 n.9. Thus, TUTRIC argues, the Department must first follow clear congressional intent and can only turn to its own discretion after such intent is proven unclear.

TUTRIC contends that analyzing a statute requires the Department to look beyond the meaning of its "specific language or lack thereof" (here, 19 U.S.C. § 1677(5) or (5A)) and instead first examine its plain meaning (19 U.S.C. §§ 1671, 1673, 1675, 1677). TUTRIC states further analysis is not necessary if the statutory language is unambiguous upon reviewing "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." Rosenberg v. XM Ventures at 141. In addition, TUTRIC notes that Congress' use of different language or terms within a statute creates a presumption of congressional intent that such terms have different meanings.

Based on such "tools of statutory construction," TUTRIC argues the Department must analyze the entire context and structure of the statutory provisions addressing either CVDs or ADs, i.e. 19 U.S.C. §§ 1671, 1673, 1675, and 1677, which often include "rules for, and the scope of, each type of investigation" within the same section. TUTRIC May Case Brief at 5. Thus, TUTRIC submits, because the meaning of particular CVD and AD provisions must be construed within the broader context of both the AD and CVD laws (rather than in "the vacuum of only that discipline (AD or CVD)"), the Department improperly restricted its analysis to only sections 1671 and 1677(5) and 5(A) in this investigation and in CFS from the PRC. TUTRIC May Case Brief at 5-6. For instance, TUTRIC notes that in CFS from the PRC, the Department interpreted section 1671 (regarding CVDs) as "a general grant of authority to conduct CVD investigations," including discretion to apply the CVD law to NMEs, since it has no reference to NMEs. See CFS from the PRC and IDM at Comment 1. Yet section 1673 (regarding ADs) also has no reference to NMEs but, TUTRIC states, the Department does not have discretion to not apply the AD law to NMEs and the congressional mandate that antidumping measures must be applied to NMEs is indisputable.

Accordingly, TUTRIC maintains that the Department's claim of discretion must derive instead from section 1677, which describes the relevant "special rules" and definitions for both AD and CVD investigations. Although the term "non-market economy" is not referenced in certain portions of section 1677 (i.e. 5 and 5A), TUTRIC notes that it does appear in other portions with respect to just AD proceedings (and not CVD proceedings). In particular, TUTRIC points to section 1677(18), which outlines NME analysis and expressly restricts judicial review of NME determinations made only in AD investigations. TUTRIC contends that the absence of language regarding judicial review of NME status determinations in CVD proceedings indicates that CVDs are not applicable to NMEs, since "(s)urely, it is unreasonable to believe that Congress would not have limited judicial review of a non-market designation in one type of investigation, but not the very same designation in another. As another example, TUTRIC notes that section 1677(b) includes reference to a "non-market economy country" regarding the calculation of normal value in AD investigations involving NMEs, but not for the calculation of subsidies in CVD investigations. TUTRIC argues that Congress would have expressly referred to investigations involving NME exports in at least one of the CVD sections if it had intended to make the CVD law applicable to NMEs. Thus, TUTRIC argues, the repeated reference to NMEs in the overall section relating to both AD and CVD investigations, but specific absence of the term in the portions related to CVDs is evidence that Congress intended only ADs to be applicable to NMEs, not CVDs.

In addition, TUTRIC argues that the CIT's decision in GOC v. U.S. was limited solely to jurisdictional issues, rather than the substantive merits of the case (contrary to the Department's references in CFS from the PRC). See GOC v. U.S. Since a court lacking jurisdiction "cannot render precedential opinions on the merits," TUTRIC argues that the Department cannot rely on dicta from GOC v. U.S. as support for its proposed application of the CVD law to NMEs or its reasoning in CFS from the PRC. TUTRIC May Case Brief at 8-9; see also Steel Co. at 94-95, and American Spring at 75.

Next, TUTRIC states that the non-applicability of the CVD law to NMEs is further affirmed by the statutory interpretation in Georgetown Steel and subsequent legislative history. Georgetown Steel addressed the issue of whether CVDs could be applied to NMEs pursuant to section 303 of the Act, which TUTRIC contends is "virtually identical" to the current act in its amended form. TUTRIC May Case Brief at 9. Contrary to the Department's interpretation of the holding as narrowly tailored to its discretion, TUTRIC argues that the plain language of the decision indicates congressional intent that CVD laws not apply to NMEs. In particular, TUTRIC cites the court's description of congressional efforts to address the problem of NME exports via certain statutory provisions which "indicate that Congress intended that any selling by {NMEs} at unreasonably lower prices should be dealt with under the antidumping laws. There is no indication in any of those statutes, or their legislative history, that Congress intended or understood that the countervailing duty law also would apply." Georgetown Steel at 1314 (emphasis added by TUTRIC). TUTRIC also notes the court's focus on the role of Congress (rather than the Department) in concluding that if the AD law did not adequately protect U.S. industries against NMEs selling at unreasonably low prices, then "it is up to Congress to provide any additional remedies it deems appropriate." Georgetown Steel at 1318. Based on the court's statutory interpretation in Georgetown Steel and the Department's own conclusion that "Congress could not have intended to apply the CVD law to NME economies," TUTRIC states that the Department repeatedly rejected CVD petitions against NMEs up until CFS from the PRC. See Oscillating Fans from the PRC – Rescission and IDM at Comment 1.

Moreover, TUTRIC notes that Congress is presumptively aware of an administrative interpretation of a statute and is deemed to have adopted that interpretation when it reenacts a statute without modification. See Merrill Lynch at 383, n.66. TUTRIC points to the legislative history of the OCTA, particularly regarding an ultimately abandoned section of law, as evidence of Congress' awareness that the CVD law was not applicable to NMEs per Georgetown Steel, and of the Department's lack of discretionary authority to decide otherwise. See OTCA – House Report at 138 and OTCA. Thus, by enacting the OCTA and the URAA without expressly amending the CVD law to apply to NMEs or to grant the Department discretion to make such a determination, TUTRIC contends that Congress accepted the interpretation of congressional intent first provided in Georgetown Steel.

Finally, TUTRIC argues the view that Congress did not intend the CVD law to be applicable to NMEs is supported by the Department's continued non-application of the CVD law to NMEs even after new iterations of the CVD law were enacted. In Sulfanilic Acid from Hungary (in 2002), the Department did not consider "the inherent differences between NMEs" in determining that CVD law was not applicable to Hungary when it was still deemed an NME, as opposed to CFS from the PRC (in 2006), where the Department analyzed differences between Hungary and "Soviet-style NMEs of 1980s." TUTRIC also contends that in the year before "graduating" to market economy status, Hungary was at the same economic level as present-day China. Thus, TUTRIC argues, the Department effectively determined the CVD law was not applicable to any NMEs in Sulfanilic Acid from Hungary, but now (and in CFS from the PRC) construes the same statute as applicable to some NMEs.

Petitioners note that in CFS from the PRC the Department refuted arguments similar to those presented by the GOC and GTC, namely that the Department cannot apply the CVD law to the PRC under the precedent of Georgetown Steel. In particular, Petitioners cite the court's language to demonstrate that the issue presented was whether the Department's determination that certain benefits (provided for exports from the Soviet Union and German Democratic Republic) were not countervailable was "unreasonable, not in accordance with law or an abuse of discretion." Georgetown Steel at 1318. Thus, Petitioners distinguish the Georgetown Steel decision as not precluding the possibility that, particularly under a different record with different facts, the Department could reach a different and lawful conclusion.

Petitioners also contest the GOC's and GTC's argument that the Department's rejection of internal benchmarks as a means of measuring subsidies while viewing the PRC's internal market as liberalized enough to measure the effect of subsidies, is indicative of a flawed rationale. Petitioners argue there is no contradiction between the Department's prior reasoning that it could not measure subsidies in traditional command-style NMEs due to complete government control over pricing, investment and credit decisions, and its current view that this is no longer the case in the PRC's new economy. However, given the GOC's ongoing and significant role in the PRC economy, Petitioners maintain that internal benchmarks are still unreliable in measuring subsidies.

Petitioners further submit there is no inconsistency in the Department's simultaneous treatment of the PRC as sufficiently liberalized to be subject to the CVD law yet still a NME for AD purposes. In reference to comparable arguments in CFS from the PRC, Petitioners note the Department's view of the fundamental difference between the "analysis underlying the question of whether PRC prices and costs can be used for purposes of the antidumping law versus the question of whether it is possible to determine that the PRC government has bestowed a countervailable subsidy upon a Chinese producer." CFS from the PRC and IDM at 35-37. Petitioners cite the "transitional nature of the new Chinese economy" and the "different role of prices and costs in an antidumping investigation," as sufficient reasons for the Department's disparate treatment of the PRC under the AD law and the CVD law. Petitioners May Rebuttal Brief at 9.

Bridgestone also rebuts the arguments by the GOC, GTC, and TUTRIC that the CVD law is not applicable to the PRC. Bridgestone contends the GOC and respondents misconstrue the statute and the Georgetown Steel decision, and that their reasoning neglects the factual distinctions between the past and current economies of the PRC. Bridgestone further states the Department's case-specific approach to the facts in CFS from the PRC and in this investigation comports with the reasoning it used in not applying the CVD law to Soviet-style economies during the Georgetown Steel era.

First, Bridgestone contends the Department has authority to apply the CVD law to all countries, under its regulations and the CVD statute. Bridgestone notes that the Department should apply the statute according to its terms when the language is unambiguous. The CVD statute expressly states that CVDs be imposed when the Department finds "the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy." See § 702(1) of the Act (emphasis added by Bridgestone). In light of its expansive definitions of "country" ("a foreign country, a political subdivision, dependent territory, or possession of a foreign country") and "Subsidies Agreement country" ("a WTO member country"), Bridgestone states that the statute provides broad coverage of imports from all nations, including the PRC, without limitation. See § 771(3) and § 701(b)(1) of the Act. Moreover, Bridgestone notes the statutory definition of "countervailable subsidy" is not restricted to actions taken by a particular country or type of foreign economy, let alone a market economy government. Bridgestone contends that the statute would reflect congressional had intended to exempt NMEs from the Department's broad statutory authority to initiate and conduct CVD investigations and the broad definition of a countervailable subsidy. However, the statute does not refer to the PRC or to NME countries generally, and thus no exception can be construed from the statute.

Bridgestone further notes that there is nothing in the statute's legislative history to contradict its plain meaning or suggest that Congress opposed allowing the Department to initiate or conduct CVD investigations of imports from NME countries. From the statute's original enactment through its two major revisions (OCTA and URAA), Bridgestone states that Congress has not expressed an intent to make NMEs not subject to the CVD law or treated differently under it. (Indeed, contrary to the GOC's and GTC's arguments, Bridgestone views the legislation proposed in the current session of Congress as stemming from a "desire to compel the Department to conduct CVD investigations of NMEs," regardless of the Georgetown Steel Memorandum analysis or subsequent CVD determinations, thereby supporting the Department's position that it has discretion to apply the CVD law to NMEs. Bridgestone May Rebuttal Brief at 11.) Moreover, the PNTR legislation reflects Congress' express acknowledgment that CVD remedies against Chinese imports are available and enforceable pursuant to the PRC's WTO accession.

Next, Bridgestone argues the GOC and respondents incorrectly construe Georgetown Steel as prohibiting the Department from applying the CVD law to the PRC. Not only has the statutory language examined in Georgetown Steel since been repealed, but Bridgestone states the court's holding was based on the issue of "whether the court should defer to the Department's expertise and discretion in interpreting the scope of its authority under Section 303 in the face of Congressional silence." Bridgestone May Rebuttal Brief at 13. At the time of Georgetown Steel, Section 303 instructed that CVDs be imposed when "any bounty or grant" is bestowed by "any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation." Bridgestone May Rebuttal Brief at 14 (emphasis added by Bridgestone). In the carbon steel wire rod investigations (precursor to the Georgetown Steel litigation), the Department determined that such bounties or grants could not be found in an NME (since it has no market process for the bounty/grant to distort), but also noted that Congress had not directly addressed the question of "whether the {CVD} law applies to NMEs." See Carbon Steel Wire Rod from Czechoslovakia at 19373, and Carbon Steel Wire Rod from Poland at 19377. The Department additionally stated that political entities were not "exempted per se from the countervailing duty law" under the broad language of Section 303, but stated that its finding did not address the jurisdictional issue of "whether government activities in an NME confer a 'bounty or grant' within the meaning of Section 303." Id. at 19371, 19375. On appeal, the Federal Circuit stated it could not construe whether Section 303 applied to NMEs because not only did Congress fail to define "bounty" and "grant" within that section, it also did not reference NMEs upon the statute's enactment or express any intent to modify its scope in the years since. Georgetown Steel at 1314. Absent guidance from Congress, the Federal Circuit looked to precedent that upheld agency discretion and found the Department had statutory discretion not to apply CVD remedies to NME imports. Bridgestone argues the Department is not precluded from reconsidering this decision in light of an NME's future economic and governmental policy changes under Section 303 at the time of Georgetown Steel or under the current CVD statute.

Moreover, Bridgestone contends the issue considered in Georgetown Steel was not whether the statute prohibited the Department from applying the CVD law to NMEs or initiating a CVD investigation of NME imports, but was limited solely to whether the court "should defer to the Department's discretion in construing the statute in the absence of clear Congressional direction." Bridgestone May Rebuttal Brief at 17. Accordingly, Bridgestone argues, the court's broader discussion of legislation subsequent to Section 303 is merely dicta, and thus improperly relied on by the GOC. Moreover, Bridgestone notes that Section 303 (reviewed in Georgetown Steel) was repealed by the URAA in 1994. In examining whether the CVD law may be applied to NMEs under the current law in GOC v. U.S. (2007), the CIT stated "the Georgetown Steel court only affirmed Commerce's decision not to apply the {CVD} law to the NMEs in question in that particular case and recognized the continuing 'broad discretion' of the agency to determine whether to apply {CVD} law to NMEs," and concluded "(n)othing in the language of the {CVD} statute excludes NMEs." GOC v. U.S. at 1282.

Finally, Bridgestone argues the Department's authority to apply the CVD law to the PRC has not been restricted by any of Congress' actions or lack thereof since Georgetown Steel because that decision addressed a different iteration of the CVD statute, which has since been amended to include key provisions that are fundamentally different from those in the now-repealed Section 303. First, Bridgestone notes that Congress could only have affirmed the Department's practice to the extent that it related to the court's holding in 1984, namely that "the Department maintained discretion not to construe Section 303 as applying to NMEs in light of the conditions then applicable in the Soviet bloc economies at issue." Bridgestone May Rebuttal Brief at 19. Second, Bridgestone notes that the Department's non-application of Section 303 to NMEs in Georgetown

Steel was based on its view that it was not possible at that time to determine a "bounty or grant" in an NME within the meaning of Section 303. Bridgestone May Rebuttal Brief at 19. However, Section 303 has since been repealed, and the CVD statute now defines both "subsidy" and "countervailable subsidy." See § 771(5) of the Act. Given the broad subsidy definition in the current statute, Bridgestone contends Chinese imports are within its scope. Moreover, Bridgestone notes that the factors examined in Georgetown Steel regarding the determination of subsidies in an NME have been modified by the current language. See Bridgestone May Rebuttal Brief at 20.

With respect to TUTRIC's argument that Congress' non-action since Georgetown Steel effectively confirmed the non-applicability of the CVD law to NMEs, Bridgestone argues there is no evidence as to why Congress chose not to modify the statute but that "the most that can be deduced from Congress' inaction on this issue in the 1988 Act is that Congress chose to acquiesce in the Department's continuation of its practice, which the Federal Circuit never held to be above alteration by the Department upon reasoned explanation." Bridgestone May Rebuttal Brief at 20. In addition, Bridgestone argues, the URAA repealed Section 303 (at issue in Georgetown Steel) and amended the current CVD law to strengthen its AD provisions with respect to NMEs. Furthermore, Bridgestone notes that Congress effectively recognized the Department's authority to apply the CVD law to the PRC in the PNTR legislation, which provided the Department with funding to defend and enforce U.S. CVD measures against imports from the PRC. See § 22 U.S.C. 6943.

Department Position

We disagree with the GOC and respondents regarding the Department's authority to apply the CVD law to China. See CFS from the PRC and IDM at Comments 1, 3 and 4. The Department's position on the issues raised is fully explained in CFS from the PRC, CWP from the PRC, LWRP from the PRC, and LWS from the PRC. See id.; see also CWP from the PRC and IDM at Comment 1; LWRP from the PRC and IDM at Comment 1; and LWS from the PRC and IDM at Comment 1.

Congress granted the Department the general authority to conduct CVD investigations. See, e.g., Sections 701 and 771(5) and (5A) of the Act. In none of these provisions is the granting of this authority limited only to market economies. For example, the Department was given the authority to determine whether a "government of a country or any public entity within the territory of a country is providing . . . a countervailable subsidy . . . ." See Section 701(a) of the Act. Similarly, the term "country," defined in section 771(3) of the Act, is not limited only to market economies, but is defined broadly to apply to a foreign country, among other entities. See also Section 701(b) of the Act (providing the definition of "Subsidies Agreement country").

In 1984, the Department first addressed the issue of the application of the CVD law to NMEs. In the absence of any statutory command to the contrary, the Department exercised its "broad discretion" to conclude that "a 'bounty or grant,' within the meaning of the CVD law, cannot be found in an NME." See Carbon Steel Wire Rod from Poland; and Carbon Steel Wire Rod from Czechoslovakia. The Department reached this conclusion, in large part, because both output and input prices were centrally administered, thereby effectively administering profits as well. Id. The Department explained that "{t}his is the background that does not allow us to identify specific NME government actions as bounties or grants." Id. Thus, the Department based its decision upon the economic realities of Soviet-bloc economies. In contrast, the Department has previously explained that, "although price controls and guidance remain on certain 'essential' goods and services in China, the PRC Government has eliminated price controls on most products … ." See Georgetown Steel Memorandum. Therefore, the primary concern about the application of the CVD law to NMEs originally articulated in these Steel Wire Rod cases is not a significant factor with respect to China's present-day economy. Thus, the Department has concluded that it is able to determine whether subsidies benefit imports from China.

The CAFC recognized the Department's broad discretion in determining whether it can apply the CVD law to imports from an NME in Georgetown Steel at 1318. In doing so, the CAFC recognized that the statute does not speak to this precise issue and deferred to the Department's decision. The Georgetown Steel court did not find that the CVD law prohibited the application of the CVD law to NMEs, but only that the Department's decision not to apply the law was reasonable based upon the language of the statute and the facts of the case. Specifically, the CAFC recognized that:

> {T}he agency administering the countervailing duty law has broad discretion in determining the existence of a "bounty" or "grant" under that law. We cannot say that the Administration's conclusion that the benefits the Soviet Union and the German Democratic Republic provided for the export of potash to the United States were not bounties or grants under section 303 was unreasonable, not in accordance with law or an abuse of discretion. See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-45, 104 S.Ct. 2778, 2781-83, 81 L.Ed.2d 694 (1984).
> See Georgetown Steel at 1318 (emphasis added).

The GOC argues that the Georgetown Steel court found that the CVD law cannot apply to NMEs. In making this argument, the GOC cites to select portions of the opinion and ignores the ultimate holding of the case and the court's reliance on Chevron to find the Department had reasonably interpreted the law. Id. The Georgetown Steel court did not hold that the statute prohibited application of the CVD law to NMEs, nor did it hold that Congress spoke to the precise question at issue. Instead, as explained above, the court held that the question was within the discretion of the Department.

Recently, the CIT concurred, explaining that "the Georgetown Steel court only affirmed {the Department}'s decision not to apply countervailing duty law to the NMEs in question in that particular case and recognized the continuing 'broad discretion' of the agency to determine whether to apply countervailing duty law to NMEs." See GOC v. U.S. at 1282 (citing Georgetown Steel at 1318). Therefore, the court declined to find that the Department's investigation of subsidies in China was ultra vires.

The GOC's argument that Congress' failure to amend the law subsequent to Georgetown Steel amounts to a Congressional prohibition on the application of the CVD law to NMEs is also legally flawed. The fact that Congress has not enacted any NME-specific provisions to the CVD law does not mean the Department does not have the legal authority to apply the law to NMEs. The Department's general grant of authority to conduct CVD investigations is sufficient. See, e.g., section 771(5) and (5A) of the Act. Given this existing authority, no further statutory authorization is necessary. Furthermore, since the holding in Georgetown Steel, Congress has, on several occasions, expressed its understanding that the Department already possesses the legal authority to apply the CVD law to NMEs. For example, on October 10, 2000, Congress passed the PNTR legislation. In section 413 of that law, which is now codified in 22 U.S.C. § 6943(a)(1), Congress authorized funding for the Department to monitor "compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China." 22 U.S.C. § 6943(a)(1) (emphasis added). China was designated as an NME as of the passage of this bill, as it is today. Thus, Congress not only contemplated that the Department possesses the authority to apply the CVD law to China, but authorized funds to defend any CVD measures the Department might apply.

This statutory provision is not the only instance where Congress has expressed its understanding that the CVD law may be applied to NMEs in general, and China in particular. In that same trade law, Congress explained that "{o}n November 15, 1999, the United States and the People's Republic of China concluded a bilateral agreement concerning the terms of the People's Republic of China's eventual accession to the World Trade Organization." 22 U.S.C. § 6901(8).

Congress then expressed its intent that the "United States Government must effectively monitor and enforce its rights under the Agreements on the accession of the People's Republic of China to the WTO." 22 U.S.C. § 6941(5). In these statutory provisions, Congress is referring, in part, to China's commitment to be bound by the SCM Agreement as well as the specific concessions China agreed to in its Accession Protocol. See Accession Protocol, in the Petition at Exhibit 20.

The Accession Protocol allows for the application of the CVD law to China, even while it remains an NME. In fact, in addition to agreeing to the terms of the SCM Agreement, specific provisions were included in the Accession Protocol that involve the application of the CVD law to China. For example, Article 15(b) of the Accession Protocol provides for special rules in determining benchmarks that are used to measure whether the subsidy bestowed a benefit on the company. Id. at 9. Paragraph (d) of that same Article provides for the continuing treatment of China as an NME. Id. There is no limitation on the application of Article 15(b) with respect to Article 15(d), thus indicating it became applicable at the time the Accession Protocol entered into effect. Although WTO agreements such as the Accession Protocol do not grant direct rights under U.S. law, the Protocol contemplates the application of CVD measures to China as one of the possible existing trade remedies available under U.S. law. Therefore, Congress' directive that the "United States Government must effectively monitor and enforce its rights under the Agreements on the accession of the People's Republic of China to the WTO," contemplates the possible application of the CVD law to China. See 22 U.S.C. § 6941(5).

The GOC and the other respondents fail to discuss these statutory provisions and instead cite to the fact that Congress has enacted revisions to the AD law to deal with NME methodologies, including in the OTCA, but not to the CVD law. The fact that Congress enacted specific provisions for the application of the AD law, but not the CVD law, to NMEs simply reflects that the Department was applying the AD law to NMEs at the time rather than the CVD law. As the CVD law was not being applied to NMEs at that time, there was no reason to amend the CVD law to address concerns unique to NMEs. Further, we are not persuaded by TUTRIC's arguments that sections 731 or 771 of the Act, or the Act as a whole, demonstrates that Congress did not intend the CVD law to apply to NMEs. The fact that the Act does not allow for judicial review of NME designations in AD proceedings, but is silent on this point with respect to CVD proceedings, does not overcome the language of section 701 of the Act and of 22 U.S.C. § 6943(a)(1). Moreover, the CAFC has explained that "congressional inaction is perhaps the weakest of all tools for ascertaining legislative intent, and courts are loath to presume congressional endorsement unless the issue plainly has been the subject of congressional attention." Butterbaugh at 1342. Again, and contrary to TUTRIC's argument, the Act's reference to NMEs with respect to AD proceedings is a weak basis for implying that the CVD law does not apply to NMEs. In sum, Congress has never precluded the Department from applying the CVD law to NMEs.

The GOC and GTC contend that the Department's imposition of the CVD law against Chinese respondents conflicts with the evaluation of the PRC as a transitioning NME in the Georgetown Steel Memorandum and that the Department did not provide any evidence that U.S. law recognizes different types of NMEs countries and should apply different rules to different types of NMEs. Contrary to the GOC's and GTC's claims, the Department has not established types of NMEs. After its initial analysis of the Soviet-styled economies in the Steel Wire Rod investigations, the Department began a practice of not looking behind the designation of a country as an NME when determining whether to apply the CVD law to imports from that country (assuming no claim for a market oriented industry was made). See, e.g., Sulfanilic Acid from Hungary. Now, the Department has revisited its original decision not to apply the CVD law to NMEs and has determined that it will re-examine the economic and reform situation of the NME on a case-by-case basis to determine whether the Department can identify subsidies in that economy, much as it did in the original Steel Wire Rod investigations. See, e.g., Georgetown Steel Memorandum. However, the determination of whether the CVD law can be applied does not necessarily create different types of NMEs. It is simply recognizing the inherent differences between NMEs, which the Department fully explained in the Georgetown Steel Memorandum.

Furthermore, there is no requirement that the Department address each instance where a prior practice was applied when changing that practice. The Department is only required to provide a "reasoned analysis" for its change. See, e.g., Rust v. Sullivan at 187. As explained by the Supreme Court:

> An agency is not required to establish rules of conduct to last forever, but rather must be given ample latitude to adapt its rules and policies to the demands of changing circumstances.
> Id. at 186-87 (citations and internal quotations omitted).

The Department provided a detailed explanation of its change in practice in CFS from the PRC. See, e.g., CFS from the PRC and IDM at Comments 3 and 6. Furthermore, as described above, the Department's ability to develop its practice on a case-by-case basis is well-grounded in administrative law and has been fully recognized by the courts.

With respect to the GOC's argument that it is irrational for the Department to apply CVD law to the PRC while it is still deemed an NME since the Department's claim of an absent market means that it cannot value goods or determine "adequate remuneration," the Department disagrees. The Georgetown Steel Memorandum details the Department's reasons for applying the CVD law to China and the legal authority to do so.

In Georgetown Steel, the Department based non-applicability of the CVD law on the centrally planned nature of Soviet-era economies, i.e., the government's absolute control over the entire economy and the resultant fact that meaningful identification of bounties and grants was impossible. Of course all prices in such economies were set administratively by the government, but this was an effect, not the cause, of the non-market nature of the economy. So, in the case of Soviet-era economies, non-market-determined prices were a necessary consequence of the centrally planned nature of the economy, and one could, therefore, as a "short-cut," equate non-market-determined prices with non-applicability.

In the case of China's economy today, as the Georgetown Steel Memorandum makes clear, the PRC no longer has a centrally planned economy and, as a result, it no longer administratively sets most prices. As the Georgetown Steel Memorandum also makes clear, it is the absence of central planning, not market-determined prices, that makes subsidies identifiable and the CVD law applicable to China. As the Department explains in the Georgetown Steel Memorandum, extensive PRC government controls and interventions in the economy, particularly with respect to the allocation of land, labor and capital, undermine and distort the price formation process in China and, therefore, make the measurement of subsidy benefits potentially problematic. The problem is such that there is no basis for either outright rejection or acceptance of all PRC prices or costs as CVD benchmarks because the nature, scope and extent of government controls and interventions in relevant markets can vary tremendously from market to market. Some PRC prices or costs will be useful for benchmarking purposes, i.e., market-determined, and some will not, and the Department will take a case-by-case approach in making that determination, based on the facts and evidence on the record.

The Department also disagrees with the GOC's argument that use of external benchmarks is, effectively, confirmation that subsidies cannot be measured in the PRC. First, the Department notes its case-by-case analysis of benchmarks has not resulted in the use of external benchmarks in all instances. For example, in CWP from the PRC, the Department relied upon actual import transactions in China and world market prices we deemed to be equivalent to actual import transactions in China to value HRS. See CWP from the PRC and IDM at Comment 7. In this investigation, we are not using external benchmarks to measure the adequacy of remuneration for the provision of rubber. Rather, we are using actual prices paid by the respondents for imported rubber and privately produced domestic rubber. Therefore, although the GOC take issue with the particular benchmarks that the Department has used for inputs and land, the GOC cannot claim that the Department summarily excluded all internal PRC prices from consideration. The fact remains that the Department followed a case-by-case approach and selected appropriate benchmarks on the basis of facts and evidence on the record in each case, as required by the mixed, transitional nature of China's economy.

With respect to the use of external benchmarks for measuring subsidy benefits, China is not special or unique. The Department's regulations do not limit the Department to actual in-country prices for a less than adequate remuneration analysis. Our regulations explicitly provide for the use of world market prices for these analyses. See 19 CFR 351.511(a)(2)(ii). The Department has several times in the past, in cases involving market economies, resorted to external benchmarks when facts and evidence on the record warrant it, consistent with our statute and regulations. For example, the Department found in CFS from Indonesia, that Malaysian export prices provided the most appropriate basis for determining an external benchmark price to use in assessing stumpage rates in Indonesia. See CFS from Indonesia and IDM at Comments 11 and 12. We found that these prices were consistent with market principles within the meaning of 19 CFR 351.511(a)(2)(iii) and were the most appropriate basis for deriving a market-based stumpage benchmark for determining whether the government of Indonesia provided stumpage for less than adequate remuneration. Furthermore, the Department also used an out-of-country benchmark in Lumber from Canada Investigation. See Softwood Lumber from Canada and IDM at "Provincial Stumpage Programs"; and Softwood Lumber from Canada – Amended. In this case, the Department has followed its established practice of using out-of-country benchmarks where actual transaction prices are significantly distorted because of government involvement in the market. Moreover, a case-by-case approach is what China agreed to in its Accession Protocol, which explicitly provides for use of external benchmarks, where there are special difficulties in applying standard CVD methodology. See Accession Protocol at para. 15. Thus, the use of world market prices is fully in accordance with the Department's regulations and the Department's past practice, and in no manner evidences that the CVD law should not be applied to China.

Comment A.2: Application of the CVD Law to the PRC is Consistent with the APA

The GOC and GTC argue that the Department's application of CVD law in this investigation violates the APA. Under the APA, formation of a new rule requires a notice and comment period, after which the issuing agency provides an interpretive and explanatory statement of the legal question addressed by the rule. The respondents argue that the Department's historical position of not applying CVD law to NMEs qualifies as a rule under the APA (defined as "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy") 5 U.S.C. §551(4). In particular, the respondents cite three instances (Carbon Steel Wire Rod from Poland, General Issues Appendix, and CVD Preamble) of past agency practice where, following what the GOC and GTC characterize as notice and comment periods, the Department issued statements addressing the imposition of CVDs against imports from NMEs. Respondents also point out that, pursuant to the CVD regulations issued in 1998 (confirming the Department's intention not to impose CVD against NMEs), the preamble to that final CVD rule has legal effect because it includes a "general statement of its basis and purpose," which the APA requires of all final rules. In addition, the respondents note that the APA requires a new notice and comment period for any subsequent change to an agency's interpretation of a rule, as such a change is essentially an amendment of the regulation. Thus, the respondents argue, even if the Department were statutorily allowed to amend its regulations to enable the application of CVD law to NMEs, the Department cannot change its analytical approach and apply such an interpretation without first promulgating an amended final rule in accordance with the rulemaking requirements of the APA.

TUTRIC also contests the Department's application of the CVD law to NMEs in this investigation, stating that the sudden change in the Department's previous approach without any notice or comment period violates the APA's rulemaking procedures. In particular, TUTRIC notes that when an agency forms or proposes to change a rule, the APA requires the agency to provide a notice and comment period and then publish its final interpretation addressing the comments received from interested parties. Thus, TUTRIC states, the Department violated the APA by applying the CVD law to a NME, which essentially revised its previous rule, before completing the necessary procedural steps under the APA.

TUTRIC states that the Department's previous interpretation (over the past twenty years) that the CVD law is not applicable to NMEs falls within the APA's definition of a rule (see above), instead of merely policy or practice. TUTRIC relies on language from the D.C. Circuit to describe rulemaking under the APA as encompassing both formation and modification of an agency rule. See Alaska Hunters at 1034. Thus, once an agency offers a definite interpretation of its regulation, subsequent modification of that interpretation is effectively an amendment to the rule and thus requires a notice and comment period.

TUTRIC describes the same three instances cited by the GOC and GTC in arguing that the Department's interpretive guidance regarding the application of the CVD law to NMEs evolved into a binding rule. In 1983, a group of CVD cases brought against NMEs prompted a published notice, comments, and a hearing (though the petition was withdrawn before reaching a preliminary determination), the review of which prompted the Department in a subsequent case to state that a subsidy is a "market phenomenon" and "does not apply in a nonmarket setting." See Carbon Steel Wire Rod from Poland. Soon after, in refusing a petition for investigation in Potassium Chloride from the Soviet Union – Rescission, the Department, according to TUTRIC, noted that subsidies could not be found in NMEs as a matter of law. See Potassium Chloride from the Soviet Union – Rescission. In 1993, the Department stated that CVD law did not apply to NMEs because there is no conceptual basis for finding that a subsidy can distort the normal allocation of resources in a NME, and it is impossible to claim that a producer received a subsidy in a NME. See General Issues Appendix at 37261. TUTRIC claims that the Department ultimately adopted its rule regarding the non-applicability of the CVD law to NMEs in the CVD regulations enacted in 1998. In particular, TUTRIC points to the Preamble of the Final Rule, where the Department explicitly notes its practice of not applying CVD law to NMEs and its intent to continue the practice. See CVD Preamble at 65630. TUTRIC argues that the Final Rule met the APA requirement of having a general statement of its basis and purpose and is the

Department's interpretation of the CVD statute, and thus the Department must follow the APA's requisite notice and comment period in proposing any change to that interpretation.

Finally, TUTRIC notes that although the initiation of CFS from the PRC prompted the Department to publish a public notice (in December 2006), it did not respond to the parties' comments before making the preliminary and final decisions, thereby depriving the parties of the meaningful participation intended by the APA's notice and comment requirements. See Application of CVD to PRC – Comment Request. Because the Department failed to follow the notice and comment procedures required by the APA for any modification of its interpretation of the CVD regulations, TUTRIC concludes that the Department's actions with respect to its CVD investigations of products from NMEs are unlawful.

Petitioners note that in CFS from the PRC the Department discarded arguments similar to those presented by the GOC, essentially that the Department did not follow the APA's notice and comment requirements in its application of the CVD law to the PRC, which was effectively a rule modification. Petitioners argue that the GOC confuses the application of Department practice with the practice itself. In particular, Petitioners state that the Department has not altered its practice of not applying the CVD law to command-style economies but rather has merely determined the reasons underpinning that practice (articulated in Georgetown Steel) are not applicable to the special circumstances of the PRC's new economy. See Georgetown Steel Memorandum at 2.

Petitioners also argue that the GOC confuses rulemaking with Department practice, and note that the GOC's statutory source for its argument is not applicable to "interpretative rules, general statements of policy, or rule of agency organization, procedure, or practice." 19 U.S.C. § 553. Petitioners characterize the Department's non-application of the CVD law to certain NMEs in past decisions as a "practice," insofar as those decisions were published by the same means as many of the Department's other AD and CVD decisions ("in conformance with existing regulations and practice") and they were "not the subject of a formal notice and comment rulemaking." Petitioners May Rebuttal Brief at 6. In particular, the petitioners cite to Carbon Steel Wire Rod from Poland and the "formal written statement" in Steel Products from Austria (both referenced in the GOC's May case brief) as examples of typical Department discussion of the issues involved, rather than any attempt to form a rule. Petitioners further distinguish the statement in the Department's final rule of the amended CVD regulations in 1998 (also relied on by the GOC) as occurring only in the preamble (which the petitioners state is a policy statement at most; see Tung Mung at 769) to the regulations and as confirmation of the Department's intention to continue adhering to its previous practice.

Petitioners also rebut the GOC's and GTC's reliance on Carlisle Tire, noting the court's ruling that, absent the promulgation of a formal rule, the Department must fully explain its determination to ignore certain record facts (statements as to the "de minimis nature of aggregate subsidy margins" were not sufficient). Petitioners May Rebuttal Brief at 7. The petitioners note that the Department has determined in multiple instances that the CVD law was not applicable to certain "traditional command economies," but has never created a formal rule that the CVD law is not applicable to NMEs generally or to the PRC specifically. In its more recent decisions, the

Department decided the PRC's new economy was indeed subject to CVD analysis, but Petitioners maintain that the Department has met its sole obligation to explain such decisions.

Bridgestone rebuts the APA violation arguments of the GOC, GTC, and TUTRIC, and argues that the Department's previous policy and position with respect to its non-application of the CVD law to NMEs did not constitute a rule, as addressed and confirmed by the Department in CFS from the PRC. See CFS from the PRC and IDM at Comment 2. Bridgestone also points to affirmation of this view from the CIT, which found, in part, that "Commerce has not promulgated a regulation confirming that it will not apply (CVD) law to NMEs. In the absence of a rule, Commerce need not follow the notice-and-comment obligations found in the APA." See GOC v. U.S. at 1282. Bridgestone submits that the Department's statements regarding its past policy and practice were never incorporated into a regulation or codified, and thus arguments to construe it otherwise should be rejected.

Bridgestone also rebuts the three instances cited by the GOC as indicative of past agency practice where, following notice and comment periods, the Department issued statements addressing the imposition of CVDs against imports from NMEs. In reference to the steel wire rod cases, Bridgestone states that the Department did not establish "a sweeping rule against ever applying CVD law to NMEs," but rather used its discretion in determining that it could not find a countervailable grant in a NME and "based its decision upon the economic realities of these Soviet-bloc economies." See CFS from the PRC and IDM at Comment 2. With respect to the General Issues Appendix, Bridgestone again references CFS from the PRC, where the Department stated "reference to Georgetown Steel does not set forth a broad rule, but merely acknowledges the Department's practice regarding non-application of the CVD law to NMEs." See id. Bridgestone also notes the Department's position in CFS from the PRC, where it clarified the meaning of the CVD Preamble in stating "a statement in a preamble to a set of rules does not itself become a rule, particularly where… the statement explicitly describes a practice that is not covered in that set of rules." See id.

Department Position

As an initial matter, the Department notes that the GOC, as well as all other parties in this investigation, have been provided due process through the substantial process that is mandated under the CVD law and the Department's Regulations (e.g., opportunity for a hearing, submission of written argument, and submission of rebuttal argument). Moreover, the Department's previous policy of non-application of the CVD law to NMEs is not a "rule" under the APA, but a practice. Contrary to the GOC's argument, the Department has never promulgated a rule pursuant to the APA regarding the application of the CVD law to NMEs.

The APA's notice-and-comment requirements do not apply "to interpretative rules, general statements of policy or procedure, or practice." 5 U.S.C. § 553(b)(3)(A). The decision as to whether to apply the CVD law to NMEs involves the Department's practice or policy, not a promulgated rule, and thus is not subject to the APA. Moreover, an agency has broad discretion to determine whether notice-and-comment rulemaking or case-by-case adjudication is the more appropriate procedure for changing a policy or a practice. See, e.g., Chenery Corp. at 202-03 ("the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency"). Here, the decision of whether a subsidy can be calculated in an NME hinges on the facts of the case, and should be made exercising the Department's "informed discretion." See Chenery Corp. at 203. The CIT recently agreed, stating that:

> While Commerce acknowledges that it has a policy or practice of not applying countervailing duty law to NMEs, see, e.g., Request for Comment, Commerce has not promulgated a regulation confirming that it will not apply countervailing duty law to NMEs. In the absence of a rule, Commerce need not follow the notice-and comment obligations found in the APA, 5 U.S.C. § 553, and instead may change its policy by "ad hoc litigation." Chenery Corp. at 203.
> See GOC v. U.S. at 1282.

The CIT has repeatedly recognized the Department's discretion to modify its practice and has upheld decisions by the Department to change its policies on a case-by-case basis rather than by rulemaking when it has provided a reasonable explanation for any change in policy. See, e.g., Budd Co. (holding that the Department did not engage in rulemaking when it modified its hyperinflation methodology: "because it fully explained its decision on the record of the case it did not deprive plaintiff of procedural fairness under the APA or otherwise"); and Sonco Steel at 966 (formal rulemaking procedures were not required in determining whether it was appropriate to deduct further manufacturing profit from the exporter's sales price). This is because it is necessary for the Department to have the flexibility to observe the actual operation of its policy through the administrative process and as opposed to formalized rulemaking. See Ceramica Regiomontana at 404-05. The Department has provided a fully reasoned analysis for its change of practice in this case. See Preliminary Determination at 71363; see, also, Georgetown Steel Memorandum, in the Petition at Exhibit 69, on file in the Department's CRU.

The Department's decision to apply the CVD law in this investigation is also not subject to the notice-and-comment rulemaking of the APA because of the nature of the proceedings before the agency. The "APA does not apply to antidumping administrative proceedings" because of the investigatory and not adjudicatory nature of the proceedings, a principle equally applicable to CVD proceedings. See GSA at 1359 (citing SAA at 892) ("Antidumping and countervailing proceedings . . . are investigatory in nature.")). The Department's explanation in CFS from the PRC evidences that the courts have consistently held that the Department does not create binding rules under the APA when it develops its practice on a case-by-case basis in antidumping and CVD proceedings. See CFS from the PRC and IDM at Comment 2.

The GOC cites Carlisle Tire for the proposition that the APA applies generally to AD and CVD proceedings. Carlisle Tire at 305. Carlisle Tire, however, only held that the APA applied when the Department had created a rule (with respect to de minimis dumping margins) with application to other cases. The court ultimately found that it had not done so, and that the Department was free to use a different de minimis level, although the Department had to explain why the margin it chose was reasonable. Carlisle Tire at 306. Here, however, the decision whether to apply the

CVD law to NMEs such as China has been made on a case-by-case basis, so no rule has been implemented under the reasoning in Carlisle Tire.

TUTRIC cites to Alaska Hunters at 1033-34, to support its claim that the APA's notice and comment requirements apply if the Department decides to modify a definite interpretation of its regulation (purportedly here, the application of the CVD law to an NME). However, in that case, the FAA had published a notice of general application. See id. at 1033; see also Compliance Notice to Alaskan Hunt and Fish Guides. This is not analogous to the Department's practice here, where the practice was developed on a case-specific basis – there was no broad notice of general application that the Department would never investigate future CVD complaints against NMEs.

The GOC cites to various determinations where it claims the Department established a rule under the APA that it would not apply the CVD law to China. As discussed above, the GOC's argument premised on these determinations is incorrect because the Department does not create binding rules under the APA through its administrative determinations. Instead, in these determinations the Department expounds on its practice in light of the facts before the Department in each proceeding. Furthermore, in the determinations to which the GOC cites, the Department never found that Congress exempted China from the CVD law.

For example, in the wire rod cases that provided the Department's analysis on the Soviet bloc economies and examined whether the CVD law could be applied, the Department articulated its decisions based on the status of those economies at the time. For example, after analyzing the operation of the market (or lack thereof) in Poland, the Department explained that:

> These are the essential characteristics of nonmarket economic systems. It is these features that make NME's irrational by market standards. This is the background that does not allow us to identify specific NME government actions as bounties or grants. Carbon Steel Wire Rod from Poland.

The Department concluded that Congress had never clearly spoken to this issue. Id. In the absence of any statutory command to the contrary, the Department exercised its "broad discretion" to conclude that "a 'bounty or grant,' within the meaning of the countervailing duty law, cannot be found in an NME." Id.; see also Carbon Steel Wire Rod from Czechoslovakia (final negative CVD determination). The Department based its decision upon the economic realities of these Soviet bloc economies. It did not create a sweeping rule against ever applying the CVD law to NMEs.

The GOC cites to Potassium Chloride from the Soviet Union – Rescission as a statement of the Department's position that it will not initiate subsidy investigations against NMEs. However, that notice did not create a rule, but simply referenced the Department's previous decision in the wire rod investigations that it was not able to apply the CVD law to those types of economies. Indeed, the Department's subsequent actions demonstrate that it did not create a rule against the application of CVD law to NMEs. For example, in 1992, the Department initiated a CVD investigation against China, notwithstanding its status as an NME, after determining that certain industry sectors were sufficiently outside of government control. Lug Nuts from the PRC – Initiation.[26]

The GOC also references a statement in the General Issues Appendix to the 1993 steel cases, again claiming that a reference to the Department's practice elevated that practice to the level of a rule. However, the statement is simply an explanation that the CVD law is not concerned with the subsequent use or effect of a subsidy and that "Georgetown Steel cannot be read to mean that countervailing duties may be imposed only after the Department has made a determination of the subsequent effect of a subsidy upon the recipient's production." General Issues Appendix at 37261. This reference to Georgetown Steel does not set forth a broad rule, but merely acknowledged the Department's practice regarding non-application of the CVD law to NMEs.

The Department has appropriately, and consistently, determined that formal rulemaking was not appropriate for this type of decision. Contrary to the GOC's claims, when it drafted other CVD rules the Department reiterated its position that the decision to not apply the CVD law in prior investigations involving NMEs was a practice:

> In this regard, it is important to note here our practice of not applying the CVD law to non-market economies. The CAFC upheld this practice in Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986).

See CVD Preamble at 65360 (emphasis added).[27] The claim by the GOC, GTC, and TUTRIC that the Department promulgated a rule is unfounded; a statement in a preamble to a set of rules does not itself become a rule, particularly where, as here, the statement explicitly describes a practice that is not covered in that set of rules. In a subsequent determination, the Department continued to explain that it has a practice of not applying the CVD law to NMEs, and did not refer to this practice as a rule. "The Preamble to the Department's regulations states that . . . it is important to note here our practice of not applying the CVD law to non-market economies. . . . We intend to continue to follow this practice." Sulfanilic Acid from Hungary and IDM at Comment 1 (emphasis added). The claim that the Department has somehow created a rule, when it has neither referred to its practice as such nor adopted notice-and-comment rulemaking for this practice, is erroneous.

Comment A.3: Whether Simultaneous Application of CVD Law in this Investigation and NME Methodology in the Parallel Antidumping Investigation Imposes Double Trade Remedies

The GOC and GTC argue that double remedy issues arise from the Department's concurrent application of its NME AD methodology and its market-oriented CVD law to the PRC, and to

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[26] The Department ultimately rescinded the CVD investigation on the bases of the AD investigation, the litigation, and subsequent remand determination, concluding that it was not a market-oriented industry. Lug Nuts from the PRC – Rescission.

[27] See also General Issues Appendix at 37261.

GTC in particular. Specifically, the GOC submits that the Department's reliance on normal values sourced from subsidy-free surrogate values to calculate NME dumping margins produces an unjust antidumping price comparison that penalizes Chinese companies twice for the same allegedly unfair trade practice (once when the CVDs are applied to compensate for the alleged subsidy, and then a second time when the allegedly subsidized export price is compared with the non-subsidized constructed normal value). GTC adds that applying both AD NME methodology and the CVD law in this investigation creates double remedies to address the same issue. As an example, the GOC and GTC cite to rubber used in the production of subject merchandise. Accordingly, the GOC and GTC state that the Department must take measures to prevent double remedies for a single alleged unfair trade practice, either by ending its CVD investigation or by adjusting its AD calculations in the parallel AD investigation to account both for the amount of any export subsidies and any domestic subsidies.

As an example of the potential for double counting, the GOC cites the treatment of export subsidies. The GOC notes that a government-granted subsidy favoring exports increases the producer's return on export sales, which in turn provides an incentive for price discrimination between export sales and domestic sales. The GOC states that an export subsidy in a competitive market would predictably produce a lower export price than domestic price. Because the subsidy is corrected when the Department applies CVDs equal to the amount of the export subsidy, the GOC argues that, to the extent that the export subsidy causes the expected price discrimination between export sales and domestic sales, the additional assessment of ADs would constitute a double penalty. The GOC further argues that this double counting issue is acknowledged and expressly addressed by the AD statute, which requires that the computed dumping margin be adjusted according to the amount of CVD already assigned to the export subsidies. In addition, the GOC notes that, "(i)n this context, there is no requirement that the respondent provide case-specific evidence of double-counting, much less demonstrate that the export subsidy resulted in a lower export price." GOC May Case Brief at 18.

With respect to domestic subsidies, the GOC states that no double counting issue will arise in a market economy AD investigation if the U.S. levies both AD and CVD on the imports. Because domestic subsidies are market neutral, they will, in a competitive market, lower prices in both export and domestic markets and consequently do not produce a dumping margin or price discrimination. The GOC notes that the Department would offset the subsidy by assessing CVDs equivalent to the subsidy amount, and that any additional dumping margin found could be attributed to price discrimination (rather than resulting from the CVD-remedied subsidy).

However, the GOC notes a key difference in the Department's AD methodology with respect to NMEs, namely that the normal value is based on third country surrogate values for factors unaffected by domestic subsidies in the PRC, i.e. inputs, G&A expenses, financial expenses, and profit (instead of home market prices or costs of production). Like a producer in a market economy, a domestic subsidy recipient in the PRC can lower both its domestic and export prices. But in the NME context, the GOC notes that domestic subsidies will certainly result in an AD margin (which is not the case in market economies) because the normal value is calculated from surrogate values wholly derived from a third country's unsubsidized prices. Thus, the GOC argues, in the case of NMEs, domestic subsidies received by Chinese OTR tire producers will be accounted for in the export price but not in the normal value. Accordingly, when the Department takes into account the subsidy-caused difference between normal value (sourced from third country surrogate values) and U.S. price in assessing ADs, the antidumping calculation will capture any domestic subsidy entirely.

The GOC argues that double counting occurs when ADs and CVDs are concurrently applied to NME producers because the Department simultaneously measures the alleged subsidy benefit (relying on market economy benchmarks) and dumping (using its factors of production analysis based on third country prices) for many of the same inputs (e.g. interest expenses, rubber, electricity, water). As a result, Chinese producers, including GTC, are effectively penalized twice for the same alleged offense of paying a purportedly non-market-determined price for certain inputs. GTC notes that in this investigation, for instance, the Department preliminarily determined that GTC received a benefit via its alleged purchase of rubber from enterprises in which the state has an interest for LTAR. In calculating the benefit, the Department compared the monthly price charged by state-involved rubber suppliers to a purported monthly world market "benchmark" price for rubber. The Department treated the difference between the price paid by GTC and world market price as a subsidy, which was then included in GTC's subsidy rate. However, in the parallel AD investigation, the Department's calculation of the normal value relied in part on surrogate values for rubber, which were based on the price of non-subsidized rubber imports in India. Accordingly, the amount of the purported domestic subsidy that GTC allegedly received from state-involved rubber suppliers was not deducted from the surrogate value amount computed for the rubber it used, as would be done for a market economy (since the Department would use the actual price of rubber paid by GTC). Thus, GTC contends that first CVDs were imposed for its payment to a state-involved rubber supplier of an amount less than the world market price for rubber, and then it was additionally assessed ADs "to the extent the price of its OTR tires exported to the United States was insufficient to recover the unsubsidized, market economy surrogate value for rubber." GTC May Case Brief at 12. GTC concludes that any subsidy benefit conferred by state-involved suppliers to the GTC via the provision of rubber is wholly captured by the Department's AD calculation.

The GOC notes that, in recent AD investigations, the Department has rejected respondents' claims that double counting results from imposing both CVD and AD on NME producers. For instance, the Department dismissed any presumption that domestic subsidies will lower domestic and export prices and stated that the GOC had not presented any evidence to support such a proposition. However, the GOC contends the Department has no grounds to demand such "evidence," because the relevant issue is not whether domestic subsidies actually lower prices in any market, but rather that "the CVD statutes and AD statutes presume that domestic subsidies do not ordinarily create dumping margins." GOC May Case Brief at 20. The GOC states that this presumption is correct only with respect to domestic subsidies in a market economy, not in the NME context. The GOC points out that when a Chinese producer receives a domestic subsidy, it will decrease its domestic price and its export price by the amount of the subsidy, while the normal value (based on third country surrogate values) will remain unchanged and the dumping margin will increase by the change in the U.S. price. Thus, the GOC submits, "the fact that NME

{AD} methodology captures the value of subsidy buttresses the conclusion that the statute presumes that CVD law would not be applied to NMEs, and that it cannot fairly be applied because, conceptually, it will always lead to double counting." GOC May Case Brief at 21.

The GOC further argues that the Department's analysis in Uranium from France 01/03 AR – AD conflicts with its position in CFS from the PRC – AD that CVD law does not assume that domestic subsidies lower domestic and export prices pro rata. In Uranium from France 01/03 AR – AD, the Department stated that domestic subsidies "presumably lower the price of the subject merchandise both in the home and the U.S. markets, and therefore have no effect on the measurement of any dumping that might also occur," and "…are assumed not to affect dumping margins, because they lower prices in both the U.S. and the domestic market of the exporting country equally." See Uranium from France 01/03 AR – AD at 46506. However, the GOC contends that the Department's view in Uranium from France 01/03 AR – AD directly contradicts its statement in CFS from the PRC – AD (and in the parallel AD investigation for this case) that "we find the assertion that the AD law embodies the presumption that domestic subsidies automatically lower (domestic and export) prices, pro rata, to be baseless." See CFS from the PRC – AD and IDM at Comment 2. In light of this purported inconsistency, the GOC notes that any presumption proposed by the Department "must have a rational basis, and must be consistent with economic theory and the trade statute's structure as a whole." GOC May Case Brief at 21.

TUTRIC also argues that double counting of remedies results from parallel AD and CVD investigations involving a NME country. Specifically, TUTRIC claims that the Department's use of both NME methodology and CVD methodology creates double remedies because any purported government subsidization is already counteracted by the application of NME AD methodology to NMEs (including the PRC). When applying its NME AD methodology, the Department uses information from a surrogate market economy (rather than actual prices and costs in the PRC) to restate the Chinese producer's costs and thus relies solely on surrogate values undistorted by subsidies. As a result, TUTRIC maintains, parallel application of the CVD law doubles the remedy because the NME AD calculation has already compensated for any subsidy distortions. TUTRIC also argues the other side of its argument insofar as once CVD law is applied to offset an alleged subsidy of receiving a lower cost to obtain input material, it is illogical to impose an additional AD remedy to address the same practice.

TUTRIC further contends that the absent grant of "market oriented industry" status (to a Chinese industry) or "market economy" status (to a Chinese respondent) in AD proceedings contradicts the Department's efforts to apply the CVD law to the PRC. Indeed, TUTRIC states, the Department still considers the PRC a NME with respect to calculating subsidization in CVD proceedings, as evidenced by its persistent use of a countrywide rate in AD investigations involving the PRC for companies not given separate rate status instead of the all-others rate for non-sampled respondents. See TUTRIC May Case Brief at 14. Thus, TUTRIC concludes, applying the CVD law to the PRC will result in double penalties so long as the Department treats the PRC as a NME for AD purposes.

In order to avoid this double-counting error, TUTRIC concludes that the Department must either end the CVD investigation or apply its standard market economy methodology in the parallel AD investigation for OTR tire imports. TUTRIC contends that the use of typical AD rules instead of a special NME methodology in calculating AD margins is justified by the same findings underpinning the Department's application of the CVD law to Chinese rubber exporters. However, in the event that the Department continues to rely on its NME methodology in calculating the AD margin, TUTRIC maintains that the Department must create measures to avoid imposing double remedies to offset the same alleged unfair trade practice.

Petitioners note that in CFS from the PRC – AD the Department discarded arguments like those presented by the GOC in this case. Petitioners further state that, per the statute, the Department is not authorized to assess ADs or CVDs for less than the amount of the calculated duty or subsidy, respectively. The Department is statutorily directed to offset an export subsidy by adjusting the export price upwards in the amount of an imposed duty, but such an adjustment is limited to export subsidies only. See 19 U.S.C. § 1677a(c)(1)(C) and CFS from the PRC – AD and IDM at Comment 2.

Petitioners further submit that the respondents' arguments are grounded in erroneous assumptions about the "effects of domestic subsidies in market economies on prices." Petitioners May Rebuttal Brief at 13. Petitioners refer to CFS from the PRC – AD to demonstrate the Department's view that it is speculative to presume domestic prices necessarily lower export prices, pro rata, given that the connection between the two is indirect and subject to numerous variables. CFS from the PRC – AD and IDM at 14. Petitioners further cite the Department's position that there is no certainty that subsidy recipients will react to subsidies by lowering their prices, rather than pursuing other potential uses of the subsidy. Id. Finally, Petitioners note that while the legislative history of the statute "explains that the adjustment to U.S. price is limited to duties offsetting export subsidies," the Department has noted the absence of any congressional presumption regarding the effect of domestic subsidies on export prices (in particular that "they automatically reduce export prices, pro rata"). See TAA of 1979 – Senate Report at 93-94, and CFS from the PRC – AD and IDM at 14.

Bridgestone contends there is no statutory authority by which the Department may adjust its AD NME methodology to address double remedy allegations. Specifically, Bridgestone argues that, in the case of parallel AD and CVD investigations, the statute permits the Department's adjustment to the dumping margin to account for export subsidies only. See § 772(c)(1) of the Act. Bridgestone submits that Congress would have made its intent clear if it had meant to include an equivalent adjustment with respect to domestic subsidies. Thus, Bridgestone argues, the absence of clear congressional intent stating otherwise indicates that Congress did not intend antidumping calculations to be adjusted when accounting for domestic subsidies in NME cases, a view echoed by the Department in Uranium from France 01/03 AR – AD, CFS from the PRC, and the Preliminary Determination – AD.

Bridgestone also argues the purpose behind the Department's AD NME methodology has been misconstrued by TUTRIC and the GOC. Bridgestone agrees with the view of TUTRIC and the GOC that the Department tries not to use subsidy-distorted surrogate values in its dumping calculations for NMEs, but clarifies that the surrogate value methodology is not aimed at offsetting alleged government subsidization but rather to "correct for price distortions in the NME country, which may or may not be the result of government subsidies." Bridgestone May Rebuttal Brief at 34. In particular, Bridgestone states that the AD NME methodology is not aimed at matching surrogate value data with the actual experience of NME producers. In arguing that producer-specific matches are not the purpose of the AD NME methodology, Bridgestone refers to the Department's use of the same financial ratios when computing the normal value for all respondents, and notes that subsidy issues or the relation between surrogate ME and NME costs are not specifically addressed when calculating labor costs in a NME case.

Further, Bridgestone argues that the GOC, GTC, and TUTRIC failed to show any specific examples of double counting of remedies in this investigation. Bridgestone claims that TUTRIC and the GOC did not point to any particular subsidy to support their argument, while GTC alleged double counting only with respect to the purchase of rubber for LTAR. Although GTC argues that the Department's AD calculation fully accounted for any subsidy benefit conferred to GTC via rubber provided by state-involved suppliers (see above), Bridgestone contends that GTC's theory is "premised upon unsupported economic principles and a flawed understanding of the function of the NME antidumping methodology." Bridgestone May Rebuttal Brief at 35.

Finally, Bridgestone contends that the issue of double counting, even if found to exist, should be dealt with solely in an administrative review context. Bridgestone notes that, per the statute, adjustments to export price or constructed export price can only be calculated for those CVDs already imposed as of the final AD determination. Thus, Bridgestone states that no adjustment is required for cash deposits attributable to export subsidies in cases where the CVD order is not published until after the final AD determination, namely in aligned AD and CVD investigations such as this one. Bridgestone concludes it "would be absurd to interpret the statute as requiring Commerce to increase EP or CEP by the amount of CVDs that will be imposed to offset domestic subsidies when it could not do so even for export subsidies." Bridgestone May Rebuttal Brief at 36.

Department Position

The GOC and respondents have not cited to any statutory authority that would allow us to terminate this CVD investigation to avoid double counting, and if any adjustment to avoid a double remedy is possible, it would only be in the context of an antidumping investigation. In the parallel antidumping investigation to this case, the parties raised double remedy arguments in their briefs. The summary of those comments and the Department's position are detailed in the final determination of the concurrent antidumping duty investigation.

Comment A.4: Whether December 11, 2001 is the Appropriate Date from Which the Department May Measure Subsidies in the PRC

The GOC and GTC argue that the Department's "cut-off" date of December 11, 2001 for measuring subsidies in this investigation is unlawful. Specifically, the GOC states that the Department's cut-off date violates due process and fairness requirements by applying CVDs to events pre-dating the time for which the Department concluded NMEs were sufficiently liberalized to be subject to the CVD law, thereby depriving the parties of any reasonable expectation that the CVD law would apply prior to that period. The GOC notes that the Department itself acknowledges the Georgetown Steel holding that CVD provisions do not apply to NME-granted subsidies and that "such dramatic changes in well-settled expectations should apply only prospectively." See Sulfanilic Acid from Hungary and IDM at 8 and 14. In addition, the GOC argues that the December 11, 2001 cut-off date violates the Department's own precedent of declining to consider alleged subsidy benefits granted prior to the period for which it determines CVD law is applicable to a certain country. In Sulfanilic Acid from Hungary, the Department, citing the CVD Preamble, noted that when it "determines a change in status from non-market to market is warranted, subsidies bestowed by that country after the change in status would become subject to CVD law," and consequently did not countervail capital infusions disbursed the year before Hungary was found to have achieved market economy status. The GOC argues that the Department should continue to follow the principle it espoused in Sulfanilic Acid from Hungary, which necessarily means that December 11, 2001 is not an appropriate cut-off date since the Department had not recognized the PRC as subject to the CVD law by that date.

As such, the GOC and GTC contend that the earliest date for measuring subsidies in this investigation should be January 1, 2005, i.e. the start of the POI in CFS from the PRC, when the Department first stated it was possible to determine whether the GOC bestowed a benefit on Chinese producers and whether any such benefit was specific. The GOC states that although the Georgetown Steel Memorandum (issued in connection with CFS from the PRC – Preliminary) describes changes in the PRC economy since the Georgetown Steel decision which support the Department's application of the CVD law to the PRC, its analysis is limited to the economic and market conditions of "present-day" China. Accordingly, the GOC argues, the Department's analysis of the PRC economy does not reflect market conditions prior to the period of investigation in CFS from the PRC (January 1, 2005), and there is no record evidence indicating such analysis supports the Department's chosen cut-off date of December 11, 2001.

In addition, the GOC states that a pre-2005 cut-off date would contradict the Department's own assessment that the PRC had not fully transitioned to a market economy by 2005. In Lined Paper from the PRC – AD, the Department explained why it continued to treat the PRC as a NME under the AD law and described certain market conditions to illustrate the PRC's incomplete transition to a market economy prior to 2006 (the slow liberalization of the RMB pre-2006 and slow pace of reforms in the banking sector, continuing restrictions on foreign investment after China's WTO accession, limits on private ownership, and the GOC's ongoing control over large number of import items). See August NME Status Memorandum. In addition, GTC states that record evidence demonstrates that despite major changes in the PRC economy over the past decade, the emerging market economy currently coexists with persistent non-market features. Thus, the GOC and GTC contend that the earliest cut-off date supported by record evidence and the Department's analysis in Lined Paper from the PRC – AD is January 1, 2005.

TUTRIC also argues that the Department should revise its cut-off date to the start of the POI in CFS from the PRC, i.e. January 1, 2005. In CFS from the PRC, TUTRIC notes that the

Department determined it was possible to measure whether the GOC bestowed any benefit on a Chinese producer and whether such a benefit was specific, but declined to determine any particular date as to when the PRC economy became sufficiently liberalized to warrant application of the CVD law. Thus, since the Department first determined the PRC economy as market-oriented enough to apply the CVD law during the POI of CFS from the PRC, TUTRIC argues that the beginning of that POI is the earliest possible cut-off date.

TUTRIC contends that the Department's application of the CVD law to the PRC from as early as December 11, 2001 is inconsistent with the precedent of Georgetown Steel, Sulfanilic Acid from Hungary and Lined Paper from the PRC – AD. In Sulfanilic Acid from Hungary, TUTRIC notes that regardless of the Department's CVD practice of viewing capital infusions as providing non-recurring benefits beyond the period when they were first received, the Department only measured subsidies bestowed after the date of its decision to apply market economy status (and thus the CVD law) to Hungary. TUTRIC contrasts the practice in Sulfanilic Acid from Hungary with this investigation, where the Department is measuring subsidies received not only before the PRC's designation as a market economy, but also before its designation as a "reformed" NME.

TUTRIC further argues that, logically, the Department can apply the CVD law to an economy only from the date it designates that economy "ready." TUTRIC notes that the Department did not comprehensively analyze the nature of the PRC economy from the time of Georgetown Steel up until 2006, when it examined the evolution of the PRC's economy from 1994 to 2006 in two NME Status memoranda, which were intended to "apprise interested parties of the Department's fundamental analysis of China's economy." See May NME Status Memorandum at 8. In particular, TUTRIC states, the memoranda explained that the PRC economy was not changed enough by its WTO accession to merit market economy treatment. Thus, with respect to this investigation, TUTRIC argues that because the Department's only comprehensive analysis of the modern PRC economy was not done until 2006, the Department could not consider the PRC economy sufficiently liberalized to be subject to the CVD law until at least January 1, 2005.

Petitioners argue that the Department's use of a particular date to limit the countervailability of non-recurring subsidies in CVD investigations involving the PRC has no legal or factual basis, and that the Department should choose a different date from which to countervail subsidies in the PRC.

First, Petitioners argue that respondents' reliance on Sulfanilic Acid from Hungary in this investigation is misplaced. Respondents cited Sulfanilic Acid from Hungary to argue that the CVD law is not applicable to a period pre-dating "the scope of the Department's findings and conclusions regarding the point in time that an economy is susceptible to a reasonable examination of subsidies." Petitioners May Case Brief at 6, citing GOC October New Subsidy Allegations Response and GTC October New Subsidy Allegations Response. Petitioners maintain that the Department's decision in Sulfanilic Acid from Hungary to not countervail non-recurring subsidies received before Hungary achieved market economy status was consistent with its then-practice of not applying the CVD law to NMEs (as affirmed in Georgetown Steel). Petitioners also note that Sulfanilic Acid from Hungary is still the only case in which "the Department limited the scope of subsidies that it will identify and measure prior to a specific date or event." Petitioners May Case Brief at 6. Petitioners further state the Department's previous practice (including as applied in Sulfanilic Acid from Hungary) clearly distinguished between market economies and NMEs, and accordingly the Sulfanilic Acid from Hungary decision to "not investigate subsidies that accrued prior to January 1, 1998, was based solely on Hungary's status as an NME prior to that date." Petitioners May Case Brief at 7. In the case of the PRC, however, Petitioners note that the PRC has not "graduated" from its NME status, and thus no "graduation" date is applicable. Petitioners conclude that, unlike its treatment of Hungary in Sulfanilic Acid from Hungary, the Department's application of the CVD law to the PRC is based on "its recognition that the Chinese economy differs, and is grounded in (the Department's) nuanced interpretation of the unique factual circumstances of China's economic development." Petitioners May Case Brief at 7.

Petitioners further argue that, in line with its current practice of reviewing the applicability of the CVD law to NME countries on a case-by-case basis, the Department should also use a case-by-case approach in determining the countervailability of non-recurring subsidies. Petitioners state the Department's new policy acknowledges that CVD law may be applicable to mixed economies such as the PRC, and thus rejects its prior "all-or-nothing" approach relied on in Georgetown Steel and Sulfanilic Acid from Hungary. Petitioners May Case Brief at 8. In particular, the Department has distinguished the "Soviet-style" NMEs examined in Georgetown Steel from the PRC's NME of today and decided it would take a case-by-case approach in reviewing the economic and reform situation of a NME to determine whether subsidies are identifiable for that economy. See Georgetown Steel Memorandum at 10. Accordingly, rather than relying on an arbitrary cut-off date, Petitioners contend the Department should apply the same case-specific analysis in determining the countervailability of all non-recurring benefits within the PRC. Petitioners note the Department took such an approach in the early 90s, when the Department initiated CVD investigations in two Chinese industries based on changes in the PRC economy. See Oscillating Fans from the PRC – Initiation and Lug Nuts from the PRC – Initiation. Petitioners submit that the PRC's current "uneven mix of market-driven policies and segments of the economy and pervasive government interventions and distortions in other areas of the Chinese economy" also demands such case-specific analysis. Petitioners contend that determining the countervailability of non-recurring subsidies depends not only on the date on which it was granted but also on the characteristics of the relevant sector of the economy and the overall government policies governing that sector. Thus, Petitioners argue choosing one date before which no non-recurring subsidies may be countervailed throughout the PRC's economy precludes the Department's ability to examine facts on case-by-case basis in determining whether the GOC bestowed a benefit on a Chinese producer and whether any such benefit is specific.

Finally, with respect to the Department's continued use of a cut-off date in measuring non-recurring subsidies, Petitioners state there are better alternatives than the PRC's WTO accession date and that "any bright line should serve to establish rebuttable presumptions only." Petitioners May Case Brief at 10. Petitioners suggest two alternative cut-off dates, which reflect the PRC's negotiation and implementation of economic reforms that would be subject to review under WTO rules upon completion: 1) May 28, 1997 (the circulation date of a draft protocol regarding the countervailability of subsidies in the PRC by the WTO working party on the PRC's accession), or

2) November 15, 1999 (the signature date of the PRC's bilateral accession agreement with the United States). Petitioners argue that both the draft report and signed agreement expressly considered the application of the CVD law to the PRC, and both contained all of the aspects of the PRC's WTO accession that the Department considered relevant for its determination in CWP from the PRC – Preliminary (e.g. "commitments to reform the PRC economy in line with market principles and to subject the PRC to the disciplines of the WTO agreements"). Petitioners May Case Brief at 11. Moreover, Petitioners note the bilateral agreement stated that subsidies primarily used by SOEs would be deemed "specific." Thus, Petitioners argue, "the PRC was on notice as to the terms under which the U.S. intended to apply CVD law to China." Petitioners May Case Brief at 12. Additionally, consistent with the Department's case-by-case approach in CFS from the PRC and its recognition of the possible countervailability of certain subsidies in the PRC as early as 1991, Petitioners contend that any presumption of countervailability for non-recurring subsidies disbursed before the cut-off date should be rebuttable and determined by the facts of each case. Petitioners further argue the Department should request the respondents to provide information sufficient for parties to be able to rebut such a presumption.

Bridgestone argues that a special cut-off date for measuring subsidies in the PRC is not statutorily permitted and contradicts the framework governing CVD investigations of WTO member countries. Bridgestone further notes that a "cut-off" date of December 11, 2001, would only allow the measurement of subsidies from the date of China's WTO accession, thereby deviating from Department regulations which instruct the Department to countervail non-recurring subsidies bestowed during the AUL of physical assets in the industry under investigation. See 19 CFR 351.524(b). Thus, Bridgestone submits, the Department should employ its standard AUL methodology for measuring non-recurring subsidies.

Bridgestone argues that a WTO member country's accession date is not a relevant starting point for the investigation of subsidies regarding that country. Although Bridgestone "does not concede that a country must first have knowledge of the CVD law before being subject to it," it contends that the PRC recognized it was subject to subsidies law when it sought accession to GATT in 1986 and acknowledged the aim of ensuring that "contracting parties … eliminate … discriminatory AD and CVD procedures against China." See Communication from China to the Working Party – July 11, 1988 at 6. Bridgestone additionally notes that the PRC and the United States agreed (and therefore became bound under U.S. law) to certain terms and obligations two years prior to its WTO accession, which supports Bridgestone's claim that the PRC's WTO accession date is not "an appropriate bright-line from which to measure subsidies in China." Bridgestone May Case Brief at 72. Bridgestone further submits that when the PRC agreed to be bound by the SCM Agreement provisions, it was aware that subsidies granted before the WTO agreement entered into force (i.e. April, 15, 1994) would be included in the overall rate of subsidization calculated in a CVD case. See SCM Agreement at Annex IV, para. 7. As support, Bridgestone notes that upon its WTO accession, the PRC notified certain subsidies that were in existence for several years before its accession.

Bridgestone also argues that reliance on the PRC's WTO accession date is "only relevant under the countervailing duty law as it relates to China's status as a 'Subsidies Agreement' country" and is “contrary to the Department’s statutory obligation to countervail subsidies bestowed by all governments, including governments that are not WTO members.” Bridgestone May Case Brief at 73. While the ITC is statutorily required to make an injury determination before imposing CVDs on imports from SCM Agreement countries, Bridgestone submits that the PRC’s status as a SCM Agreement country does not impact the Department’s own analysis of subsidies. Bridgestone concludes that the statute does not permit the preferential treatment afforded to the PRC and argues that no other country has been given such a “subsidy holiday.”

The GOC and GTC argue that choosing a uniform cut-off date is consistent with Department practice, but that the alternative cut-off dates suggested by Petitioners and Bridgestone are “arbitrary and legally flawed.” The GOC and GTC also reiterate their belief that the Department’s chosen cut-off date of December 11, 2001 not only violates due process and fairness requirements, but is also contrary to both Department precedent and its rationale for the continued application of NME methodology in AD investigations after that date.

The GOC and GTC contest Petitioners’ argument that Sulfanilic Acid from Hungary is not relevant to this investigation since the PRC has not yet achieved NME status (whereas Hungary had). The GOC and GTC also maintain that the PRC is the sole WTO member for which the Department has repeatedly not used domestic benchmarks in calculating subsidies and has simultaneously applied both CVD and ADs based on NME methodology. Although the GOC and GTC view the Department’s decision to impose the CVD law against a country it still deems a NME in AD proceedings as contradictory, they argue that it does not affect the core finding of Sulfanilic Acid from Hungary, which the GOC and GTC submit is that the Department will not measure subsidies received prior to the point when it first finds the CVD law applicable to a certain country. Accordingly, the GOC and GTC argue, the appropriate cut-off date should be the point when the Department first decided to apply the CVD law to the PRC in CFS from the PRC, i.e. January 1, 2005.

Contrary to Petitioners’ suggestion, the GOC and GTC further argue that the Department should not make case-by-case determinations in applying a cut-off date to measure each alleged subsidy because such an approach is not supported by Department precedent or the record. The GOC and GTC state that the Department first decided to rely on a uniform cut-off date of December 11, 2001, in CWP from the PRC – Preliminary and has since used that date in every preliminary CVD determination relating to exports from the PRC. Thus, the GOC and GTC state that the Department has established a “clearly articulated practice of applying one uniform cut-off date” to identifying and measuring non-recurring subsidies in the PRC. GTC May Rebuttal Brief at 8. Moreover, the GOC and GTC argue, Petitioners offer no record support for their request that the Department take a “fact-specific, case-by-case approach,” insofar as Petitioners do not give a reason as to why or which non-recurring subsidies should be granted such individualized treatment, or which cut-off date would be appropriate as a result. The GOC and GTC argue that the cases relied on by Petitioners refer to the Department’s case-by-case analysis of investigation-relevant industries in determining whether they function “more or less along market economy or non-market economy principles,” in the context of initiating an investigation. GTC May Rebuttal

Brief at 8. Yet, the GOC and GTC note, Petitioners have not argued that the "OTR tire industry operates on market economy principles." GTC May Rebuttal Brief at 8.

The GOC and GTC further rebut Petitioners' alternative argument that the appropriate cut-off date should be May 28, 1997, or November 15, 1999, arguing that neither date gives fair notice to the PRC or represents the market status of its economy. Instead, the GOC and GTC reiterate their view that the cut-off date should be the point when, after examining the PRC's "present-day" economy, the Department first decided to apply CVD law to the PRC, i.e. January 1, 2005.

TUTRIC agrees with the Department's use of a specific cut-off date to measure non-recurring subsidies in this investigation and submits that the earliest possible cut-off date in Chinese CVD cases is December 11, 2001.

TUTRIC argues that there is a "legal and factual" basis (contrary to Petitioners' argument) for relying on a uniform cut-off date to calculate subsidies in the PRC, given the Department's consistent past practice of refusing to apply the CVD law to NMEs. Specifically, TUTRIC states that it is illogical and unlawful for the Department to identify and measure subsidies received at a time when it found the application of CVD law to all NMEs impossible. TUTRIC contends that the Department stated that the CVD law was not applicable to NMEs in Steel Products from Austria (at 37261), the first year of the AUL in this case, and again in its CVD Preamble. TUTRIC emphasizes the Department's reference to all NMEs as including the PRC, since two CVD petitions against the PRC were rejected for the same reason the year before Steel Products from Austria (Lug Nuts from the PRC – Rescission and Oscillating Fans from the PRC – Rescission), and the CVD Preamble expressly applies to the PRC. Thus, TUTRIC argues that it is contradictory for the Department to apply CVD law to the PRC for a subsidy received in 1998, the same year that it determined such an application impossible in its CVD Preamble.

Although TUTRIC recognizes the unique circumstances surrounding the application of the CVD law to the PRC while it is still an NME, TUTRIC points to Sulfanilic Acid from Hungary as analogous in that it is "the only other case where the Department changed its practice of applying CVD law to a certain country." TUTRIC May Rebuttal Brief at 3. Similar to the theory of market transformation in Sulfanilic Acid from Hungary, TUTRIC notes that this case involves the transformation of the PRC from a "Soviet-style" NME to its current status, which permits the application of the CVD law. Thus, TUTRIC characterizes the issue as how to deal with subsidies received before the transformation from "non-market to market," and responds that the Department cannot value subsidies during a period when the CVD law could not be applied.

TUTRIC maintains that one uniform cut-off date is the most appropriate approach. In countering Petitioners' proposal to determine the cut-off date case-by-case and to analyze the PRC economy sector-by-sector, TUTRIC argues that this approach ignores the Department's determination that the CVD law is applicable to the PRC economy "as a whole." TUTRIC contends that the Department cannot intend to use an otherwise piecemeal and case-by-case application of the CVD law depending on the industry involved. Moreover, TUTRIC argues that the alternative cut-off dates proposed by Petitioners (i.e. the dates of the draft protocol or the bilateral accession agreement with the United States) should be rejected insofar as such agreements would have been meaningless absent the PRC's actual WTO accession. Thus, TUTRIC submits, with respect to any obligations made by the PRC in previous agreements, the most appropriate date is when such obligations became effective, i.e. the date of WTO accession.

TUTRIC concludes by reiterating the proposed cut-off date of January 1, 2005, as it represents the only point from which the Department could comprehensively analyze the PRC economy. TUTRIC further contends that, despite references by Petitioners and Bridgestone to the WTO obligations of the PRC, the relevant dispute in this case is not whether the PRC understood the CVD law of any country to be applicable while it retained NME status (or what China agreed to at the WTO), but rather how the Department treats the PRC under U.S. law.

Petitioners note that in CFS from the PRC the Department addressed an argument similar to that presented by the GOC and GTC in this case, specifically that the Department's cut-off date should be January 1, 2005. Petitioners also contest the GOC's and GTC's arguments that December 11, 2001 would be an unfair cut-off date and that the Department violated the precedent of Sulfanilic Acid from Hungary in countervailing subsidies received prior to the PRC's change in market status.

Petitioners argue that Sulfanilic Acid from Hungary is not pertinent to this investigation. Petitioners argue note that the Department's refusal to apply the CVD law to NMEs in Sulfanilic Acid from Hungary was grounded in its analysis of the affected economies at that time, aspects of which no longer apply to the evolved economy of the PRC. Petitioners thus argue that, despite the Department's decisions regarding other economies with their own particular circumstances, it was not reasonable to expect the Department to continue its non-application of the CVD law to the PRC. Additionally, Petitioners note that Congress granted the PRC PNTR status in 2000, the legislation for which authorized funding for the Department to monitor the PRC's compliance with its WTO obligations and to defend "United States antidumping and countervailing duty measures with respect to products of the People's Republic of China." See 22 U.S.C. § 6943(a)(1). Moreover, Petitioners note that the statute stated the United States must enforce its rights under the PRC's Accession Protocol, which reflects not only the PRC's agreement to concessions in the Accession Protocol but also its obligation to be bound under the SCM Agreement. See 22 U.S.C. § 6941(5).

Petitioners finally note that the PRC's commitment to be subject to the SCM Agreement was circulated as early as May 28, 1997, as part of the draft Accession Protocol, well before the Department's proposed cut-off date of December 11, 2001.

Bridgestone contests the January 1, 2005 cut-off date proposed by the GOC and the respondents as meritless. Bridgestone further states that the Department should not rely on any cut-off date with respect to CVD investigation in the PRC, arguing that establishing a bright-line date encourages Chinese respondents to "cobble together cut-off dates to suit their own interests." Bridgestone May Rebuttal Brief at 24. Instead, Bridgestone contends the Department should continue to measure subsidies during the AUL of productive assets of the investigated industry, as such an approach follows the Department's usual CVD practice and "ensures the consistency of countervailing duty investigations of all countries." Bridgestone May Rebuttal Brief at 25.

Bridgestone notes that the Department's application of the CVD law to the PRC was a change in practice rather than in "black letter" law, and thus did not require notice under the law. In particular, Bridgestone states that the Department was free to change its practice provided it gave a reasoned analysis for the change, since the Department's prior practice of not applying to CVD law to NMEs (dating back to the mid-1980s) had not been codified and did not require notice and comment rulemaking procedures for its adoption or alteration. In particular, Bridgestone notes "the Chevron doctrine contemplates that agencies can and will abandon existing policies and substitute new approaches." Bridgestone May Rebuttal Brief at fn58.

Bridgestone further argues that, even if non-application of the CVD law to NME imports were considered more than a practice, it would be a non-binding interpretive rule at most, which merely informs the public as to the Department's current treatment of a legal norm. Bridgestone states the Department has issued both legislative and interpretative rules in the past, and thus is aware of the distinction. Indeed, Bridgestone claims, the Department clearly indicated that its prior non-application of CVD law to NMEs did not constitute a legislative rule, as evidenced by reference to its "practice" (in the preamble to the final CVD regulations) and "policy" (in the notice requesting comments on whether to apply CVD law to the PRC). See Bridgestone May Rebuttal Brief at 27, CVD Preamble, and Application of CVD to PRC – Comment Request at 77507.

Bridgestone maintains that the Department gave adequate notice of the applicability of the CVD law to Chinese imports before January 1, 2005. Bridgestone also cites a number of events as illustrative that the GOC had notice that it was subject to the CVD law or consented to the "subsidies disciplines," including the PRC's request to be treated as other GATT contracting parties (1986), the PRC's request to convert its GATT application to WTO accession (1995), Congress' recognition of CVD remedies against PRC imports (via legislation authorizing PNTR with the PRC upon WTO accession, in 2000), and the Department's initiation of CFS from the PRC and published request for comment on the Application of CVD to PRC – Comment Request (both in 2006).

Finally, Bridgestone contends that neither Sulfanilic Acid from Hungary nor the Department's investigation in Lined Paper from the PRC – AD require the Department to limit its measurement of subsidies to those granted after January 1, 2005. Contrary to the GOC's claim that the Department abandoned a "fundamental principle applied in Sulfanilic Acid from Hungary," Bridgestone notes the factual distinctions in this investigation and contends that the Department complied with its legal obligation to provide a reasonable explanation for its change in practice in CFS from the PRC.

Further, Bridgestone argues that the Department should rely on its usual AUL methodology to measure subsidies in CVD cases. Bridgestone submits that the methodology used to measure subsidies in this CVD investigation does not hinge on the Department's decision in Lined Paper from the PRC – AD, not only because the AD and CVD laws are applied under different authority and for different reasons, but also because the comparison to In Lined Paper from the PRC – AD is inapposite. Instead of comparing the PRC's NME status for AD purposes with the status of its economy for CVD purposes (as argued by the GOC), Bridgestone contends the Department correctly compared the status of the PRC's economy at the time of Georgetown Steel versus its current condition. Accordingly, Bridgestone argues, the Department's analysis and measurement of subsidies in this investigation should focus on whether the PRC's NME has "undergone sufficient changes since the opinion in Georgetown Steel such that the application of the CVD law is not possible, even though China is still considered an NME for antidumping purposes." Bridgestone May Rebuttal Brief at 30. Contrasted with the nature of NMEs at the time of Georgetown Steel (where government interference was pervasive and the Department could not distinguish subsidies from government control), the Department has determined the present nature of the PRC economy allows a determination of "whether the government has bestowed a benefit upon a Chinese producer." Bridgestone May Rebuttal Brief at 31. In particular, Bridgestone notes the Department's practice of "providing individual margins based on the company's own sales prices to the United States or based on an average pricing behavior of a set of producers who are representative of the industry to companies that demonstrate freedom from de facto or de jure government control." Bridgestone May Rebuttal Brief at 31.

Department Position

After careful consideration of the parties' comments, we continue to find that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law, and have adopted December 11, 2001, the date on which the PRC became a member of the WTO, as that date.

Our decision to adopt this date is not based on whether the CVD law can or cannot be applied to non-WTO members. Therefore, parties' reliance on CVD investigations in which the Department investigates non-recurring subsidies that predate membership in the WTO is misplaced. Instead, we have selected this date because of the reforms in the PRC's economy in the years leading up to its WTO accession and the linkage between those reforms and the PRC's WTO membership. See WTO Working Party Report – 10/1/2001. The changes in the PRC's economy that were brought about by those reforms permit the Department to determine whether countervailable subsidies were being bestowed on Chinese producers. For example, the GOC eliminated price controls on most products; since the 1990s, the GOC has allowed the development of a private industrial sector; and in 1997, the GOC abolished the mandatory credit plan. See Georgetown Steel Memorandum. Additionally, as noted in the Preliminary Determination, the PRC's Accession Protocol contemplates application of the CVD law. While the Accession Protocol, in itself, has no authority to preclude application of the CVD law prior to the date of accession, the Protocol's language in Article 15(b) regarding benchmarks for measuring subsidies and the PRC's assumption of obligations with respect to subsidies provide support for the notion that the PRC economy had reached the stage where subsidies and disciplines on subsidies (e.g., countervailing duties) were meaningful.

Although Bridgestone argues that the statute does not permit a fixed date from which the Department will find countervailable subsidies, this argument ignores that the imposition of CVDs requires the Department to be able to identify and to measure subsidies. The Department addressed the virtually identical concern in Carbon Steel Wire Rod from Czechoslovakia at 19371. Specifically, we examined whether "any political entity is exempted per se from the countervailing duty law" and found that none were, but then went on to address the additional question of whether the law could be applied to nonmarket economy countries like Czechoslovakia. We concluded that state intervention in that economy, such as government control of prices, did "not allow us to identify specific NME government actions as bounties or grants."

The Department's analytical approach in Carbon Steel Wire Rod from Czechoslovakia was upheld by the CAFC in Georgetown Steel. See Georgetown Steel at 1318. As discussed in Comment A.1, the Court found that the Department had the discretion not to apply the CVD law where subsidies could not meaningfully be identified or measured. In the instant investigation, our analysis has led us to conclude that the economic changes that occurred leading up to and at the time of WTO accession allowed us to identify or measure countervailable subsidies bestowed upon Chinese producers. In this regard, the Department is not providing China with special/preferential treatment nor is the Department expanding the criteria for a subsidy beyond those found in the statute. Rather, the Department is simply acknowledging its ability to identify and measure subsidies as of December 11, 2001, based on the economic conditions in China. Therefore, the Department is fully within its authority in not applying the countervailing duty law to the PRC prior to December 11, 2001. See Georgetown Steel at 1318.

We acknowledge that there was not a single moment or single reform law that suddenly permitted us to find subsidies in the PRC. Many reforms were put in place before the PRC acceded to the WTO, but the Department has identified other areas where the PRC economy continues to exhibit nonmarket characteristics. As discussed above, economic reform is a process that occurs over time. This process can also be uneven; reforms may take hold in some sectors of the economy or areas of the country before others.

We have rejected the approach of making specific findings for specific programs, opting instead for a uniform date of application based on the economic changes that have occurred across the entire Chinese economy. First, the cumulative effects of the many reforms implemented prior to the PRC's WTO accession give us confidence that by the end of 2001, subsidies in the PRC could be identified and measured. Second, a program-by-program, company-by-company approach is not administratively feasible. Using the instant proceeding as an example, we are investigating three OTR tire companies located in different provinces and more than thirty alleged subsidies administered at the national, provincial, and municipal levels. While certain programs such as reduced income tax rates can be relatively straightforward to investigate, alleged subsidies such as the provision of land for less than adequate remuneration and policy lending are not. They require analysis of several levels of government and banks because practices vary from jurisdiction to jurisdiction. If the Department were first required to determine whether subsidies could be identified and measured on a land plot-by-land plot or loan-by-loan basis and then investigate the subsidy, the Department could not complete CVD investigations on Chinese products within the statutorily mandated deadlines. These significant administrative concerns support a bright-line cut-off that allows the Department to focus its analysis on investigating the alleged countervailable subsidies. Furthermore, this bright line provides certainty to the parties concerned.

Bridgestone has further argued that our AUL regulations require that we investigate subsidies given during the AUL period. For the reasons explained above, if subsidies cannot be meaningfully identified and measured before December 11, 2001, then these regulations are inapplicable.

Turning to the arguments made by the GOC, we disagree that adoption of the December 11, 2001 date is unfair because parties did not have any reasonable expectation that the CVD law would be applied to the PRC prior to January 1, 2005 (the start of the POI in CFS from the PRC). Initiation of CVD investigations against imports from the PRC and possible imposition of duties was not a settled matter even before the December 11, 2001 date. For example, in 1992, the Department initiated a CVD investigation on lug nuts from the PRC. See Lug Nuts from the PRC – Initiation at 877. In 2000, Congress passed PNTR Legislation (as cited in Comment A.1), which authorized funding for the Department to monitor, "compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China." 22 U.S.C. §6943(a)(1) (emphasis added). Thus, the GOC and PRC exporters were on notice that CVDs were possible well before the start of the POI in CFS from the PRC.

We further disagree that Sulfanilic Acid from Hungary is controlling here. As noted in the response to Comment A.1, the Department has revisited its original decision not to apply the CVD law to NMEs and has determined that it will re-examine the economic and reform situation of the NME on a case-by-case basis to determine whether the Department can identify subsidies in that country.

Finally, the GOC points to several nonmarket characteristics of its economy the Department identified in its August NME Status Memorandum to support the agency's continued treatment of the PRC as an NME for AD purposes. According to the GOC, these characteristics existed in 2005 and 2006, and support the adoption of a later cut-off date. We disagree. As we acknowledged above, economic reform is a process that occurs over time, and it may progress faster in some sectors of the economy or areas of the country than in others. Unquestionably, there continue to be nonmarket aspects of the Chinese economy today. Nevertheless, we have concluded that the cumulative effects of the many reforms implemented prior to the PRC's WTO accession lead to economic changes allowing us to identify and to measure subsidies bestowed upon producers/exporters in the PRC after December 11, 2001.

For the same reasons provided in CWP from the PRC, the Department finds that it can determine whether the GOC has bestowed countervailable subsidies on Chinese producers from the date of the PRC's WTO accession. See CWP from the PRC and IDM at Comment 2; see also LWRP from the PRC and IDM at Comment 4 and LWS from the PRC and IDM at Comment 2. Moreover, we reiterate our position, as stated in CWP from the PRC, that the GOC recognizes the changing nature of the PRC economy in that its Accession Protocol considers the application of the CVD law to the PRC, even while it remains an NME. Therefore, for this final determination, we affirm the date of December 11, 2001 as the date from which we will measure countervailable subsidies in the PRC.

B. Attribution of Subsidies and Cross-Ownership

Comment B.1: Attribution of Subsidies to, and Cross-Ownership of, TUTRIC/DCB

TUTRIC contends that the record evidence demonstrates that TUTRIC, Dolphin Group and DCB are not "cross-owned" companies as envisioned by the Department's regulation. TUTRIC cites to 19 CFR. 351.525(b)(6)(vi), which states cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. TUTRIC further cites to the CVD Preamble at 65402, which states that "varying degrees of control can exist in any relationship."

According to TUTRIC, Dolphin Group is not a traditional western holding company, but "a relic of China's Soviet-style system." TUTRIC states that Dolphin Group was founded in 1997 pursuant to Approval No. 33 of the Tianjin Municipal Economic Commission. See Dolphin Group Initial Questionnaire Response at Exhibit CBCVD-1. TUTRIC argues that Dolphin Group is not a traditional asset management company, which operates under the State Council Order Guofa No. 378, to "maintain and increase the value of the state-owned assets." TUTRIC states that enterprises under the umbrella of Dolphin Group are "entitled to the right to autonomy in business operations." TUTRIC further argues that the Department "observed this fact" during the TUTRIC verification, by not conducting a separate Dolphin Group verification.

TUTRIC contends that neither the ultimate owners of Dolphin Group nor Dolphin Group's other affiliates fall within the definition of a cross-owned parent or holding company, cross-owned producers of subject merchandise or cross-owned input suppliers of TUTRIC, because their operations have not merged to such a degree that one can use or direct the individual assets of the other in the same ways it can use its own. Finally, TUTRIC cites the Tianjin Government Verification Report, which shows that TSASAC does not own any percentage of Dolphin Group or TUTRIC directly.

Petitioners argue that the Department should reject TUTRIC's argument that TUTRIC is not cross-owned with DCB and Dolphin Group, stating Dolphin Group is not a "relic of China's Soviet style system," but a typical asset management company that controls TUTRIC.

TUTRIC contends that should the Department find that TUTRIC, Dolphin Group and DCB are cross-owned, the Department must attribute the subsidies bestowed to Dolphin Group and DCB to the consolidated sales of all companies, citing to 19 CFR. 351.525(b)(6)(iii). Furthermore, TUTRIC argues that the Department should also include the re-sales of a "recently established sales company" in TUTRIC/DCB's total sales denominator to arrive at the appropriate FOB value for subsidy attribution. Since this new company was not reported at the time of the Preliminary Determination, TUTRIC argues that the Department should use the revised sales denominator calculations in its final determination.

Department Position

We find TUTRIC's arguments to be unpersuasive. In the Preliminary Determination, we found Dolphin Group, a state-owned parent company, described by TUTRIC as a "holding company," and DCB, a supplier of an input consumed in the production of tires, to be essentially the same entity. We further found that this entity controlled TUTRIC. The details of this analysis are business proprietary and are discussed in the TUTRIC's Cross-Ownership Memorandum. See also, TUTRIC Verification Report. Pursuant to 19 CFR 351.525(b)(6)(vi), we determined that TUTRIC was cross-owned with Dolphin Group/DCB, and, pursuant to 19 CFR 351.525(b)(6)(iii),[28] we attributed the subsidies received by Dolphin Group/DCB to the combined sales of TUTRIC and the Dolphin Group.[29]

We continue to find that the information on the record demonstrates that Dolphin Group/DCB is the holding or parent company of TUTRIC.[30] Moreover, we note that TUTRIC has mischaracterized the Department's decision to conduct verification of information related to Dolphin Group at DCB's and TUTRIC's facility. As a matter of administrative convenience, the Department may decide to conduct verification of information regarding affiliated or cross-owned companies at the respondent's facility, rather than at the facilities of the affiliated or cross-owned companies. See e.g., GTC Verification Report. Thus, the decision on where to conduct verification is irrelevant to our cross-ownership analysis of TUTRIC and Dolphin Group/DCB.

Pursuant to 19 CFR 351.525(b)(6)(vi), we continue to find that Dolphin Group/DCB is the holding or parent company of TUTRIC, and, where appropriate, we have attributed the subsidies received by Dolphin Group/DCB to the combined sales of TUTRIC and the Dolphin Group/DCB.[31]

C. Whether GTC and TUTRIC are SOEs

Comment C.1: Whether GTC Is an SOE

The GOC and GTC argue that the Department has failed to define the term SOE. In addition, the GOC and GTC contend, the Petitioners and Bridgestone have incorrectly relied on the term SOE

[28] The Department's regulations at section 351.525(b)(6)(vi) state that cross-ownership exists between corporations if one corporation can use or direct the individual assets of the other corporation(s) in essentially the same way it uses its own. This section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.

[29] Section 351.525(b)(6)(iii) of the Department's regulations states that "if the firm that received the subsidy is a holding company, including a parent company with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries." The CIT has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. See Fabrique at 604.

[30] See TUTRIC Verification Report at 22

[31] As for the "recently established sales company", we determined that it is the domestic sales arm of DCB, and its sales are part of DCB's total sales. All inter-company sales to TUTRIC were sold directly from DCB.

to argue that certain programs are specific. The GOC and GTC argue that the Department may not conclude that these programs are specific because the Department has provided no consistent criteria or definition of an SOE. The GOC and GTC add that there is no information on the record demonstrating that enterprises in which the state has invested receive specific benefits or state assistance.

GTC argues that the Department has unlawfully initiated investigations with respect to a number of government programs involving the provision of countervailable benefits to SOEs (GTC and the GOC refer to SOEs as "enterprise in which the state has an interest" in their questionnaire responses). GTC states these programs include: 1) Provision of Natural and Synthetic Rubber to Enterprises for Less Than Adequate Remuneration in Which the State has an Interest; 2) Provision of Land to Enterprises for Less Than Adequate Remuneration in Which the State has an Interest; 3) Non-Tradable Shares Reform; and 4) State Key Technology Renovation Project Fund. GTC argues that since the Department has failed to provide a definition of an SOE, it may not find these programs to be specific.

According to GTC, its shares are traded on the Shenzhen Stock Exchange and more than 66 percent of its shares are held by private companies and individual shareholders. GTC states the remaining 33 percent not publically held was owned by the GAMC group and that the Department's characterization of GAMC's role in GTC in the Preliminary Determination is inaccurate. According to GTC, GAMC's role is limited as stipulated in the Interim Measures for the Supervision and Administration of State-Owned Assets of the Enterprises and the company's Articles of Association. See GOC Supplemental Questionnaire Response at Exhibit GOC-SUPP-1; see also GTC Verification Exhibits at pages 00289 to 00337. GTC states that the Interim Measures for the Supervision and Administration of State-Owned Assets of the Enterprises limits GAMC's role in the company to that of an investor who does not interfere in the day-to-day operations of the company. Aside from shareholder elections, GAMC does not have control over the appointment of GTC's directors and/or managers.

Moreover, GTC disputes the Petitioners' and Bridgestone's argument that GTC's status as an enterprise in which the state has an interest makes it eligible to participate in the programs in this investigation. See, e.g., Comment H.5. It is GTC's view that it is a publicly listed company that operates free of government control and direction.

In rebuttal, Bridgestone argues that evidence on the record demonstrates that GTC is an SOE. Bridgestone notes that GTC is 33.39 percent owned by GAMC, with the next largest shareholder holding only one percent of the company's shares, and that GTC's argument that the Department must define the term SOE is misplaced. Bridgestone states the Department has made subsidy findings for programs in which state ownership may be relevant based on the company' receipt of benefits, not on a review of the company's ownership structure. Bridgestone cites to the State Key Fund as a program that the Department countervailed in the Preliminary Determination, not because the PRC is the largest shareholder, but because the company received funds under the program, which the GOC limited to SOEs. Bridgestone states that arguing about the definition of an SOE does not alter the fact that this program, which is limited to SOEs, resulted in the provision of countervailable subsidies to GTC.

Department Position

In the Preliminary Determination, the Department found that, based on the information on the record, GTC was an SOE. See Preliminary Determination at 71366. Specifically, the Department found that one-third of GTC's total shares outstanding are "state-owned" by the GAMC, whose self-described purpose is to play the role of an owner of SOEs. We also found that GTC benefited from the State Key Technologies Renovation Project Fund, which according to the GOC, was only available to SOEs.

GTC makes several arguments that essentially go to the issue of whether GAMC is in a position to control the day-to-day operations of GTC. As an initial matter, based on the evidence on the record, the Department does not agree with GTC's characterization of GAMC's role in the company. More importantly, though, we find that we do not need to reach the issue, in this case, of who controls the respondent. The facts on this record are clear: the State, through GAMC, owns shares in GTC. Although we do not preclude the possibility in other proceedings of identifying additional bases, apart from direct ownership, for finding that a company is an SOE, we do not need to consider those other factors here. GAMC's direct ownership of GTC is a sufficient basis, in this case, for finding GTC to be an SOE.

We further note, however, that whether GTC meets any Department definition of an SOE is not central to a finding of whether the subsidies in this case that GTC received were specific. If GTC receives a subsidy under the criteria set out in Chinese law or policies for eligibility, and the Department finds that those criteria limit eligibility for the subsidy in such a manner that indicates it is de jure specific to an industry or enterprise, or group thereof, the label ("SOE" or otherwise) used to describe those who are eligible is not a critical element of the analysis. If GTC qualified for and received benefits under a program that is de jure specific to "SOEs," then the program is countervailable, regardless of the definition of SOE. See, e.g., CFS from the PRC, finding that programs limited to FIEs are de jure specific to a group of enterprises.

Comment C.2: Whether TUTRIC Is an SOE

TUTRIC contends that it should not be treated as an SOE, given that TUTRIC does not pass the SOE test that the Department applied to respondent GTC in the Preliminary Determination, in which the Department found GTC to be an SOE based on the company's ownership structure, the role of the GOC as an owner of the company, and the fact that GTC received subsidies specific to SOEs. Further, TUTRIC argues that the GOC should not consider TUTRIC to be an SOE, as TUTRIC could not, and did not, apply for subsidy benefits that are specifically offered to SOEs (e.g., State Key Technologies Renovation Project Fund). TUTRIC states it could, and did, apply for and receive benefits under subsidy programs for FIEs (e.g., FIE reduced tax rates). Finally, TUTRIC states it could not obtain interest waivers on its debt unless the debt was assumed by Dolphin Group, an SOE. Dolphin Group could obtain interest waivers because of its SOE status pursuant to State Council Order Guofa (97) No. 10. See TUTRIC's "Full AUL" Supplemental Questionnaire Response at Exhibit S2CVD-4.

Petitioners argue that the Department should reject TUTRIC's argument that it is not an SOE, saying that information on the record demonstrates that TUTRIC's owners are state-owned and, thus, TUTRIC is owned by the GOC. Moreover, Petitioners argue that the fact TUTRIC received interest waivers that were only available to SOEs indicates that TUTRIC is an SOE.

Bridgestone rebuts TUTRIC's argument that TUTRIC is not an SOE, stating that Dolphin Group, the majority owner of TUTRIC, is owned by the GOC and that Dolphin Group maintains direct control over TUTRIC. See TUTRIC Questionnaire Response at Exhibit 2, "TUTRIC's Articles of Association and Organizational Minutes." Thus, Bridgestone argues that information on the record indicates that both TUTRIC and Dolphin Group are SOEs comprising one of the largest state-owned conglomerates controlled by the GOC. Bridgestone rebuts TUTRIC's argument that TUTRIC cannot be an SOE since it receives FIE benefits, stating that in CFS from the PRC the Department found respondent Shandong Chenming to be both an SOE and an FIE. Finally, with regard to TUTRIC's argument that it was not able to receive interest waivers unless the state-owned Dolphin Group assumed the debt, Bridgestone notes that State Council Order Guofa (97) No. 10, which entitles Dolphin Group to the interest waivers as an SOE, is not on the record in this proceeding.

Department Position

In the Preliminary Determination, the Department found that, based on business proprietary information on the record provided by TUTRIC, TUTRIC was both an SOE and FIE. See Preliminary Determination at 71366; see also TUTRIC Questionnaire Response at page 9.

TUTRIC contends that applying the same methodology the Department used for finding GTC to be an SOE in the Preliminary Determination, should lead the Department to find that TUTRIC should not be considered an SOE. Specifically, TUTRIC argues that its ownership structure, and the fact that the company did not receive "SOE exclusive programs," precludes it from being an SOE.

As discussed above with respect to GTC, the pertinent question is whether TUTRIC or its cross-owned affiliates (e.g., Dolphin Group) actually qualified for and received subsidies that, under Chinese law, are limited solely or in part to SOEs and are de jure specific. That said, the record facts are clear that the State owns shares in TUTRIC and its cross-owned affiliates. Therefore, we continue to find this respondent to be an SOE, in addition to being an FIE, for purposes of this investigation.

D. Government Provision of Rubber for Less Than Adequate Remuneration

Comment D.1: Whether the GOC's Provision of Rubber Is Specific

Petitioners argue that the Department should continue to find the government provision of rubber for less than adequate remuneration to be specific in the final determination, as in the Preliminary Determination. According to Petitioners, this program is de facto specific within the meaning of

19 CFR 1677(5A)(D)(iii). Petitioners state that the tire industry accounts for 60 percent of China's rubber consumption.

Bridgestone argues that based on the results of verification, there is no new evidence on the record that should cause the Department to change its position from the Preliminary Determination that industries that use natural and synthetic rubber were limited and that, therefore, the provision of rubber is specific under section 771(5A)(D)(iii)(I) of the Act.

The GOC and GTC argue that the Department's preliminary finding that the natural and synthetic rubber markets were limited based on the list of industries that used rubber was incorrect, saying that the list provided by the GOC was not exhaustive, and that in fact there is no narrow set of industries purchasing rubber. The GOC and GTC note that, at verification, representatives of the Chinese Synthetic Rubber Industry Association provided a list of additional industries that used synthetic rubber. See GOC Verification Report at 10. Claiming that even the list provided by the GOC was itself sufficiently broad, the GOC and GTC point out that the machinery components and commodity products industries incorporate a significant number of companies and sectors. Additionally, the GOC and GTC argue that rubber pricing is competitive throughout China and that there is no preferential rubber pricing for the OTR tire industry or other industries. Therefore, the GOC and GTC argue that the Department cannot find the provision of natural and synthetic rubber during the POI to be specific.

Arguing that both Petitioners and Bridgestone have acknowledged that a broad range of Chinese industries rely on rubber to manufacturer their goods, the GOC states that there is no justification for how the provision of a good to such a broad range of industries can constitute specificity under the CVD law.

Noting Petitioners' claim that the tire industry accounts for 60 percent of China's rubber consumption, TUTRIC and Starbright argue that it is questionable whether this percentage is sufficient to determine whether the tire industry is a predominant user of rubber, adding that the OTR tire industry is a small subset of the overall tire industry. Therefore, TUTRIC and Starbright argue that the provision of rubber is not de facto specific.

TUTRIC and Starbright also disagree with Petitioners' contention that the provision of rubber is de facto specific because the industries that use rubber are "limited in number." TUTRIC argues that evidence on the record show that a variety of industries purchase and use rubber, including tires, bands, tubes, shoes, machinery components and construction, as well as rubber suppliers to each of these industries. See GOC Verification Report at 10. TUTRIC and Starbright state this broad range of industries cannot be considered "limited in number," and that because companies that purchase rubber are those that use or sell rubber does not mean they are "limited in number." TUTRIC and Starbright note that in Live Swine from Canada the Department found that the use of a program by farmers of different agricultural sectors was not "limited in number." See Live Swine from Canada.

Petitioners disagree with the respondents' contention that the provision of rubber is not specific, in particular with the respondents' claim that the list of industries provided by the GOC is "not exhaustive, but is merely illustrative." Petitioners point out that the GOC never provided the Department with a more comprehensive list. Additionally, Petitioners note that, at verification, representatives of the Chinese Synthetic Rubber Industry Association stated that the "tire industry is the largest consumer of natural and synthetic rubber in the country" and that the "main consumers of synthetic rubber are: shoemakers, rubber pipe producers, construction companies, and automobile producers." See GOC Verification Report at 9 and 10. Therefore, Petitioners argue that the record supports the finding that the users of rubber are "limited in number."

Bridgestone contends that the respondents' arguments relate only to the list of synthetic rubber users and that, moreover, this list is essentially the same list provided by the GOC in its questionnaire response. See GOC New Subsidy Allegations Response. Therefore, Bridgestone argues that the Department has already considered this information and still found the program countervailable. Bridgestone also states that respondents ignore the fact that "the tire industry is the largest consumer of natural and synthetic rubber" in China. See GOC Verification Report at 10. Bridgestone argues that this statement confirms that any subsidy to rubber producers is a de facto subsidy to the tire industry in China because it is the largest consumer of natural and synthetic rubber in the country.

Department Position

The Department continues to find that industries that use natural and synthetic rubber are "limited in number." Therefore, the Department has continued to find that the provision of synthetic and natural rubber is de facto specific under section 771(5A)(D)(iii)(I) of the Act.

For the Preliminary Determination, the Department relied on a list of industries that consume rubber provided by the GOC to determine that such industries were "limited in number." See GOC New Subsidy Allegations Response at 11. Respondents have argued that this list of industries was not an exhaustive list. We note, however, that when providing this list the GOC provided no indication that this list was not exhaustive.

Subsequent to the Preliminary Determination, the GOC identified additional users of synthetic rubber. We find, however, that the additional industries are not sufficiently numerous to find that the industries receiving synthetic rubber are not "limited in number."[32] Additionally, the number of companies that may be encompassed by these industries is not necessarily relevant given that our finding is on an industry-specific basis under section 771(5A)(D)(iii) of the Act. Therefore, the Department continues to find that the provision of natural and synthetic rubber is de facto specific under section 771(5A)(D)(iii)(I) of the Act. This finding is also consistent with the Department's past practice. See e.g., CWP from China and IDM at Comment 7; see also Steel Products from Belgium.

[32] Moreover, we note that at verification, SRIA officials confirmed that the tire industry is the largest consumer of natural and synthetic rubber in the country. Furthermore, figures provided by SRIA officials indicate that the tire industry consumes over half of the total rubber consumed in the country during the POI, indicating that this program may also be de facto specific under the predominant and disproportionate analyses of section 771(5A)(D)(iii)(II) and (III) of the Act. See GOC Verification Report at 10.

Comment D.2: Whether the GOC's Provision of Rubber Confers a Financial Contribution

Petitioners argue that the GOC's provision of rubber for less than adequate remuneration constitutes a financial contribution. Petitioners note that the state owns the majority of the natural rubber plantations in the PRC, and that the market leader in natural rubber sales is the state-owned producer Sinochem International Corporation. Additionally, Petitioners argue synthetic rubber prices are manipulated by the GOC and that the state-owned China Petroleum & Chemical Corporation controls 90 percent of the market (see Bridgestone Supplemental to New Subsidy Allegations at 10) and thus dominates the production and supply of the synthetic rubber market.

Citing to the definitions of a subsidy under section 771(5)(B)(i) of the Act, Bridgestone notes that "authority" is defined as a government of a country or any public entity within the territory of the country and that in analyzing whether a company is a public entity, the Department is guided by the following factors: 1) government ownership; 2) government presence on the entity's board of directors; 3) government's control over the entity's activities; 4) the entity's pursuit of governmental policies or interests; and 5) whether the entity is created by statute. See e.g., Hot-Rolled Steel from South Africa. Bridgestone states that any of these factors can determine whether a company is a public entity and notes that the Preamble to its regulations instructs the Department "to continue our longstanding practice of treating most government-owned corporations as the government itself." Bridgestone argues that evidence on the record demonstrates that the respondents received rubber from state-owned enterprises that qualify as public entities.

The GOC and GTC argue that the Department provides no explanation for how rubber purchases from enterprises in which the state has an interest constitutes a financial contribution within the meaning of section 771(5)(B). The GOC and GTC state that no allegation has been made in this case that domestic rubber suppliers should be considered government authorities. The GOC and GTC argue that the Department has concluded, without evidence to support it, that the GOC has directed or entrusted state-owned rubber suppliers to provide rubber to OTR tire producers for less than adequate remuneration. According to the GOC, for the Department to find a financial contribution, such a financial contribution must be from either a direct (i.e., provision of tangible economic assistance such as tax benefits, goods or services) or indirect (i.e., where private entities serve as government proxies in providing a contribution "that would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments"[33]) action by the government.

Although there is no definition of entrustment or direction in the statute or regulations, the GOC argues, there is binding court precedent approving the Department's general approach in determining entrustment or direction, applying a two-prong test: 1) the existence of a government policy of support and 2) government action to act upon that policy. See Hynix 1 at 1343. The GOC adds that the courts did not give the Department a blank check regarding this matter, noting that in Hynix 1 the courts stated: "While Commerce may allege a program of government entrustment or direction under 19 USC 1677(5)(B)(iii), Commerce must consider counterevidence

[33] See section 771(5)(B) of the Act.

that the transactions making up that alleged program was formulated by an independent commercial actor (not a government) and motivated by commercial considerations." Id. Moreover, the GOC points out that while the courts have had only one opportunity to consider the "entrusts or directs" provision, the WTO dispute settlement mechanism has provided a more definitive approach in assessing this issue, pursuant to Article 1.1(a)(1)(iv) of the SCM Agreement, which requires three elements for finding entrustment or direction: 1) an affirmative action, whether by delegation or command; 2) addressed to a particular party; and 3) the object of which is a particular task or duty.

The GOC states that the WTO provides a basis for distinguishing actions of government that may lead to certain conduct by private parties from actions of government that mandate a specific action.[34] The GOC states that the focus of an entrustment or direction inquiry must be on the nature of the government action, not its effects, noting that the WTO has stated that if the alleged financial contribution cannot be determined from the nature of the government action, then entrustment or direction cannot be found.[35] The GOC states that a general government expression of support is not sufficient to establish entrustment or direction. See DRAMS from Korea.

TUTRIC and Starbright argue that an explicit support for an enterprise or industry, accompanied by a legal act in support of the policy, does not end the entrustment or direction analysis,[36] saying that if a private actor does not take action in accordance with government policy, there is no entrustment or direction. TUTRIC and Starbright state that there is no evidence on the record linking any government action to the pricing practices of rubber producers and/or their dealings with OTR tire producers, nor is there evidence that the government policies and actions meet the two-part test for establishing entrustment or direction.

TUTRIC and Starbright argue that, due to the application of AFA in the Preliminary Determination, the Department did not adequately address whether rubber-producing SOEs provided a financial contribution to OTR tire producers in the form of rubber for less than adequate remuneration. TUTRIC and Starbright state that evidence placed on the record since the

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[34] See United States – Measures Treating Export Restraints as Subsidies at 8.31: "Government entrustment or direction is thus very different from the situation in which the government intervenes in the market in some way, which may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market. Indeed, governments intervene in markets in various ways, and with various policy or profit objectives, and these interventions might have various results, including results that are not intended by, or that are even undesirable for, the government. We do not see how a scenario of this type would comprise the three elements that we consider to be germane to the definition of entrustment or direction. That is, the fact that two different government actions might happen to have the same *result* in a given situation does not transform the *nature* of the actions, i.e., it does not mean that the two actions are effectively one and the same. Otherwise put, the distinction that we make between entrustment or direction and a government intervention which might or might not have a particular effect in a particular market at a particular time is not merely semantic."

[35] Id. at 8.34: "the existence of a financial contribution by a government must be proven by reference to the action of the government.….we do not see how the reaction of private entities to a given governmental measure can be the basis on which the Member's compliance with its treaty obligations under the WTO is established."

[36] See DRAMS from Korea – AB Report "{T}here may be cases where the breadth of discretion left to the private body is such that it becomes impossible to properly conclude that that private body has been entrusted or directed (to carry out a particular task); this is a factual/evidentiary matter to be addressed on a case-by-case basis."

Preliminary Determination allows the Department to address whether these producers fall within the definition of government authorities under section 771(5)(B)(i) of the Act, or whether such producers were "entrusted or directed" by the GOC to provide a financial contribution within the meaning of section 771(5)(B)(iii) of the Act. TUTRIC and Starbright state that since SOEs are not a government authority nor are they entrusted or directed by the government, no countervailable subsidy can exist.

According to TUTRIC and Starbright, state ownership is insufficient to establish that an entity is a government entity. TUTRIC contends that when assessing whether a company should be considered the government, the Department must evaluate the following factors: 1) government ownership; 2) government presence on the entity's board of directors; 3) government's control over the entity's activities; 4) the entity's pursuit of governmental policies or interests; and 5) whether the entity is created by statute. See e.g., Magnesium from Canada. TUTRIC and Starbright argue that an entity with majority government ownership cannot automatically be considered a government authority, stating that even one hundred percent government-owned companies have in certain circumstances, been determined not to be part of the state. See DRAMS from Korea.

TUTRIC and Starbright argue that the relevant issue is not government ownership or control, but whether an entity exercises elements of governmental authority. TUTRIC and Starbright state that the Department has not established a level of government authority regarding the domestic rubber producers, and thus has not established that any rubber producer should be considered a government authority for the purposes of this analysis. TUTRIC and Starbright state that, even if the Department found one producer to be a government authority, it cannot assume all producers with government ownership meet the criteria to be government authorities. According to TUTRIC and Starbright, the Department must make a separate finding for each producer, and that such an analysis would demonstrate government-owned producers in China operate on a commercial basis.

TUTRIC and Starbright claim that since the Department cannot show that the government-owned rubber producers are government authorities, the Department must demonstrate that such producers were entrusted or directed to provide rubber for less than adequate remuneration. TUTRIC and Starbright state that while there is no definition of entrustment or direction in the statute or regulations, the courts have approved the Department's general two prong test to determine entrustment or direction: 1) the existence of a government policy of support; and 2) government action to act upon that policy. See Hynix 1 at 1343. TUTRIC and Starbright state that this was done based on the need to establish a reasonable theory of subsidization. However, TUTRIC and Starbright add, the courts also stated: "While Commerce may allege a program of government entrustment or direction under 19 USC 1677(5)(B)(iii), Commerce must consider counterevidence that the transactions making up that alleged program was formulated by an independent commercial actor (not a government) and motivated by commercial considerations." Id.

GTC adds that there is no record evidence which supports a finding that the GOC has directed any rubber supplier to provide rubber to the OTR tire industry for less than adequate remuneration.

GTC also notes that while the Department may allege a program of government entrustment or direction, it must also consider counterevidence that the alleged program was formulated by an independent commercial actor and motivated by commercial considerations. Id.

The GOC and GTC also argue that Petitioners and Bridgestone fail to demonstrate a financial contribution by the GOC through the provision of rubber, saying that an ownership interest by the GOC in rubber suppliers does not give rise to a financial contribution under the CVD law and there is no evidence to support the argument that this ownership interest has any impact on the terms of the sales to the OTR tire producers.

GTC also argues that it did not receive preferential pricing during the POI. GTC states that as demonstrated at verification, the GTC makes its rubber purchasing decisions by closely monitoring the international price for rubber. See GTC Verification Report at 17. Thus, GTC argues the Department should find that no financial contribution was provided to GTC through its purchase of rubber during the POI.

TUTRIC and Starbright add that the fact that the GOC maintains an ownership does not mean the GOC controls a producer. According to TUTRIC and Starbright, other factors offset any GOC presence in the market. First, TUTRIC and Starbright cite to the presence of public online auctions, saying that nearly 60 percent of the volume of domestic natural rubber purchases in China is made through these auctions. See GOC Verification Report at 9. TUTRIC and Starbright argue that the auction operates on market principles, and thus, the ability of buyers to outbid each other eliminates the ability of the SOE sellers to affect the prices. Second, TUTRIC and Starbright argue that many OTR producers purchase rubber through privately owned middlemen. Therefore, TUTRIC and Starbright argue that while the SOE rubber companies produce a significant portion of the domestic natural rubber, their role in the sale of rubber is less prominent. TUTRIC and Starbright argue that private suppliers eliminate the effect of any price controls implemented by the SOE rubber producers. TUTRIC and Starbright argue that under the Department's regulations, a market-determined price could be established from "actual sales from competitively run government authorities." See 19 CFR 351.511.

TUTRIC and Starbright argue that by assuming the government ownership renders the rubber producer a government authority, Petitioners and Bridgestone have failed to recognize the unique character of SOEs in China. TUTRIC and Starbright disagree with Bridgestone's position that any of the five factors (i.e., government ownership; government presence on the board of directors; government control over activities; pursuit of governmental policies/interests; if the entity is created by statute) can be dispositive with respect to China. TUTRIC and Starbright argue, that in antidumping investigations, the Department has found that government ownership in China does not mean that a company is the government. TUTRIC and Starbright cite to the Department's separate rates procedures, under which an entity wholly owned by the GOC can be found to be independent from the state in pricing decisions and management. See Heavy Forged Hand Tools from the PRC 04/05 AR – AD and IDM at Comment 3. Therefore, TUTRIC and Starbright argue that the Department must look at more than government ownership. TUTRIC and Starbright argue that the Department must analyze each individual rubber producer using the five relevant factors to determine whether each meets the definition of a public entity. If the

Department does not consider the SOE producers a public entity, TUTRIC and Starbright argue, the Department must analyze each private company to determine whether the GOC "entrust or directs" those companies to provide a financial contribution.

Additionally, TUTRIC and Starbright point out that, in their briefs, Petitioners and Bridgestone fail to mention that most of TUTRIC's and Starbright's rubber purchases were from private suppliers. TUTRIC argues that while the rubber may have been produced by SOEs, it was not sold to TUTRIC by SOEs, and that even if the GOC did direct the SOE producers to sell rubber at a certain price, the subsequent resale of that rubber through a private supplier cleansed the transaction of government involvement. Therefore, unless the Department finds that the GOC directed or entrusted each of TUTRIC's private rubber suppliers to provide rubber at a lower price, there is no countervailable financial contribution.

In its rebuttal brief, Bridgestone disagrees with respondents' argument that SOEs are not "authorities" within the meaning of the Act and that, therefore, the Department must make a determination that the GOC "directed or entrusted" state-owned suppliers to provide rubber to OTR tire producers. Bridgestone argues that since China's SOEs are "authorities" within the meaning of the Act, it is unnecessary for the Department to determine the GOC "directed or entrusted" rubber suppliers.

Noting that the statutory definition of "authority" is a "government of a country or any public entity within the territory of a country," Bridgestone argues that the statute does not differentiate between "government" and "public entity." See section 771(5)(B)(iii) of the Act. Therefore, a financial contribution by either a government or a public entity that confers a benefit (and meets the specificity requirement) is considered a subsidy. Bridgestone argues that Chinese SOEs are "authorities" as defined by section 771(5)(B)(i) of the Act, and that the GOC has a publicized plan to lower rubber prices and the ability to do so through its ownership of rubber suppliers and producers. Bridgestone states that evidence on the record demonstrates that the GOC uses SOEs such as its oil refiners to accomplish its policy goals. Bridgestone also states that treating Chinese SOEs as public entities is consistent with China's commitment to the WTO. See WTO Working Party Report – 11/21/2001 at paragraph 172, attached to Bridgestone Supplemental to New Subsidy Allegations at Exhibit 17.

Bridgestone notes, moreover, that the Department has treated Chinese SOEs as part of the GOC in other CVD investigations and also found government-owned providers of inputs in countries other than China to be public entities. See e.g., LWRP from the PRC. In SSSC from Korea, Bridgestone notes, the Department did not evaluate whether the government-controlled input provider was "directed or entrusted" by the Government of Korea despite the fact that the Government of Korea had reduced its holdings in the government-controlled supplier from fifteen percent to four percent during the POR.

Bridgestone argues that the GOC and respondents incorrectly concluded that the Department found the GOC "directed or entrusted" rubber suppliers in the Preliminary Determination, saying this argument is based on the presumption that the Department is investigating an indirect subsidy under Section 771(5)(B)(iii) of the Act.[37] Bridgestone states that whether the GOC "entrusted or directed" rubber suppliers is irrelevant, since the investigation is not about whether the GOC provided a financial contribution through any "private entity." Bridgestone argues that because SOEs are government authorities, not private entities, the Department does not need to conduct a "direct or entrust" analysis in this case.

Department Position

TUTRIC and Starbright have argued that, when determining whether a company should be considered an "authority" within the meaning of section 771(5)(B)(i) of the Act, the Department should evaluate five factors. The Department agrees that such a test has been used in some prior cases. See e.g., DRAMs from Korea and IDM at 16 and 17; see also Magnesium from Canada. However, there are other cases, particularly cases where an input is being provided by a government producer, where the Department has not conducted such an analysis. See e.g., Hot-Rolled Steel from India 04 AR; see also SSSC from Korea. Therefore, for purposes of this final determination, the Department has evaluated the government ownership of a rubber producer to determine whether it qualifies as an "authority" within the meaning of section 771(5)(B)(i) of the Act. This is consistent with the CVD Preamble, which states that "we intend to continue our longstanding practice of treating most government-owned corporations as the government itself." See CVD Preamble at 65402. This finding is also consistent with the Department's past practice. See e.g., CWP from PRC; see also Sacks from PRC; see also Hot-Rolled Steel from India 04 AR – Preliminary (unchanged in final), where the Department countervailed the provision of iron ore from a mostly government-owned mine without any reference to the five-factor test. Section 771(5)(B)(iii) of the Act defines "authority" as a "government of a country or any public entity within the territory of a country." Therefore, a financial contribution by either a government or a public entity that is specific and confers a benefit is considered a subsidy.

Respondents have argued that the Department should evaluate whether the producers are "entrusted or directed" by the GOC to provide a financial contribution. However, because the Department is finding that these SOE producers are "authorities," it is not necessary to evaluate the issue of whether these private entities are "entrusted or directed" by the GOC to provide a indirect financial contribution to the respondents pursuant to section 771(5)(B)(iii) of the Act. See e.g., CWP from PRC; see also SSSC from Korea.

Comment D.3: GOC Control of the Rubber Market

Bridgestone states that throughout the course of this investigation, the GOC has failed to provide the Department with adequate responses regarding the make-up of the natural and synthetic rubber industries – including a description of each industry, identifying input users and whether rubber producers were SOEs. Bridgestone argues that although the Department relied on adverse

[37] An authority "makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments."

inferences in the Preliminary Determination in determining whether the GOC dominated the production and sale of natural and synthetic rubber in the PRC, the Department need not do so for the final determination, since information on the record demonstrates that the GOC does, in fact, dominate the rubber industry. Bridgestone argues that information provided by the GOC since the Preliminary Determination demonstrates that SOEs account for a significant portion of the natural and synthetic rubber imported and produced in the PRC. See e.g., GOC Verification Report at 7.

Bridgestone notes that information submitted by the GOC indicates that it requires Advance Import Licenses (AILs) for certain goods that require close statistical monitoring. Bridgestone states that that GOC monitors and controls the imports, and attempts to curb the price of natural and synthetic rubber through these AILs. According to Bridgestone, evidence on the record demonstrates that the GOC considers the natural and synthetic rubber industries to be “sensitive.” See e.g., GOC Verification Report at 6. Therefore, Bridgestone argues, the GOC would not allow a sharp increase in production costs to the tire industry.

Petitioners argue that, through SOEs who produce the majority of natural rubber in the PRC, the GOC is able to provide rubber to Chinese tire producers below market price. According to Petitioners, the state-owned Sinochem International Corporation is the PRC market leader in natural rubber sales. Petitioners argue that the GOC also dominates the production and supply of synthetic rubber, mainly through the state-owned China Petroleum and Chemical Corporation, which is the largest petrochemical producer in the PRC, controlling ninety percent of the market.

Arguing that the GOC’s AIL program allows the GOC to maintain control over the import rubber market, Petitioners cite to the rules for implementation of the AILs which state that FIEs must meet a number of conditions in order to qualify for the AILs, including relevant provisions of other regulations and “industrial policies.” See Petitioners’ Rubber Import Licenses Submission at 3. Petitioners note that imports of both natural and synthetic rubber were subject to the AIL program during the POI. See GOC Verification Report at 5.

The GOC and GTC argue that Petitioners have failed to provide any evidence to support the claim that the GOC is able to suppress the price of rubber below market prices. The GOC and GTC argue that the Department has recognized that prices paid for natural rubber in China were consistent with international prices (see GTC Verification Report at 17) and that the majority of rubber sold in China during the POI was purchased by the highest bidder in a competitive auction system. See GOC Verification Report at 11.

GTC argues that the GOC plays no role in the pricing of rubber, nor does it limit the importation of rubber. GTC notes that information on the record shows that rubber prices in the PRC are closely related with international rubber prices. See e.g., GOC Verification at 7 and 9. Therefore, GTC contends, rubber prices in the PRC are directed by market principles.

The GOC and GTC also disagree with Petitioners’ and Bridgestone’s argument that the GOC’s AIL system allows the GOC to control rubber imported into the country. The GOC and GTC contend that record evidence demonstrates that the AIL system does not permit the GOC to control rubber imports. See GOC Verification Report at 6. Instead, the GOC and GTC argue, the

AIL system allows the GOC to monitor and collect statistics of imports of certain goods, similar to the United States Government's monitoring of imports and exports. The GOC and GTC state that Bridgestone has not explained how monitoring imports through AILs constitutes control over rubber pricing. The GOC and GTC state that there are no price or quantity limits on the rubber imports into China. Id. at 5. Therefore, the GOC and GTC argue, AILs have no impact on the terms of a company's rubber purchases.

TUTRIC and Starbright also disagree with Petitioners' and Bridgestone's claim that the GOC exerts control over the importation of rubber through its presence in rubber exchanges and use of AILs. TUTRIC states that Petitioners' and Bridgestone's claim cannot be applied generally to the OTR tire industry because TUTRIC does not purchase imported rubber using AILs.

Department Position

The Department recognizes that government involvement in a market may have an impact on the price of the good or service in that market, especially if the government provides a majority or, in certain circumstances, a substantial portion of the good or service. See CVD Preamble at 65377. The Department has found that, in certain circumstances, the government's presence in a market for a particular good or service so dominates that market that the Department will consider the market to be significantly distorted. Under these circumstances, prices stemming from private transactions within the market cannot give rise to a price that is sufficiently free from the effects of the GOC's actions and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration. See e.g., CWP from the PRC and IDM at Comment 7. If the Department determines that a particular market is distorted, the remaining private prices in that country cannot be considered to be independent of the government price. See e.g., Softwood Lumber from Canada and IDM at 38 and 39. In such situations, the regulations state that the Department will not use private prices in the country in question as the basis for a benchmark in determining a benefit. See CVD Preamble at 65377.

Information on the record indicates that China is the largest consumer of rubber in the world. See GOC Verification Report at 6 and 7. However, the country is unable to produce enough rubber to cover all its rubber needs. Therefore, the PRC imports much of the rubber that it consumes. Specifically, China imports 75 percent of the natural rubber and nearly 50 percent of the synthetic rubber it consumes. Id.

Based on the facts of the record for this investigation, neither Petitioners nor Bridgestone have provided sufficient evidence to demonstrate that SOEs specifically or the GOC exerted control over the PRC rubber markets during the POI. Additionally, there is no information indicating that the GOC set prices for rubber during the POI. The Department notes that SOE producers of natural rubber and synthetic rubber make up a significant portion of the natural and synthetic rubber produced domestically. See GOC Verification Report at 7. However, imports of natural rubber far exceed the total domestic production of natural rubber as a percentage of total natural rubber consumption in the PRC. The same pattern is true for the PRC synthetic rubber market. Thus, the Department finds that the SOE's share of domestic output in this case is not, in itself, a sufficient basis for finding that the GOC is in a position to control or otherwise distort the natural rubber and synthetic rubber markets.

At verification, the Department reviewed the AIL program extensively. See GOC Verification Report at 4 through 6. The Department was provided information demonstrating the AIL system allows the GOC to monitor and collect statistics of imports of certain goods that it has deemed to be sensitive. Petitioners' and Bridgestone's evidence about the AIL program is not sufficient to demonstrate that the GOC used the AIL program to control the quantity and/or price of rubber imports. Furthermore, they did not provide any evidence that the GOC had import quotas on natural or synthetic rubber during the POI, nor that any previous imposition of import quotas distorted domestic market prices during the POI. Moreover, at verification, the Department found no evidence that the GOC used AILs to do anything but monitor the imports of a broad category of products, including natural rubber and synthetic rubber. Thus, the record evidence does not demonstrate that the GOC controls the amount or price of rubber imported into China during the POI. Therefore, based on the facts of the record of this investigation, the Department finds that the GOC does not control imports through AILs in a manner that significantly distorted import prices during the POI.

Given that information on the record shows a very high degree of import penetration into the PRC natural and synthetic rubber markets, and given that our evaluation of all of the evidence on the record shows that the GOC did not utilize other means to control domestic or imported rubber sales or prices, we find that the GOC did not control or otherwise distort prices in the natural or synthetic rubber markets during the POI. Therefore, for purposes of this investigation, the Department finds that prices of privately produced domestic natural and synthetic rubber and import prices of natural and synthetic rubber can serve as an appropriate basis of comparison for determining whether there is a benefit under this program.

Comment D.4: Purchases of SOE-Produced Rubber Through Private Trading Companies

Based on its arguments regarding the GOC's involvement in the production of rubber (see Comment D.3: GOC Control of the Rubber Market), Petitioners and Bridgestone argue that the Department should continue to find that the provision of rubber for less than adequate remuneration by SOE producers to OTR tire producers is countervailable. Petitioners contend that information on the record demonstrates that respondents purchased natural rubber and synthetic rubber inputs from SOEs. See e.g., Starbright Supplemental Questionnaire Response at Exhibit 26.

Petitioners and Bridgestone go on to argue that purchases of rubber from private trading companies that was produced by SOEs should be countervailed as well. Petitioners and Bridgestone cite the Department's recent final determination in CWP from the PRC, which found that for such transactions, the GOC's financial contribution is made to the privately owned company and all or some portion of the benefit is conferred on the respondents' purchases from the privately owned company. See CWP from China and IDM at 10. Petitioners conclude that

OTR tire producers receive a benefit when they purchase these government-provided goods and, accordingly, receive these inputs for less than adequate remuneration.

TUTRIC argues that in the Preliminary Determination the Department improperly considered all of TUTRIC's rubber purchases as purchases from SOEs and should disregard purchases from private entities in its analysis for this final determination. TUTRIC states that the Department confirmed at verification that all of TUTRIC's domestic synthetic rubber and roughly half of its natural rubber purchases were purchased through private suppliers. TUTRIC argues that its rubber purchases from private entities were not made pursuant to government authority and, thus, do not fall under the provision of natural and synthetic rubber by SOEs. TUTRIC notes that in Softwood Lumber Products from Canada 2nd AR the Department did not countervail private lumber prices. See Softwood Lumber from Canada 2nd AR and IDM at Comment 23.

Similarly, GTC argues that the Department should exclude domestic purchases from wholly private enterprises from its benefit calculation. Moreover, GTC states that, in the Preliminary Determination, the Department applied neutral facts available to GTC because it could not identify which suppliers were SOEs. GTC argues that since the Preliminary Determination, it has supplied the Department with evidence demonstrating the ownership of the rubber suppliers. Therefore, GTC argues, the Department should not continue to countervail purchases that GTC has demonstrated it bought from private domestic rubber suppliers.

Similarly, Starbright also claims that its purchases of rubber should not be countervailed since the company purchased its inputs from privately owned suppliers and not SOEs. Starbright argues that the Department confirmed this fact at verification. See Starbright Verification Report at 4. Starbright also cites the Department's finding in Softwood Lumber from Canada 2nd AR which states that private lumber prices from New Brunswick and Nova Scotia are not countervailable and are appropriate under the regulations to serve as benchmark prices to compare with the government prices as support for its argument that its domestic rubber purchases were not purchased from SOEs and thus not countervailable by the Department. See Softwood Lumber from Canada 2nd AR.

Bridgestone argues that the Department must examine all purchases of rubber produced by SOEs. Bridgestone contends that the GOC's policy to "deflate rubber prices to the tire producers" by providing rubber at less than adequate remuneration affects the entire rubber market in China. Bridgestone states that the SOEs sell rubber to both affiliated and unaffiliated trading companies. Bridgestone states that since the unaffiliated trading companies are competing with the state-owned trading companies, their prices are affected by the GOC's policy to lower rubber prices. Bridgestone states that the Department's subsidy calculation demonstrates that these entities are selling rubber for less than adequate remuneration. Bridgestone states that a substantial benefit was provided to the respondents through the purchase of state-produced rubber from trading companies. Therefore, Bridgestone argues the Department should include all purchases of rubber produced by SOEs in this final determination.

Noting that TUTRIC has argued that most of its rubber was purchased from private suppliers, Petitioners contend that information on the record indicates that TUTRIC purchased substantial quantities of rubber produced by SOEs. See e.g., TUTRIC Verification Report.

In its rebuttal brief, TUTRIC reiterates that most of its rubber purchases were from private suppliers. See Comment D.2: Whether the GOC's Provision of Rubber Confers a Financial Contribution. TUTRIC argues that even if the GOC does direct the SOE producers to sell rubber at a certain price, the subsequent resale of that rubber through a private supplier cleanses the transaction of government involvement. Therefore, TUTRIC argues, there is no countervailable financial contribution for purchases from private domestic rubber suppliers.

Starbright argues that the findings in CWP from the PRC are not applicable to the instant case since there are vast differences between the Chinese rubber industry and the Chinese hot-rolled steel coil industry at issue in CWP from the PRC. Starbright notes that in CWP from the PRC, the Department determined that hot-rolled steel producers that were SOEs accounted for 96 percent of Chinese production and that Chinese steel pipe producers purchased the majority of their hot-rolled steel domestically. See CWP from the PRC and IDM at Comment 10. Starbright notes that in the instant case, over 75 percent of natural rubber and 50 percent of synthetic rubber used to manufacture tires are imported. See GOC Verification Report at 7. Starbright states that it purchased a portion of its domestic rubber from private producers and the remainder from private suppliers. Starbright further states that it purchased the majority of its rubber from private trading companies located in bonded zones that were selling imported rubber. See Starbright Verification Report at Exhibit 8. Starbright also maintains that the one SOE from which it purchased imported rubber charged more than the next closest non-SOE supplier. See Starbright 2nd Supplemental Questionnaire Response at Exhibit SSCVD-9. Starbright concludes that since SOEs do not play a dominant role in either the imported or the domestic rubber market, the Department's final determination in CWP from the PRC does not apply to the instant case.

Department Position

The Department agrees with Petitioners and Bridgestone, and is treating as a government financial contribution all purchases of rubber produced by SOEs in this final determination. The Department has previously found that a financial contribution (i.e., provision of a good or service) made by a government agency through a private trading company is countervailable. See e.g., CWP from the PRC at 10; see also Softwood Lumber from Canada 2nd AR and IDM at Comment 47; see also PET Film from India 3rd AR and IDM at Comment 8; see also LWRP from the PRC.

For transactions in this case, the GOC's financial contribution (provision of rubber) is made to the trading company suppliers that purchase the natural or synthetic rubber, while all or some portion of the benefit is conferred on the respondents who purchase the rubber from the trading company. Where the price paid by the tire producers is less than the benchmark price, the tires producers receive a benefit when they purchase these government-provided goods and, accordingly, receive these inputs for less than adequate remuneration. Therefore, for purposes of this investigation, the Department will continue to include purchases of all rubber produced by SOEs in its subsidy calculation, regardless of whether the actual supplier was an SOE or a private entity.

The Department disagrees with Starbright's argument that the Department's finding in Softwood Lumber from Canada 2nd AR is relevant in this case. In Softwood Lumber from Canada 2nd AR, the Department found that private lumber prices from New Brunswick and Nova Scotia were not government financial contributions and, moreover, were appropriate to serve as benchmark prices to compare with the government prices. In this case, these rubber purchases are from SOE producers through private suppliers. The fact that these purchases were made through private suppliers does not cleanse the transaction of government involvement, or remove the element of government financial contribution from the transaction. These transactions do not constitute "private prices" and, therefore, Softwood Lumber from Canada 2nd AR is not applicable.

Although we are countervailing rubber purchases when an SOE rubber producer sold through a private supplier, we are not countervailing rubber purchases when a private rubber producer sold through an SOE supplier. As explained above, the Department has found that the GOC does not control the rubber market in the country. See Comment D.3: GOC Control of the Rubber Market. Therefore, the Department finds that the prices of natural and synthetic rubber produced by privately held enterprises are not distorted by the presence of SOE producers or by other means. We find that the rubber producer is the key link in the sales chain, and when the rubber producer is private, there is no government financial contribution. Because there is not a government financial contribution when a private producer sells through an SOE supplier, there is no countervailable subsidy. However, we note that this decision is based solely on the facts on the record of this proceeding and if evidence was provided that indicated that SOE trading companies were involved with SOE producers or the government in controlling or setting prices, we might reconsider this decision.

Comment D.5: Whether Imported Rubber Is Countervailable

Petitioners argue that the Department should modify its determination to account for the GOC's involvement in the importation of rubber. Petitioners state that through SOE participation in the import market, the GOC is able to exert control over the price and quantity of imported rubber. Petitioners hold that information on the record demonstrates that SOEs import rubber to distribute to consumers. Additionally, Petitioners state the record shows that the GOC maintains an import licensing program for rubber. Petitioners argue that FIEs must meet a number of conditions in order to qualify for AILs. See Petitioners' Rubber Import Licenses Submission at 3. Petitioners argue that this system covers products that require import monitoring to ensure that imports of such products do not fluctuate drastically. Petitioners state that the granting of these AILs is terminated if the GOC implements measures to prohibit or limit the importation of certain goods (e.g., making them subject to the licensing or import quotas). Petitioners state that both natural rubber and synthetic rubber were subject to this import licensing program prior to the POI.

The GOC and respondents state that the GOC does not control imports of rubber into China. See Comment D.3: GOC Control of the Rubber Market. TUTRIC adds that even if the Department accepted Petitioners' and Bridgestone's claim regarding the GOC's control over rubber imports, TUTRIC's rubber purchases are not countervailable because the imported rubber came directly from foreign suppliers. GTC argues the Department should continue to exclude import purchases from its benefit calculation saying that there has been no suggestion that China could, or has, directed or entrusted the sale of imported natural and synthetic rubber. Both the GOC and GTC state that the AIL system does not distort prices of rubber in China, nor does the GOC use this system to control the price and quantity of imported rubber. See Comment D.3: GOC Control of the Rubber Market. Therefore, both the GOC and GTC argue that the Department should not countervail the respondents' rubber imports in this final determination.

In its rebuttal brief, Bridgestone argues that the Department should reject GTC's argument to exclude import purchases from its benefit calculation. Bridgestone argues that, as discussed at verification, SOEs are major importers of natural and synthetic rubber. See GOC Verification Report at 7. Bridgestone states that when locally produced rubber is not available, tire producers rely on "China United Rubber Co., a government-backed company that imports rubber on behalf of Chinese consumers." See Bridgestone Comments on Starbright's New Subsidy Questionnaire Response at 5 to 7. Bridgestone states that the record demonstrates that the GOC imported rubber on behalf of tire producers. Id. at Exhibits 7-13.

Department Position

As discussed above, the Department has found that the AIL system is not operated by the GOC to control the quantity and/or price of rubber imported into China. See Comment D.3: GOC Control of the Rubber Market. Moreover, also as noted above, the Department has determined that it will countervail only SOE-produced rubber (irrespective of whether it was purchased through a private or SOE supplier/trading company). Accordingly, the Department finds that, for purposes of this investigation, respondents' imports of natural and synthetic rubber are not countervailable.

Comment D.6: Rubber Benchmark

Bridgestone states that 19 CFR.511(a)(2) stipulates a three-tier hierarchy, in order of preference, when deciding an appropriate benchmark, and that the "first tier" states a preference for using "market-determined price for the good or service resulting from actual transactions in the country in question." Bridgestone cites to the CVD Preamble[38] and to previous Department decisions[39] when an in-country, market-determined price should not be used. Arguing that, when government providers, or SOEs, are the predominant providers of a good or service, there can be no in-

[38] "While we recognize that government involvement in a market may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy." See CVD Preamble at 65377.

[39] The CVD Preamble reflects the fact that, when the government is the predominant provider of a good or service, there is a likelihood that it can affect private prices for the good or service. Where the government effectively determines the private prices, a comparison of the government price and the private prices cannot capture the full extent of the subsidy benefit. See Softwood Lumber from Canada 4th AR at 33951.

country, market-determined prices, Bridgestone contends that the record of this investigation shows that the GOC controls the natural and synthetic rubber markets. Therefore, Bridgestone argues there are no usable market-determined prices for natural or synthetic rubber in the PRC.

Bridgestone contends that in the Preliminary Determination, the Department found that home market prices could not be used. Therefore, Bridgestone argues that the Department should continue to use the world price benchmarks from the Preliminary Determination, which were published by the IRSG, the authoritative source of statistical data regarding production, consumption and trade in rubber and rubber products. Bridgestone states that IRSG provides reliable, accurate, publicly available data for the world rubber market.

Bridgestone notes that in the Preliminary Determination the Department used IRSG natural rubber prices which were based on exchange prices in Singapore, New York and Europe as the bases for natural rubber prices, and export prices from the United States, Japan and France for synthetic rubber prices. Bridgestone also notes that these prices were adjusted, where necessary, for delivery charges, import duties and exchange rates. Bridgestone argues that since these benchmarks were calculated from commodity markets and export prices, it is reasonable to conclude that these prices would be available to rubber purchasers in China, as envisioned in 19 CFR 351.511(a)(2).

Petitioners argue the Department should continue to apply AFA in the selection of a benchmark for this investigation, given that the GOC has not provided a complete list of rubber suppliers nor indicated the level of its ownership interest in any rubber producer, which makes it difficult to verify the GOC's ownership involvement in the rubber industry. Petitioners also point out that the GOC was not able to estimate the total sales value of natural rubber by companies in which the GOC maintains an ownership or management interest, making it difficult to determine the extent to which SOEs dominate the domestic rubber market or how much the state's involvement distorts the prices for these products. Petitioners argue that since the GOC has failed to act to the best of its ability, the Department should continue to apply AFA and to use world market prices as the basis for its rubber benchmark.

Petitioners state that even if AFA is not applied, the Department should still continue to use world market prices rather China prices because the GOC's influence over the rubber industry creates market distortions that make domestic prices unreliable. Petitioners note that 19 CFR 351.511(a)(2) stipulates that if "there is no useable market-determined price with which to make the comparison… the Secretary will seek to measure the adequacy of remuneration by comparing the government price to a world market price." Petitioners argue that information on the record demonstrates the GOC's involvement in both the domestic rubber market (see GOC Verification Report at 7) and, through AILs, the import market. See GOC Verification Report at 4 and 5. Therefore, Petitioners argue that the GOC's involvement in the production and importation of rubber makes market-determined prices for rubber in China unusable.

The GOC argues that the Department must use a China benchmark for the final determination saying that the Department is required by law, except in limited circumstances, to determine whether a good or service has been provided at less than adequate remuneration in relation to "prevailing market conditions" within the country. The GOC notes that the statute defines "prevailing market conditions" to include "price, quality, availability, marketability, transportation, and other conditions of purchase or sale." See 19 USC 1677(5)(E). The GOC argues that the Department's regulations state a preference for "comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question," and that in making such a comparison the Department will "consider product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability." See 19 CFR 351.511(a)(2)(i).

The GOC notes that in the Preliminary Determination the Department applied AFA in its benchmark calculation based on the GOC's inability to identify the primary suppliers of rubber in China and the ownership of these suppliers, but that the GOC has provided this information since the Preliminary Determination. Therefore, the GOC argues, the Department may not impose AFA regarding benchmarks, but instead must use available prices in China for the final determination.

GTC argues that the record evidence does not support the Department's preliminary decision not to use prices in China, based on a finding that such prices are unreliable, and that information on the record shows that the company purchased natural and synthetic rubber based on market principles. See e.g., GTC Verification Report at 17. Therefore, GTC argues that, on this basis, the Department should rely on China transactions for its benchmark.

GTC also states that record evidence contains rubber pricing data on which the Department can rely to establish an in-China benchmark for rubber purchases. GTC states that, in the Preliminary Determination, the Department acknowledged that there has been no government distortion of the purchase prices of rubber from domestic suppliers. GTC adds that both the GOC and GTC have provided detailed information that allows for a calculation of a unit price for natural rubber produced by private enterprises in China. See GOC Verification Report; see also GTC Verification Report.

TUTRIC and Starbright argue that, if the Department continues to countervail rubber purchases in the final determination, it should use a "first tier" benchmark, saying that, in comparison to other recent determinations, there is enough information on the record to make a first-tier determination without FA, let alone AFA. In particular, TUTRIC and Starbright cite to CFS from Korea, in which the government was the sole domestic supplier of the input and, thus, prices from company-specific imports were used instead. In this case, TUTRIC and Starbright argue, there are multiple suppliers of rubber, the majority of which are private entities. TUTRIC and Starbright state that the Department does not need additional information for its analysis, and does not need to use FA or AFA in the final determination.

TUTRIC and Starbright note that there is precedent for using company-specific import prices in the Department's NME AD practice. In NME AD cases, TUTRIC and Starbright argue, the Department uses company-specific imports to value inputs when a company imports more than one-third of that particular input, based on the rationale that a significant level of imports from outside the NME provides the Department with enough information to value imports that are not distorted by government control. TUTRIC and Starbright argue that the Department cannot reconcile the methodology in this case to its NME methodology, stating it cannot accept import prices as sufficiently devoid of government distortion in the AD case but reject import prices as distorted by the state in the CVD case. Therefore, TUTRIC and Starbright argue that the Department should use a first-tier benchmark (i.e., import prices) in this final determination. TUTRIC and Starbright add that the Department should compare company-specific, monthly, weighted-average import prices to the domestic prices to measure the benefit.

TUTRIC and Starbright argue that, if the Department continues to use a world price benchmark, it should not, as it did in the Preliminary Determination, include VAT or import duties in the benchmark price when comparing the price TUTRIC would have paid versus what it actually paid. TUTRIC and Starbright state that nearly all of their imported rubber was purchased on a bonded basis, which excludes VAT and import duty. Therefore, to make a proper apples-to-apples comparison, the Department should exclude VAT and import duties from the world price benchmark.

In their rebuttal briefs, the GOC and GTC argue that Petitioners and Bridgestone have not provided any basis to justify the Department's use of an external benchmark. The GOC and GTC contend that despite the claim that GOC ownership in certain rubber suppliers allows the state to control the price of rubber, evidence on the record shows that market forces determine pricing for rubber in China. The GOC and GTC note that, as the world's largest consumer of rubber, China is forced to import approximately 75 percent of its natural rubber and approximately 50 percent of its synthetic rubber. See GOC Verification Report at 7. Therefore, the GOC and GTC argue that rubber prices in China are dictated largely by external forces, including international rubber prices. The GOC also states that approximately 60 percent of the domestic rubber sold in China during the POI was sold through an online auction system without limitation as to the companies or industries eligible to make purchases. Id. at 11. GTC adds that, at verification, it provided the Department with a detailed review of its market-based approach to negotiating rubber purchases. See GTC Verification Report at 17. Therefore, the GOC and GTC argue, the Department should rely on rubber prices in China for the benchmark in the final determination.

TUTRIC and Starbright counter Petitioners' and Bridgestone's arguments about applying AFA and using world prices by claiming that information provided by the GOC after the Preliminary Determination demonstrates that the rubber market is not dominated by SOEs. Thus, TUTRIC and Starbright state the Department should not rely on AFA in this final determination and should not use world benchmark prices.

TUTRIC and Starbright disagree with Petitioners and Bridgestone's argument that the GOC dominates the natural and synthetic rubber markets. TUTRIC and Starbright argue that the percentage of GOC control over these markets (see GOC Verification Report at 6 and 7) should not be considered dominant. TUTRIC and Starbright add that there is no evidence on the record that SOE rubber producers and importers are following a concerted plan to provide rubber to OTR tire producers. TUTRIC and Starbright states the only evidence that Bridgestone provides is a March 2003 article from the China Daily stating that the government was concerned about rubber prices. See Bridgestone New Subsidy Allegations at Exhibit 6, "State to Deflate Rubber Prices." TUTRIC and Starbright argue that an article from 2003 has no bearing on any alleged market influence in 2006 and adds that governments often make statements concerning market conditions, but such statements do not prove that a government can influence the market.

Noting that one of the SOEs Bridgestone considers to be controlling the rubber market is Sinopec (see TUTRIC Verification Report at 6), TUTRIC and Starbright point out that Sinopec is one the most profitable corporations in China and argues that it is unlikely that Sinopec could operate as one of the most profitable companies in China, while simultaneously enforcing the alleged policies of the state. TUTRIC and Starbright state that this example is a good demonstration that government ownership is not sufficient to render the company a part of the GOC.

TUTRIC and Starbright also disagree with Petitioners' contention that the AIL system is used by the GOC to control import prices. TUTRIC and Starbright state that the Department has found that the AIL system there does not restrict import quantity and value.[40] TUTRIC and Starbright argue the Department should not consider the AIL program to be part of a GOC program to control rubber prices noting that, for example, Import Administration monitors import of various products. TUTRIC and Starbright state that since the GOC does not dominate the domestic rubber industry or control rubber imports, a world benchmark is not appropriate in this final determination.

In rebuttal, with regard to the respondents' argument that there is enough record information to use in-China rubber prices as a benchmark, Petitioners reiterate their contention that the GOC has not provided the Department with all the information requested. Petitioners add that, the Department should continue to use an external benchmark in this final determination regardless of whether it continues to apply AFA, because as they have discussed earlier, the GOC maintains control over domestic production of rubber through SOEs, and over imports through the AIL system. Thus, Petitioners argue, there can be no in-China market-determined prices for rubber- and, therefore, the Department should continue to use an external benchmark.

In its rebuttal brief, Bridgestone argues that, contrary to GTC's argument that there is record information for calculating a unit price for natural rubber produced by private enterprises in China, the record indicates that the three largest producers of natural rubber in China are owned by the GOC and a significant portion of the all domestically produced natural rubber is produced by SOEs. Bridgestone cites to the Preliminary Determination on land benchmarks in which the Department found that an in-China benchmark was not appropriate due to the GOC's intervention in the land market.[41] Bridgestone states that, similarly, because the GOC is involved in a

[40] See WTO Import Licensing Procedures at 2:"Automatic import licensing is an administrative measure over certain products which are free of import restrictions but monitoring on importation and statistics collection of which are deemed necessary. It is implemented in a way fully consistent with the Agreement on Import Licensing Procedures, and there is no restriction in terms of import quantity or value."

[41] See Preliminary Determination at 71368: "a first tier benchmark is not appropriate where the government accounts for a significant or overwhelming portion of the sales of the good in question or where the government's presence in the market is likely to have produced significant distortions in the price formation of the good. See CVD Preamble at 65378 ("Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy"). In such cases, the "commercial environment of the purchaser" is distorted by the overwhelming presence of the government and cannot

significant portion of the rubber produced in the country, an in-country market price cannot be determined.

Bridgestone also disagrees with GTC's contention that the Department acknowledged that there has been no government distortion of the purchase prices of rubber from domestic suppliers. Bridgestone states that GTC provided no citation for this statement. Bridgestone contends that, in fact, the Department was not able in the Preliminary Determination to "ascertain the extent to which government involvement distorts the prices" for rubber in the PRC. See Preliminary Determination at 71373. Bridgestone states that information on the record now clearly demonstrates that the GOC's involvement in the rubber market completely distorts the domestic prices in China.

Bridgestone also disagrees with TUTRIC's and Starbright's argument to use company-specific, monthly weighted-average import prices as the basis for the benchmark, consistent with CFS from Korea and the Department's NME methodology. Bridgestone argues that in CFS from Korea, the Government of Korea did not control the imports of the good in question as the GOC does in this case. Bridgestone states that the GOC: 1) has declared rubber to be a strategic industry; 2) placed both natural and synthetic rubber on the AIL list; and 3) closely monitors, and sometimes imposes a quota on, the imports of natural and synthetic rubber. Bridgestone argues that the GOC has stated its intention to lower the price of rubber to tire producers using domestic and imported rubber. See Bridgestone New Subsidy Allegations at Exhibit 6, "State to Deflate Rubber Prices."

Bridgestone states that because rubber is on the GOC's AIL list, the quantity and value of each of TUTRIC's imports of rubber must be approved by the GOC. Bridgestone contends that due to its status as a sensitive product and an important strategic commodity, the GOC closely monitors all imports of rubber. Bridgestone states that the GOC uses rubber import quotas to control the domestic price of rubber. See Bridgestone Comments on Starbright's New Subsidy Questionnaire Response at 6 and 7 and Exhibits 11 and 12. Bridgestone argues that when the GOC regulates the quantity and value of each import of a product and utilizes a quota system to control prices, there can be no market-determined price. Therefore, Bridgestone argues the Department should not rely on the benchmarks proposed by Respondents.

Department Position

Prior to the Preliminary Determination, the GOC had not provided relevant figures regarding the production and sales of natural and synthetic rubber in China during the POI. Thus, the Department was unable to determine the share of natural rubber and synthetic rubber produced by SOEs in the PRC and, thus, crucial facts were missing in our analysis of whether the domestic rubber markets were distorted. As AFA, the Department preliminarily determined that it would not consider a "first-tier" price (i.e., domestic prices) as a potential benchmark. Therefore, the Department turned to the "second-tier" price (i.e., world market prices that would be available to

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give rise to a price that is sufficiently free from the effects of government actions. The use of such an internal benchmark would be akin to comparing the benchmark to itself, i.e., such a benchmark would reflect the distortions of the government presence" purchasers in the country under investigation), using world market prices for natural rubber and synthetic rubber as reported by the IRSG as the basis for the rubber benchmark.

After the Preliminary Determination, the GOC provided figures and supporting documentation regarding the natural and synthetic rubber markets in the PRC. See e.g., GOC 2nd Supplemental Questionnaire Response at 10 and 11; see also GOC Verification Report at 4 through 10. Therefore, the Department is no longer applying AFA regarding the rubber benchmark. As previously discussed, for purposes of this investigation, the Department has found inter alia that the GOC does not control the rubber market in China. See Comment D.3: GOC Control of the Rubber Market.[42] Based on this finding and other relevant considerations, the Department has determined that domestic prices during the POI were not distorted by the government, and thus, if available, a "first-tier" (i.e., in-China) benchmark may be used to calculate a benefit for this case.

In evaluating whether information on the record provided a basis for an appropriate "first-tier" benchmark, the Department reviewed: 1) the respondents' domestic rubber purchases from private producers during the POI; and 2) the respondents' import purchases during the POI. (A discussion of our analysis concerning these aforementioned rubber purchases is only possible by means of reference to business proprietary information. See GTC Final Calculation Memorandum; see also TUTRIC Final Calculation Memorandum; see also Starbright Final Calculation Memorandum.)

The Department finds that all three companies had significant import purchases of both natural and synthetic rubber during the POI. At least one respondent also had purchases of privately produced domestic rubber. The Department finds these import purchases and, where available, purchases of privately produced domestic rubber to be appropriate benchmarks to measure the adequacy of remuneration for purchases of SOE produced natural and synthetic rubber benchmarks. Therefore, in its calculations, the Department has included all of the respondents' import purchases and, where available, purchases of privately produced domestic rubber during the POI.

Comment D.7: Adjustments to Rubber Calculation

Respondents argue that, if the Department finds that the provision of rubber is a countervailable subsidy, it must make certain adjustments to its calculation in this final determination. GTC argues that the Department must account for its status as a large company that consumes a significant amount of rubber, specifically that market-based principles would predict that a larger customer would receive more favorable terms than smaller customers.

Additionally, Respondents argue that, if the Department continues to use the benchmark price used in the Preliminary Determination, it should not include VAT and import duties in the price,

[42] The concerns raised by Petitioners and Bridgestone about the AIL system, import quotas, and other possible actions that may be indicative of government control of the market have been analyzed in that Comment.

since the benchmark is for domestic purchases of rubber and the importation of rubber by either company is not subject to VAT and import duties.

Moreover, GTC argues that the Department unlawfully "zeroed" purchases of natural and synthetic rubber in the Preliminary Determination. GTC states that in Certain Softwood Lumber Products from Canada, a NAFTA panel examined the Department's zeroing of benefits and raised concerns about the application of this practice to CVD proceedings. See NAFTA Binational Panel – Softwood Lumber from Canada at 17 and 18. GTC states that, in this case, the Department's practice of not including purchases of rubber that are above the benchmark price creates a benefit where none actually exists. GTC states that any constructed benchmark price of rubber that spans an entire year will reflect a weighted average of daily prices, which fluctuate over the course of the year. GTC notes that the Department has acknowledged that the price of rubber increased during the POI. GTC argues that the use of an annual benchmark calculated by averaging four quarterly benchmarks ensures that purchases during some part of the year will be above the annual benchmark while others will be below it. GTC argues that the Department's methodology ignores the sales above the benchmark value, and that the Department should correct this in the final determination.

In its rebuttal brief, Bridgestone disagrees with GTC's argument that the Department should make a hypothetical adjustment to account for the fact that the company consumes a significant amount of rubber and thus receives more favorable terms than smaller customers. Bridgestone states that GTC has not provided legal support for this claim, nor have they provided any evidence that it is a large purchaser of rubber.

Bridgestone also disagrees with Respondents' position that the Department should not include VAT and import duties in its benchmark calculation. Bridgestone argues that neither has provided citations to a law or precedent to support their proposed benchmark calculation methodology. Bridgestone maintains that the Department's regulations state that VAT and import duties must be included in the benchmark calculation. Bridgestone contends that the Department must calculate a market price, not the market price for each potential consumer based on their particular circumstances. Bridgestone notes that the regulations stipulate that the Department will adjust the comparison price to reflect the price that a firm would have been paid if it imported the product, including delivery charges and import duties. See 19 CFR 351.511(a)(2)(iv). Bridgestone states that this methodology is consistent with the Department's practice. See e.g., LWS from the PRC. Therefore, Bridgestone argues the Department should include VAT and import duties in its benchmark calculation.

Additionally, Bridgestone contends that GTC has provided no law or precedent to support its argument to include above-benchmark purchases in the benefit calculation. Bridgestone states that the offset requested by GTC is not in the list of instances where offsets to subsidy rates are permissible. See section 771(6) of the Act.

Department Position

The Department adjusts the comparison prices to reflect the price that a firm actually paid or would have paid if it imported the product, including delivery charges and import duties. See 19 CFR 351.511(a)(2)(iv). The Department finds that in order to accurately reflect the benefit provided through these sales of natural rubber and synthetic rubber at less than adequate remuneration, the Department must make "an apples-to-apples" comparison. In order to do this, the Department is comparing the delivered benchmark price (i.e., import price) to the delivered price paid on the countervailable domestic purchases. When calculating the benchmark price, the Department is including, where applicable, import duties and VAT that were paid by respondents on its imports. Additionally, as discussed above, information on the record indicates that certain imports are subject to additional duties. See GTC Final Calculation Memorandum; see also TUTRIC Final Calculation Memorandum; see also Starbright Final Calculation Memorandum.

The Department notes the GOC allows companies to import raw materials without paying import duty and VAT if the final product is exported. Respondents reported not paying VAT or import duties for certain imports of rubber. However, information on the record indicates that for certain respondents, significantly more rubber was imported than was exported in finished goods. Therefore, these respondents should have been paying import duties and VAT on at least some of their imports. (A discussion of companies who imported rubber duty free during POI is only possible by means of reference to business proprietary information. See GTC Final Calculation Memorandum; see also TUTRIC Final Calculation Memorandum; see also Starbright Final Calculation Memorandum.) Accordingly, the Department has calculated a pro rata amount of import duties and VAT that should have been paid after accounting for imports consumed in exported products.

GTC argues that based on its status as a large company that consumes a significant amount of rubber, the Department should make adjustments to the rubber calculations because it would receive more favorable terms than smaller customers. Since we are using GTC's actual purchases of imported rubber and privately produced domestic rubber, this argument is moot.

Finally, the Department disagrees with GTC's argument to account for sales above the benchmark value in its rubber calculation. Section 771(6) of the Act, stipulates that when calculating the subsidy rate, the Department may subtract the following from the benefit: 1) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy; 2) any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order; and 3) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received. This adjustment to the calculation proposed by GTC is not an instance where offsets to subsidy rates are permissible. This finding is also consistent with the Department's past practice. See e.g., PET Film from India 4th AR and IDM. Therefore, the Department will not adjust the calculation for rubber for less than adequate remuneration to account for rubber sales above the benchmark value.

E. Government Policy Lending and Government Debt Forgiveness

Comment E.1: Specificity

Petitioners support the Department's finding in the Preliminary Determination that the GOC's Government Policy Lending to SOEs and the OTR tire industry were de jure specific, and that the OTR tire industry in China has been given preferential lending by the GOC at central, provincial and local-level governments. Bridgestone agrees that all the loans at issue were de jure specific to SOEs and that all of the respondents in this investigation were owned by the GOC for at least part of the POI.

Bridgestone reiterates its argument that the GOC maintains several loan programs providing countervailable benefits to OTR tire producers. Bridgestone states that the Department separately initiated several investigations related to lending based on allegations of: 1) preferential loans for SOEs; 2) debt forgiveness for SOEs; 3) preferential loans to the Chinese tire industry; and 4) sub-national government policy lending to the tire industry. Bridgestone argues that record evidence demonstrates that each of these programs is de jure specific to either tire producers or SOEs, and urges the Department to disregard the GOC's arguments and continue to find policy lending specific in the final determination.

The GOC and GTC claim that the GOC's national and provincial five-year plans are aspirational in nature and do not provide funding or other benefits to OTR tire producers, nor do they instruct banks to implement programs to provide benefits to the OTR tire industry or any other recipient. The GOC states that during verification, NDRC and provincial authorities explained that five-year plans were government ambitions for the industrial sector, not compulsory goals, and that there is no mechanism in place to monitor a particular industry's development.

Petitioners contest the GOC's and GTC's argument that five-year plans are only "aspirational in nature" and do not constitute evidence of a program to provide preferential loans to the OTR tire industry. Petitioners maintain that several GOC and sub-national governmental planning documents demonstrate that the GOC and sub-national governments provided preferential financing to the OTR tire industry. They cite to the Guizhou 10th Five-Year Plan which states that "policy bank loans and loans from abroad should continue to be allocated according to the plans" and singles out GTC for support under the plan to engage in technology renovation for two lines producing radial tires. Petitioners also cite to the Tianjin 9th Five-Year Plan which states that the "fine chemical industry of tyres" will be 'actively developed;" and the Tianjin Tech Industries Catalogue, whose stated purpose is to "guide social funds", which states that "the recent industrialization focuses include: Manufacturing Equipment for heavy-duty, light truck and car radial tires."

Bridgestone also contests the GOC's and GTC's argument that Chinese government industrial policies are aspirational and have no effect on lending practices of SOCBs. Bridgestone states that the Directory Catalogue on Readjustment of Industrial Structure instructs all GOC entities to formulate specific measures to implement the policy, and that many of the GOC's industrial policies relevant to respondents were implemented. Bridgestone specifically cites to the GOC 11th

Five-Year Plan that calls for an upgrade of China's automobile industry, including the development of auto spare parts, and argues that tires are an "important spare part" for automobiles and their producers are part of an integrated automobile industry. Citing also to the GOC Catalogue, the implementing regulations from the State Council, and China's Commercial Banking Law, Bridgestone argues all GOC entities are directed to cooperate in efforts to promote the encouraged projects. Thus, Bridgestone argues that China's sub-national governments are required to align their industrial policies with those of the national authorities and record evidence demonstrates that the sub-national authorities relevant to this investigation had implemented this directive in making their five-year plans.

Citing to GOC Verification Report, Guizhou Province Verification Report, and Tianjin Government Verification Report, Petitioners argue that the NDRC has the responsibility to enforce five-year plans, and even theoretically voluntary national policy objectives have a pronounced impact on the decision-making of subordinate offices and regional officials. Petitioners argue that national five-year plans play a dominant role in the formation of regional development policies, e.g., according to the Guizhou Province Verification Report, the Guizhou DRC stated that the decision to include specific industries in provincial five-year plans is made in line with national policies. Petitioners support the Department's preliminary determination that the policy lending to OTR tire producers was de jure specific.

The GOC dispute Petitioners' and Bridgestone's argument that the central, provincial and municipal five-year plans and other planning documents demonstrate the specificity of a policy lending program to the tire industry and to the respondents in this investigation. The GOC reiterates that these documents are "aimed at guiding the direction of industrial growth", and are "not compulsory goals, but, rather, goals the government hopes will be attained in the industrial sector." The GOC argues that the mention of specific companies and industries in planning documents does not demonstrate that banks in China provide discounted and/or low-cost loans to the tire or OTR tire industry.

The GOC argues that the bank lending is not specific to the OTR tire industry, citing to U.S. CVD law and the WTO SCM Agreement, Art. 2.4. The GOC argues that evidence on the record of this investigation does not support the Department's apparent conclusion that the GOC has taken an affirmative act to provide preferential financing to the OTR tire industry. The GOC argues that financing from PRC banks is segregated from government influence, and that five-year plans and other policy documents do not direct Chinese banks to provide financing. The GOC states that OTR tire producers receive financing on market terms and in accordance with the rules established by the PBOC and other financial regulators and institutions.

Moreover, the GOC argues that Petitioners and Bridgestone failed to demonstrate with respect to any loans made by SOCBs to the respondents, that there is a policy lending program under which the GOC or provincial and municipal governments provide subsidies to OTR tire producers, and that the GOC and relevant provincial and municipal governments do not direct banks to provide preferential treatment to OTR tire producers.

Finally, the GOC and GTC contend that government industrial policy plays a very limited role in lending decisions, and is but one among many factors a bank may evaluate in examining risk. The GOC continues to argue that there is no evidence to find that loans made to the respondents were de facto specific. Companies under investigation received loans from banks in which the government has an investment and from privately owned banks. Moreover, banks and other institutions provided financing to respondents during the POI in accordance with fundamental lending principals and are not providing preferential treatment to OTR tire producers. Citing to the Georgetown Steel Memorandum, GOC further argues that there is no evidence that banks in which the state has some ownership interest make loans only to specific industries. GOC further cites to the Department's OTR tires verification reports to argue that respondents' loans were given based on financial analyses and commercial considerations.

a. Specificity- Starbright

Starbright notes that the Department based its preliminary determination regarding policy lending to Starbright on language in: 1) the Hebei Province Science and Technology 11th Five-Year Plan & 2020 Long-Term Target, which lists automobile parts and the rubber industry as key projects; 2) the Hebei Province 9th Five-Year Plan, which mentions automobiles and components; and 3) the Hebei Province 10th Five-Year Plan, which states that "auto parts shall be supported." See Preliminary Determination at 71367. Starbright contends that the Hebei province plans only mention automobile parts and not tires or OTR tires. Starbright argues that the mention of automobile parts cannot include OTR tires since this type of tire is not included in automobiles. Starbright goes on to support its argument by noting that the provincial and municipal governments stated at verification that OTR tires are part of the chemical and oil industry. See Hebei Province Verification Report at 4 and 12. Starbright notes that an official from the Xingtai municipal government stated that the chemical and oil industry was not mentioned in the city's five-year plan. Id. at 12. Starbright also argues that neither it nor Hebei Tire applied for or received any long-term loans. See Starbright 5th Supplemental Questionnaire Response at Exhibits V-CVD-11 and V-CVD-13. Starbright concludes that the aforementioned facts demonstrate that OTR tires are not included in the provincial or municipal five-year plans' references to automobile parts nor do the plans' sections for the chemical and oil industry mention any provisions for preferential lending to the OTR tires industry. Starbright also argues that the fact that neither it nor Hebei Tire had any long-term loans demonstrates that there was no preferential lending program for OTR tires.

Bridgestone notes that the Hebei Province 11th Five-Year Plan lists auto parts and accessories industries as a priority industry and specifies Xingtai City, where Starbright is located, as one of the province's development bases. See Bridgestone New Subsidy Allegations at Exhibits 44 and 47. Bridgestone also cites the Notification of Directory Opinions on Planning and Developing Provincial Project Construction, which stated a goal to improve technology for tire producers. See Bridgestone New Subsidy Allegations at Exhibit 45. Bridgestone also notes that the same opinion states that the oil and chemical industry, under which OTR tires are classified, should focus on the development of advance radial tires and its accessories. Bridgestone counters Starbright's argument that OTR tires are not considered part of the automobile industry by citing the Henan Province Automobile and Parts Industry Development 11th Five Year Plan, which states that the GOC considers tires to be parts for automobiles. See Bridgestone New Subsidy Allegations at Exhibit 42.

Bridgestone also argues that the Hebei province five-year plan implementation guidelines for the science and technology sector directs banks to support financing for national and provincial key technology projects. See Bridgestone New Subsidy Allegations Clarification at Exhibit 17. Bridgestone further argues that automobile parts and the rubber industry are identified as "key" projects in the Hebei Province Science and Technology 11th Five-Year Plan & 2020 Long-Term Target. See Bridgestone New Subsidy Allegations Clarification at Exhibit 18.

Petitioners note that Starbright received a loan because of its status as an FIE. Bridgestone contends that Starbright received the BOC loan specifically due to the 2006 change in ownership. See Hebei Province Verification Report at page 00006021 of Exhibit 5. Bridgestone also cites the Hebei Province 11th Five-Year Plan and a notice from Xingtai municipality which encourage technological and financial assistance to foreign invested enterprises. Bridgestone notes that the Xingtai municipal notice specifically states that banks will help manage and organize restructurings. See Bridgestone New Subsidy Allegations Clarification at Exhibit 19 and GOC 5th Supplemental Questionnaire Response at Exhibit 2. Bridgestone maintains that certain banks lent to Starbright based on government industrial policies established in the Chinese Commercial Banking Law. See CFS from the PRC at 60645 and IDM at 58.

b. Specificity - GTC

GTC contests Petitioners' and Bridgestone's argument that policy lending program is specific to GTC. GTC argues that the references to GTC in planning documents are aimed at guiding its direction of industrial growth, and are not compulsory goals. GTC states that it has placed information on the record, including monetary policies, banking regulations, banking reform, interest rate policies, lending and risk assessment policies, and loan distribution data, that demonstrate that the Chinese banking sector has undergone substantial reforms to transition from a state-controlled banking system to a market-oriented system.

GTC also argues there is no evidence of de facto specificity with respect to the loans made to it by SOCBs. GTC argues that the record demonstrates that SOCBs and other institutions that provided financing to GTC during the POI have acted in accordance with fundamental lending principles and do not provide the company with preferential treatment. Citing to the Department's verification reports, GTC argues that banks in which the state has some ownership evaluated GTC for financing in accordance with commonly accepted lending principles and provided financing in accordance with GTC's outstanding credit rating. GTC also cited to bank analyses to argue that those banks that provided financing to GTC used stated criteria to determine whether to approve GTC's borrowing during the POI. GTC argues that many of these analyses have documented GTC's successes as a reason, for providing financing, rather than the consideration of government policy.

With regard to GTC, Bridgestone states that, in its Preliminary Determination, the Department found that China's provincial and municipal governments maintain policies to direct China's state-owned banks to make loans that favor tire producers, and these sub-national policy lending programs were consistent with central government policies. Bridgestone states that the GOC is able to effectuate its policy lending programs through its ownership and dominance of the Chinese financial sector. Bridgestone supports the Department's preliminary finding regarding policy lending and argues that the Department should make the same finding in the final determination.

c. Specificity - TUTRIC

TUTRIC disputes Bridgestone's argument that the preferential lending program to OTR tires producers in Tianjin is specific. TUTRIC states that the evidence that Bridgestone relied on, Tianjin's 11th Five-Year Plan and the Tianjin Tech Industries Catalogue, calls for the construction of "four complete car production bases" and the development of "tyre equipment." TUTRIC argues that since TUTRIC is not a "car production base," the reference is therefore irrelevant to whether Tianjin has a policy of preferential lending to the OTR tire industry. TUTRIC disputes Petitioners' argument that OTR and agricultural tires are "heavy-duty" tires, which were also referenced in the Tianjin Tech Industries Catalogue as one of Tianjin's "recent industrialization focuses." TUTRIC argues that heavy-duty tires fall somewhere between OTR and light truck tires and, thus, outside the scope of this proceeding.

Finally, TUTRIC argues that as noted in the Preliminary Determination, there are no specific programs for preferential lending plans for Hebei Province and Tianjin municipality. TUTRIC argues the only mention of "heavy duty tires" in the plan is insufficient to support the existence of a preferential lending program, as "heavy duty tires" are not OTR tires and fall outside the scope. TUTRIC urges the Department to find that there is no specific program for preferential lending to the OTR tire industry in Tianjin. Furthermore, TUTRIC maintains that in the Preliminary Determination, the Department's erroneously relied upon Tianjin's 11th Five-Year and the implementing regulations (implemented in 2006), and the Tianjin Tech Industries Catalogue to support its finding that GOT directed policy loans to TUTRIC. TUTRIC notes that none of its loans were disbursed prior to the issuance of any of the GOT documents relied upon to find TUTRIC's loans to be de jure specific.

With regard to TUTRIC, Bridgestone states that in its Preliminary Determination, the Department found that China's provincial and municipal governments maintain policies to direct China's state-owned banks to make loans that favor tire producers, and these sub-national policy lending programs were consistent with central government policies, and that the GOC is able to effectuate its policy lending programs through its ownership and dominance of the Chinese financial sector. Bridgestone supports the Department's preliminary finding regarding policy lending and argues that the Department should make the same finding in the final determination.

TUTRIC argues that Petitioners and Bridgestone only provided evidence of government policies targeting generally or tangentially-related industries, such as the rubber and auto parts industries. Therefore, TUTRIC argues that policy lending is not specific to the OTR tire industry and do not meet the Department's standard for the existence of a preferential lending program. Citing to CWP from the PRC, TUTRIC argues that the Department found no preferential lending because the evidence submitted did "not support a finding that the CWP industry in the PRC received preferential financing pursuant to the GOC's Iron and Steel Policy." TUTRIC argues that the Department established a clear policy that any claim alleging a government plan for preferential lending for a general industry is not the same as alleging a PRC plan for a targeted subset of a broad industry grouping. Therefore, TUTRIC argues OTR tire manufacturers do not benefit from a lending program designed for the rubber industry or for the automotive industry.

TUTRIC argues that the Department should follow CWP from the PRC, as a review of Petitioners' evidence for the existence of this program reveals a situation identical to the one in CWP from the PRC. TUTRIC questions Petitioners' reliance on the Tianjin Municipality 11th Five-Year Plan and Directory Catalogue on Readjustment of Industrial Structure, which refer only to "automobiles" and "key component parts." TUTRIC argues that these pieces of evidence do not satisfy the "substantial evidence" obligation required of the Department.

Department Position

We find that policy lending is de jure specific to the OTR tires industry within the meaning of section 771(5A)(D)(i) of the Act. Information on the record shows that provincial and municipality goals and objectives conform with and implement the central government policy goals and objectives with a focus more tailored to the particular interests and circumstances of that province or municipality. Specifically, the central-level plans set goals regarding macroeconomic policies and "provide a vision for economic development, market and regulatory activities, social administration, and the provision of public services." See GOC New Subsidy Allegations Response at 13 and 19. Information on the record also shows that the provincial and municipal five-year plans are drafted based on the goals and objectives of the central-level plans. Id. at 21-22. In other words, local governments (i.e., provinces and municipalities) align their policies with stated central government policies and carry out those policies to the extent that such measures affect their locality. Therefore, central-level plans should be considered a central government policy or program that local governments adopt and implement through their own five-year plans. See, also, CFS from the PRC – Amended Preliminary at 17492.

The respondents mischaracterize the Department's decision in CWP from the PRC. In that case, we found that there was a national steel plan and a number of provincial steel plans. However, we also found that the types of activities that would be supported through financing under these plans were explicitly defined. Moreover, we determined that the loans received by the respondents in CWP from the PRC were not provided pursuant to the specific types of activities that would be supported by the national or provincial plans.[43] See CWP from the PRC. Although in this case, there are no discrete policy plans for the tire industry, per se, the totality of the information on this record (as described below) shows that the government is directing policy lending to the tire industry or to specific enterprises in the tire industry

[43] In CWP from the PRC, we found that there was a provincial steel plan that had not been provided and we countervailed the loans to the CWP producer in that province based on AFA.

We also disagree with the GOC that plans merely reflect the governments' aspirations and are not instruments through which government policies are implemented. If they were simply aspirational recitations of general development goals with no meaning, there would be little reason for the provinces and municipalities to develop plans in accordance with central government plans. Nor would there be any reason for provinces and municipalities to tailor their plans to conditions and needs within their jurisdictions, and there certainly would be no reason to single out companies, industries or specific development projects (e.g., technology renovation) within those plans. The fact that companies or tires or rubber are specifically mentioned in these plans or catalogues and the fact that these plans and catalogues discuss support, including loans for "key" or promoted projects demonstrates that government policy lending in the OTR tires industry is de jure specific.

In the Preliminary Determination, we found that the Guizhou 10th Five-Year Plan (2001-2005) provided by the GOC singled out GTC for technology renovation for two meridian (i.e., radial) tire lines (OTR tires can be radial tires, as well as "bias ply" tires). See GOC New Subsidy Allegations Response at Exhibit GOC-NEW-4-6. The Guizhou 10th Five-Year Plan also states that "policy bank loans and loans from abroad should continue to be allocated according to the plans." Id. In addition, business proprietary information provided in GTC's supplemental response indicates GTC's importance in earlier five-year plans. See GTC Preliminary Calculation Memorandum. Thus, the record indicates GTC has been a key target for economic development by Guizhou province and Guiyang municipality and that the number of such specifically targeted enterprises is limited. For example, the GOC translated section 6 of the Guizhou 10th Five-Year Plan, "Traditional industry shall be improved through high technology." This section mentions only three other companies besides GTC and is, therefore, clearly targeted rather than broad in its scope. In addition to making clear the importance of GTC in the economic development of the province, the plan also is clear that loans are one means of development. Furthermore, the Guizhou 10th Five-Year Plan states explicitly, as noted above, the general directive that "policy loans" should be allocated according to the plans.

The Department notes that both the provincial and municipal five-year plans discuss GTC. Based on verification and the documentation on the record, we have determined that these loans were provided to GTC by Guizhou provincial and Guiyang municipal policy lending. (A full discussion of our analysis concerning GTC's loans is only possible by means of reference to business proprietary information. See GTC Final Calculation Memorandum.) Therefore, the Department continues to find that all of the loans received by GTC and its cross-owned affiliates from SOCBs were made pursuant to a government policy to provide loans to the tire industry.

We also found that the Hebei Province 11th Five-Year Plan for Technology, listed automobile parts and the rubber industry as "key projects," and the Hebei Province: Implementation Guidelines for 11th Five-Year Plan directed commercial banks to support "key projects." See Bridgestone New Subsidy Allegations Clarification at Exhibits 18 and 17, respectively. The Hebei Province 9th Five-Year Plan also mentions that the "automobile and components" industry will, among other industries, be "developed greatly and stronger," see GOC New Subsidy Allegations Response at Exhibit GOC-NEW-4-8, and the Hebei Province 10th Five-Year Plan states that “auto parts,” among other industries, “shall be supported,” id. at Exhibit GOC-NEW-4-9. Therefore, the Department continues to find that the loans received by Starbright from SOCBs were made pursuant to a government policy to provide loans to the tire industry.

Regarding TUTRIC, we note that in the Preliminary Determination, we found several loans made to it and its cross-owned affiliates to be de jure specific. However, as noted above in the Government Debt Forgiveness to TUTRIC section, the repayment terms of some of these loans were renegotiated. We believe the failure of TUTRIC to comply with any of these renegotiated repayment terms, including making any repayments of principal (with one exception), indicate the SOCBs involved could no longer have a reasonable expectation of payment. As such, we find that the government forgave this debt in accordance with 19 CFR 351.508. This debt forgiveness constitutes a financial contribution under section 771(5)(D)(i) of the Act, and is specific under section 771(5A)(D)(iii)(I) of the Act, as it was limited to a specific enterprise (i.e., TUTRIC and DCB).

Comment E.2: SOCBs and Financial Contribution

The GOC reiterates its argument that the Department did not demonstrate there was a financial contribution to OTR tire producers. Citing to 19 U.S.C. 1677(5)(B)(iii) and Hynix 1, the GOC and GTC contend that the Department should examine the record evidence, particularly the specific actions of the relevant institutions providing financing to the respondent OTR tire producers, to determine whether a financial contribution was provided through preferential lending.

TUTRIC argues that SOCBs are not necessarily government authorities, as they have undergone significant reorganizations to become formal corporate entities that operate under market conditions. Citing to DRAMS from Korea and IDM at 17, TUTRIC notes that the Department has found that wholly owned SOCBs are not government authorities. Starbright argues its loan from the BOC is not countervailable since the Department has incorrectly determined that SOCBs in the PRC are government authorities.

Bridgestone disputes the GOC’s argument that banks are private entities not controlled by the GOC. Bridgestone argues that record evidence and scholarly publications[44] demonstrate that the GOC owns virtually every bank in China, and that the GOC requires, by law, that banks in the PRC support its industrial policies. Bridgestone argues that China banks’ reliance on policy, rather than commercial, considerations in lending, gave rise to China’s large volume of non-performing loans, which resulted in two of the lending programs under investigation – preferential lending and debt forgiveness for SOEs. Bridgestone argues that the GOC’s citation of trends, including decreasing government ownership in banks, does nothing to contradict the record evidence that, during the POI, the GOC maintained a strong hold on both bank ownership and

[44] See WTO China Trade Policy Review – Revision at 21, in Petition at Exhibit CVD 3. See, also, IMF Working Paper – China’s Banking Sector Reform at 13, in Petition at Exhibit CVD 90.

lending, and that the Department should continue to find that loans and debt forgiveness from state-owned banks are financial contributions.

Department Position

After examining all information on the record, we continue to find that national, provincial and municipal government authorities effectuate policies to provide countervailable loans to OTR tire producers. Acting pursuant to these official policies, PRC policy banks and SOCBs provided loans to OTR tire producers. A complete analysis of the facts and circumstances of the Chinese banking system that have led us to find that Chinese policy banks and SOCBs constitute a government authority is included in CFS from the PRC and IDM at Comment 8. Parties in the instant case have not demonstrated that conditions within the Chinese banking sector have changed significantly since that previous decision such that a reconsideration of that decision is warranted. See e.g., the discussion in Tianjin Government Verification Report at 5 (a Tianjin municipal government official confirmed that SOCBs are under TSASAC supervision). In addition, there are scholarly publications on the record which report that SOCBs are required to support the GOC's industrial policies.[45] Accordingly, we continue to find that these loans constitute a direct transfer of funds by a government authority. Therefore, these loans constitute financial contributions according to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act.

Comment E.3: Role of the GOC in the PRC Banking System and Whether to Use an Internal or External Benchmark

The GOC argues that the record demonstrates that banks in China operate on market principles, and the GOC and provincial five-year plans and other policy documents do not instruct banks to provide preferential financing to the OTR tire industry. The GOC continues that, while certain banks in China are majority-owned by the government, evidence that an entity has some state ownership is insufficient to establish that the entity is a government authority within the meaning of the statute. The GOC cites to DRAMS from Korea, in which the Department found both entities owned by the government and entities with majority government ownership not to be government authorities for purposes of applying the CVD law.

The GOC claims that it plays little role in the operation of SOCBs and that the level of state ownership is declining in even the largest SOCBs, and the state has minimal or no interest in many banks that actively participate in competition. The GOC continues by stating that the GOC does not interfere with the individual lending decisions of banks in China, including those in which the state has some ownership interest.

According to the GOC, banks in China, including those in which the state maintains an interest, determine lending rates through negotiations on the basis of commercially relevant considerations

[45] See e.g., IMF Working Paper – China's Banking Sector Reform at 18-19, which states that "it is difficult to find clear evidence that SCBs have changed their behavior and became commercially oriented" and that governments should avoid "interference for policy purposes."

and market principles. The GOC states that the four largest Chinese commercial banks in which the state maintains an interest, ICBC, CBC, ABC, and BOC, have detailed written procedures governing risk analysis and the loan approval process that are similar to those used by banks in the United States and other market-driven economies. The GOC states that BOC officials informed the Department at verification that the BOC considers all relevant factors when evaluating loan applications, including the company's basic operation and management, financial performance, competitive position, industrial risks, future prospects, the development cycle of the industry, changes in that cycle, information on the particular industry, and the structure of competition in the industry. The GOC further states that BOC explained that its lending practices follow very detailed internal guidelines for its credit risk analysis of potential borrowers, and that the bank relies on a hierarchical system to give greater scrutiny as amount of financing sought increases.

Petitioners note that the Department identified significant distortions in China's banking sector at the preliminary determination, and determined that "there is not a functioning market for loans within the PRC" and, thus, that the "interest rates of the domestic Chinese Banking sector do not provide a suitable basis for benchmarking the loans provided to respondents in this proceeding." Petitioners also note that the Department further found that "because of the market-distorting effects of the GOC in the PRC bank sector, foreign banking lending does not provide a suitable benchmark." Petitioners support the Department's determination in the Preliminary Determination that "these distortions are present in the PRC banking sector and… that the interest rates of the domestic Chinese banking sector do not provide a suitable basis for benchmarking the loans in this proceeding," and maintain that, it is appropriate to use an external benchmark in this investigation as well.

According to the GOC, if the Department were to determine in the final determination that the GOC provides OTR tire producers with preferential loans, the Department should measure the extent of the subsidy based on domestic interest rates in China, not the lending rate benchmark outside of China as the Department used in the Preliminary Determination. The GOC claims that it has undertaken a gradual liberalization of financial markets as the Chinese banking system has improved its ability to manage its costs and risks, such as eliminating controls on certain kinds of transactions including inter-bank lending, liberalizing the ability of banks to determine lending rates and deposit rates, and providing greater latitude to the banks in paying interest on consumer deposits by only setting a ceiling on deposit interest rates.

GTC also objects to the use of an out-of-country benchmark, arguing that the Chinese lending system provides ample data from which a commercially valid benchmark could be calculated, while many of those countries the Department used to construct the benchmark are dissimilar from China in important ways. GTC further argues that GTC has a very high credit rating, and should not compare GTC's lending rate with any national average or composite of national average loan rates. GTC argues that the Department should adjust its selected benchmark to account for the favorable market lending terms a company with GTC's outstanding financial rating and credit history would be expected to receive.

TUTRIC argues that under the Act, the Department's regulations, and the SCM Agreement, the preference is to use domestic benchmarks for subsidized loans, and notes that many foreign banks operating in the Chinese market provide loans on commercial terms and, thus, have benchmark information that the Department should use.[46]

Citing to the Preliminary Determination and the Department's May NME Status Memorandum from the lined paper products from China investigation, Petitioners support the Department's decision to apply external benchmarks to calculate the benefit, and refute the GOC's and GTC's contention that lending rates in China are set through commercial negotiations and that bankers consider market factors such as risk. Petitioners further argue that the fact that individual banks in China may at times consider certain market factors does not remove the distortions in China's financial system that flow from the government's pervasive presence. Petitioners note that this is recognized in the Department's determination that even lending rates charged by foreign-owned banks in China are unreliable due to the overall distortions in the sector.

Citing August NME Status Memorandum at 55, and WTO China Trade Policy Review - Revision, Bridgestone rebuts the GOC's argument that the Department should use an internal lending benchmark, stating that the internal lending benchmark would introduce distortions resulting from the GOC's ownership and control of China's financial sector.

Bridgestone cites to section 771(5)(E)(ii) of the Act, and the Preliminary Determination, stating that the statute directs the Department to use "market" rates as benchmarks, and the GOC's intervention in the banking sector precludes the existence of a market rate in China. Bridgestone argues that the Chinese government continues to own nearly all Chinese banks, which suffer from a legacy of government interference. Therefore, Bridgestone argues that the use of an external benchmark to measure the benefit of any policy loans in the final determination is warranted. Bridgestone also reiterates its argument that the Department should modify the external benchmark, as suggested in Bridgestone's case brief.

GOC reiterates its argument that the Department must rely on a benchmark that is comprised of lending rates within China to determine the benefits of the alleged policy lending program. GOC argues that Petitioners and Bridgestone fail to demonstrate in their case briefs that the Department correctly used a benchmark lending rate from outside of China, and further argues that the proposed "corrections" to the benchmark used in the preliminary determination would make the benchmark even less comparable with actual lending rates available to respondents.

TUTRIC objects to Petitioners' and Bridgestone's arguments and the Department's Preliminary Determination to apply external benchmarks based on the findings from CFS from the PRC, arguing the findings in that case are dated. TUTRIC requests that the Department make independent findings in this case, given China's vastly and exponentially changing economic climate.

Citing to CFS from the PRC and Georgetown Steel Memorandum, TUTRIC states that the Department found that evidence of reforms can be seen in virtually every sector of the economy, including the banking sector. TUTRIC cites to the GOC's Case Brief at 38 and states that the

[46] Starbright stated that it supported TUTRIC's arguments on these issues.

People's Bank of China has eliminated control of inter-bank lending, liberalized the ability of banks to determine lending and deposit rates, and only set ceilings on deposit interest rates. TUTRIC argues that the internal banking climate is not nearly as distorted today as it appeared to be at the time of CFS from the PRC. Therefore, TUTRIC urges the Department to undertake an independent analysis in this investigation with regard to state control over SOCBs, and determine whether the GOC's presence in the banking sector renders the use of an internal benchmark inappropriate in this case.

TUTRIC further argues that the Department should use interest rates from foreign banks operating within China as the internal benchmark for loans in this case, as foreign banks are not controlled by the government and provide loans on commercial terms. According to TUTRIC, these foreign banks are a more accurate reflection of a loan that "could actually be obtained on the market" than a loan constructed from mixed data from multiple countries.

Department Position

In the Preliminary Determination, the Department made the finding that the "GOC's predominant role in the banking sector results in significant distortions that render the lending rates in the PRC unsuitable as market benchmarks." See Preliminary Determination at 71364; see also CFS from the PRC and IDM at Comment 10, in which the Department found that the PRC's banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the sector. As a result, the Department preliminarily determined that interest rates in the domestic Chinese banking sector do not provide a suitable basis for assessing whether the loans provided to respondents conferred a benefit, and thus, determined to use an external benchmark to measure the benefit of loans from SOCBs. See Preliminary Determination at 71365. The Department continues to find that the use of an external benchmark is warranted.

Consistent with 19 CFR 351.505 and CWP from the PRC, the Department finds that for loan purposes, benchmarks must be comparable commercial loans, i.e., they must be from a commercial lending institution, and they must be similar in structure to government loans with respect to whether they are fixed or variable, the date of maturity, and the currency in which they are granted. See CWP from the PRC and IDM at Comment 14. However, where we have determined that interest rates in the country are distorted, such interest rates are unusable to measure the benefit from government loans. Id.

Furthermore, in CFS from the PRC, the Department noted that it is not possible to adjust for these market distortions, stating that any such endeavor would be a "highly complex, speculative, and impracticable exercise," and that for these reasons, it is appropriate to resort to an external benchmark with regard to GOC policy lending programs. See CFS from the PRC and IDM at Comment 10.

Normally, the Department uses comparable commercial loans reported for benchmarking purposes. See 19 CFR 351.505(a)(2)(i) and (ii). However, because we find that the GOC's intervention has created distortions in the PRC's banking sector, we find that there are no actual commercial loans and, that there are no national interest rates that would make a suitable benchmark. See 19 CFR 351.505(a)(3). Further, the GOC's intervention in the banking sector creates significant distortions, restricting and influencing even foreign banks within the PRC. See CWP from the PRC and IDM at 6. Therefore, the Department finds that it is appropriate to use an external benchmark to calculate the benefits provided under this program.

Further, the use of external benchmarks is consistent with the Department's practice in such situations where government intervention into a sector prevents us from applying an internal benchmark. See, e.g., Softwood Lumber from Canada and IDM at "Provincial Stumpage Programs Determined to Confer Subsidies;" see also CFS from the PRC and IDM at Comment 10, and CWP from the PRC and IDM at "Benchmarks for Short-Term RMB Denominated Loans."

We noted some positive development in SOCBs' lending practices with regard to increased credit risk analysis and other scrutiny measures before making lending decisions, as reflected in certain respondent companies' loan application and analysis documents put on the record by the GOC and GTC. However, we continue to find that the GOC plays a predominant role with significant distortions in its commercial banking sector, as the Department was denied access to many of the loan documents that are critical to the Department's analysis.[47] Moreover, parties in the instant case have not demonstrated that conditions within the Chinese banking sector have changed significantly since the decision in CFS from the PRC that the credit market in the PRC is distorted. The POI in CFS from the PRC was 2005 while the POI in this investigation is 2006. The respondents have not pointed to any specific changes that occurred between 2005 and 2006 that would warrant a reconsideration of that determination that the credit market in the PRC is distorted.

The fact that the GOC has provided some guidance to assist efforts to reform the Chinese banking system and moved the system toward a commercial footing does not mean that the government, through its ownership and control of banks and of credit policies, does not distort the credit market in China. Furthermore, the fact that SOCBs may be moving toward a more solid commercial focus does not preclude these banks from serving as the implementing arm of government policy lending.

For all these reasons, we determine that it is appropriate to use the external benchmark methodology as used in the Preliminary Determination. Since the publication of the Preliminary Determination, the Department has made minor revisions to the external benchmark used to calculate the benefit conferred to recipients of policy loans through this program. See the Loan Benchmarks and Discount Rates section above as well as the next comment.

[47] See GOC 2nd Supplemental Questionnaire Response at 4 and 6 for TUTRIC, where the GOC states that it could not obtain relevant internal bank documentation from SOCBs and GOC controlled policy banks. See, also, GOC 4th Supplemental Questionnaire Response at 8.

Comment E.4: Issues Regarding Building an External Benchmark

While Petitioners support the Department's use of external benchmarks, Petitioners raise concerns that the Department's benchmark calculation methodology, which includes adjustments based on China's inflation rate, reintroduces China-specific distortions into the benefit calculation. Petitioners argue that the inflation rate in China is distorted by GOC non-market policies. According to Petitioners, GOC policies distort China's inflation rate in the following three areas: 1) through "sterilization," the GOC reduces the inflationary impact of increases in the money supply resulting from foreign exchange transactions (Petitioners argue that in 2006, China's monetary base would have been 37 percent higher without sterilization, which would have led to a commensurate increase in prices); 2) government price controls on many goods is particularly distortive of the CPI; and 3) overcapacity in many sectors has a deflationary effect.

Petitioners argue that the impact of these policies is revealed in China's abnormally low inflation rate. According to Petitioners, a model based on GDP growth would predict an inflation rate of 7.3 percent for China in 2006, not the 1.5 percent reported. Petitioners argue that the benchmark calculation methodology employed in the preliminary determination not only reintroduces China-specific distortions, it also has the perverse effect of shrinking the amount of benefit found in exact proportion to the amount by which China's inflation dynamics fail to reflect typical market forces. Thus, Petitioners argue, the more distorted China's inflation rate is, the more distorted the benefit calculation becomes.

Petitioners claim that the most straightforward solution to this problem is to calculate the benchmark interest rate by using nominal (unadjusted) interest rates. Petitioners argue such an approach would avoid reintroducing China-specific distortions while still taking into account the typical market conditions in economies at a similar level of development. Petitioners argue this approach is consistent with the Department's practice in other CVD cases. According to Petitioners, an alternative approach is to choose a benchmark country exhibiting market determinants of inflation that are similar to China's, such as India, Indonesia, or the Dominican Republic. Petitioners argue that, in this approach, the Department need not adjust for inflation and can use actual lending rates in its loan benefit calculation.

If the Department continues to use inflation-adjusted benchmarks, Petitioners argue that the GDP deflator measures of inflation should be used in lieu of CPI measures of inflation. Petitioners argue that China's method of calculating CPI contains abnormalities, including ignoring the cost of land and property and heavily weighting the index toward food products that are subject to price controls, thus making it unrepresentative of the actual level of inflation in China.

TUTRIC rebuts Petitioners' claim that the use of a Chinese inflation rate introduces "China-specific distortions" into the benchmark calculation, and urges the Department to continue to adjust the short-term loan benchmark for inflation as it did in CFS from the PRC. TUTRIC argues that the influences of China's inflation rate are distinct from influences in the banking sector, as inflation is linked to currency fluctuation, and that the Department in this proceeding has already determined that China does not manipulate its currency, citing to the Initiation Checklist at 34. TUTRIC argues that there is no real evidence of government price controls on goods, as exemplified by the Department's separate rate practice in antidumping proceedings. Citing to the ITC's preliminary determination in this case, TUTRIC argues that there is no overcapacity in the OTR tires industry as alleged, as the ITC found that the Chinese industry reported capacity utilization rates of 91 percent in 2004, 92 percent in 2005, and 88 percent in 2006, while the projected capacity utilization rate for 2007 and 2008 is 91 percent.

In addition to arguments on the inflation adjustment, Petitioners contend that the Department should modify the long-term loan benchmark methodology to reflect the risks associated with long-term financing in China. According to Petitioners, the calculation method used in the Preliminary Determination, based on short-term benchmarks adjusted against one-year and five-year U.S. swap rates, understates the true cost of long-term financing for companies in developing countries. Petitioners argue that using low risk swap rates from a stable developed country such as the United States understates the long-term loan premiums charged to companies in developing market economies like China. To remedy this problem, Petitioners suggest using a ratio of long-term and short-term interest rates in a lower middle-income country such as Indonesia.

Petitioners note that the Department revised its long-term loan benchmark calculation method in Thermal Paper from the PRC, in which the Department concluded that "{a}s bond rates appear to better reflect market conditions and factors associated with borrowing, we are replacing the Federal Reserve swap rates with the Bloomberg U.S. Corporate BB-rated bond rates to calculate the adjustment for long-term loans." Petitioners argue that the Department should adopt similar revisions in this investigation. Petitioners further argue that the Department can further improve the methodology by relying on corporate BB-rated bonds from lower middle income countries, rather than the United States.

Bridgestone further argues that the Department should modify the benchmark methodology used in the preliminary determination by 1) calculating a benchmark on a non-inflation adjusted basis; 2) removing any governance adjustment; and 3) not adjusting the respondent's actual interest paid for inflation in China. Bridgestone cites to section 771(5)(E)(ii) of the Act, the CVD Preamble to the Department's regulations, Carbon and Alloy Wire Rod from Turkey, and Steel Reinforcing Bars from Turkey, stating the regulations specifically address inflation only where "interest rates fluctuated significantly during the period of investigation or review." Bridgestone argues that since the inflation was low in China during the POI, the Department should remove the inflation factor in its benchmark construction. Bridgestone cites to Hynix 2 stating that it is unnecessary for the Department to further account for governance in its averaging of commercial lending rates in the basket of countries it has deemed comparable to China.

In addition, Bridgestone argues that the Department should not adjust the benchmark for inflation and other non-trade factors. Instead, Bridgestone contends that the Department should average the actual nominal interest rates of the same countries it used in the Preliminary Determination, and include nominal interest rates for Angola (2003, 2004, and 2006), and the Dominican Republic and Samoa (2003, 2005, and 2006).

According to Bridgestone, if the Department continues to use its regression-based, inflation-adjusted methodology for determining Chinese lending benchmarks, the Department should exclude lending rates for Angola, the Dominican Republic, and Samoa only in the years those countries' rates were aberrational.

Bridgestone argues that the Department should not exclude any of the World Bank governance factors in calculating the Chinese lending benchmarks. Bridgestone states that in the Chinese CVD investigations to date, the Department has calculated its Chinese short-term lending benchmarks based on a regression analysis using calculated real lending rates in lower-middle income countries and an average of certain "governance factors" as published and regularly updated by the World Bank, which includes: 1) voice and accountability; 2) political stability and absence of violence; 3) government effectiveness; 4) regulatory quality; 5) rule of law; and 6) control of corruption. Bridgestone argues that the Department has only calculated the average of the five of six World Bank governance factors for each country and used this average governance factor in the regression analysis. The Department should use all the governance factors, and modify its methodology only to exclude countries with aberrational data in the year that data were aberrational.

Finally, for long-term loan benchmarks, Bridgestone argues that the Department should adopt the same methodology used for Thermal Paper from the PRC – Preliminary and CWP from the PRC, e.g., replacing the Federal Reserve swap rates with Bloomberg U.S. corporate BB-rated bond rates, to calculate the appropriate benchmark for any long-term loans.

Citing to 19 CFR 351.505(a)(1), the GOC argues that the proposed changes by Petitioners and Bridgestone would cause the Department's external benchmark to become even less reflective of "a comparable commercial loan(s) that OTR tire producers could actually obtain on the market." First, the GOC disagrees with Petitioners' and Bridgestone's argument that the Department improperly adjusted for China's inflation rate. The GOC argues that the actual inflation rate in China is an important factor that cannot be accounted for, as requested by Petitioners and Bridgestone, by adjusting for the inflation rates of "lower-middle income countries" or countries "exhibiting market determinants of inflation," or by simply using "nominal (unadjusted) interest rates." Second, the GOC also disagrees with Petitioners' proposal of calculating the Department's long-term loan benchmarks by adjusting the short-term benchmarks with the Bloomberg U.S. corporate BB-rated bond rates. The GOC argues that such an adjustment would make the assumption that BB-rated U.S. corporate default risk and inflation volatility affect Respondents in China. The GOC argues that the Department's use of low-risk swap rates in a stable, developed country in the Preliminary Determination is a more appropriate adjustment. Finally, the GOC argues that Bridgestone's proposal of adding the three "aberrational" countries in the benchmark calculation (i.e., Angola, the Dominican Republic, and Samoa), countries from which none of the respondents under the investigation would seek financing, is unsound and would only raise the benchmark lending rate. The GOC continues to argue that the benchmark does not reflect the lending rates OTR tire producers could actually have obtained during the POI.

TUTRIC rebuts Petitioners' and Bridgestone's proposal to include certain lending rates from Angola, the Dominican Republic and Samoa, and certain World Bank governance factors in the benchmark construction. TUTRIC argues that if the Department continues to use an external benchmark, the benchmark should not be adjusted, consistent with CFS from the PRC and other

China CVD cases. TUTRIC states that the suggested changes in methodology would make the external benchmark even more unrepresentative.

Department Position

We have not adopted Petitioners' and Bridgestone's proposal regarding the inflation adjustments or inclusion of all of the governance factors in the interest rate regression. We continue to determine that data from certain countries and certain years are aberrational and we do not include such aberrational data in the regression analysis; however, we have adjusted the regression so that a country's data are only taken out of the analysis for the year in which the data are considered aberrational. Finally, we have continued to exclude "voice and accountability" from the average of governance indicators in performing the regression analysis for the interest rate benchmark.

The Department explains below that the inflation adjustment is a proxy for an adjustment for exchange rate expectations necessary when comparing interest rates across currencies. In addition, the Department notes that general price inflation, by definition, unambiguously increases the nominal price of all final goods and services in an economy, including those of money, i.e., interest rates. A fair and meaningful cross-country comparison of interest rates therefore requires that we account for cross-country differences in general or "headline" inflation, as measured by changes in the CPI. Furthermore, unless inflation is so high and sustained that future inflation expectations, not current or past inflation, are built into current nominal prices, it would not be appropriate to base the inflation adjustment on some estimate of inflation that is not reflected in current nominal prices. Finally, limiting the benchmark countries to India, Indonesia and the Dominican Republic, where petitioner claims market determinants of inflation are similar to those in China, would 1) take us down the road of "adjusting back" to China and 2) place undue weight on a small group of countries and inflation as an interest rate determinant. The Department explained in CFS from the PRC, why, in its benchmark interest rate calculation, it must avoid going down the road of "adjusting back" to China. With respect to the smaller, inflation-focused basket of countries Petitioners have proposed, the Department would note that inflation is but one of many important interest rate determinants and that such a small basket would unduly limit the range of relevant interest rate determinants, inflation and other, captured in the basket and reflected in the benchmark rate. As a result, the benchmark rate would not be as representative as it could be of interest rates in China if China were a market economy at its current level of economic development. For these reasons, the Department continues to rely on the larger basket of countries in its benchmark interest rate calculation

Section 351.505(a)(2)(i) of our regulations states that in identifying a "comparable commercial loan" to use as a benchmark, the Department will consider, inter alia, the currency in which the loan is denominated. In this investigation, our benchmark is not denominated in any single currency, but instead is constructed of interest rates from numerous countries, while each of the government-provided loans is denominated in a single currency. The inflation adjustment allows the Department to address this issue. As we explained in CFS from the PRC, when the Department compares prices across countries, it normally converts those prices into a common currency because cross-currency price comparisons make no sense. See CFS from the PRC and IDM at Comment 10. In the case of interest rates, this involves adjusting for expectations about movements in the exchange rate between the currencies in question. However, such an adjustment is not feasible given the limited availability of relevant forward exchange rate data for the countries in the basket that underlie the benchmark. The Department can, however, adjust nominal interest rates for inflation and use a cross-country comparison of real interest rates for benefit calculation purposes. A cross-country comparison of real rates is a rough proxy for a comparison of exchange rate-adjusted nominal rates because of the general link between inflation and (nominal) exchange rate expectations. The use of real rates is also valid because the benefit calculation should not reflect inflation expectations that differ across countries. While our regulations do not expressly permit or prohibit an inflation adjustment, they do emphasize the desirability of using a benchmark denominated in the same currency which supports making this adjustment. Once the benchmark is adjusted for inflation, it is necessary to also adjust the rates on the government-provided loans for inflation so that the comparison is conducted on an inflation-adjusted basis.

Similarly, while the Department's regulations do not explicitly address the use of governance factors for making comparisons, as with the inflation adjustment, they facilitate cross-country comparisons because they incorporate other important factors that can influence interest rate formation. Thus, the inflation adjustment and inclusion of the governance factors are consistent with the intent of 19 CFR 351.505(a)(2)(i).

However, the Department continues to determine that it is appropriate to exclude the governance indicator "voice and accountability" from the average of governance indicators in performing the regression analysis for the interest rate benchmark. The Department finds that the other governance indicators are more indicative of the factors that contribute to perceived risk in a country and that "voice and accountability" is not a factor that a lender would consider when determining the risk associated with lending to a business in a particular country.

Further, we see no inconsistency between this approach and the CIT's ruling in Hynix 2. Banks and other lenders in each of the countries included in the constructed benchmark will take into account various factors such as the quality of governance in a country, political stability, government involvement, and interference in the respective economies in assessing risk associated with lending to businesses in a country. To the extent that there are differences across countries in these factors (in such areas as political stability, government effectiveness, and rule of law) they will give rise to differences in perceived risk associated with the particular country which will be reflected in a country's overall level of interest rates, i.e. all else equal, a company in a highly unstable country will pay a higher interest rate than a similar company in a relatively stable country. Moreover, in the portion of Hynix 2 to which Petitioners cite, the CIT was examining the relevance of government involvement in the restructuring of a corporation and not governance factors, generally. See Hynix 2 at 1308. As such, Hynix 2 is inapposite to the Department's adjustment of the policy lending benchmark.

For this final determination, the Department has made minor changes to the regression analysis it used in the Preliminary Determination. The first is that the initial basket of lower-middle income countries in each year's analysis is based on the countries classified by the World Bank as lower-middle income for that particular year. In addition, while the Department continues to determine that data from certain countries and certain years is aberrational and we do not include the aberrational data in the regression analysis, we have adjusted the regression so that a country's data is only taken out of the analysis for the year in which the data is considered aberrational. See Final Loan Benchmark and Discount Rate Memorandum.

Consistent with CWP from the PRC, the Department has also determined that rather than base our calculation on swap rates, it is more appropriate to use commercial bond rates as the basis for calculating the long-term mark-up over short-term interest rates. Interest rate swaps typically involve the exchange of fixed-interest for variable-interest payments and, unlike commercial bond rates, do not involve the commercial risk (i.e., default risk) normally associated with lending long-term. For this reason, we are replacing the Federal Reserve swap rates with the Bloomberg U.S. corporate BB-rated bond rates to calculate the adjustment for long-term loans and discount rates.[48] Thus, the Department will use Bloomberg U.S. corporate BB-rated bond rates to calculate the adjustment for long-term loans and discount rates for the years 2002-2006. See Final Loan Benchmark and Discount Rate Memorandum.

Comment E.5: Whether Government Policy Lending to GTC Is Countervailable

Petitioners state that GTC and GTCIE have numerous short-term and long-term loans from SOCBs which the Department preliminarily found to have conferred a benefit equal to the difference between the interest rate paid by GTC and the interest benchmarks calculated by the Department.

Citing to Guizhou Province 10th Five-Year Plan, Guiyang Municipality 11th Five-Year Plan, Guizhou Province 11th Special Industrial Development Plan, and other documents on the record, Bridgestone argues that the record developed in this investigation demonstrates that sub-national governments maintained programs to provide policy loans to GTC specifically, and that banks owned by the GOC made loans to GTC based on these policies. Bridgestone argues that the Department should continue to find that GTC benefited from these policy loans in the final determination.

GTC argues that there is no GOC or Guizhou Province program under which banks provided financial contributions to GTC, and that banks properly weighed relevant commercial considerations before granting and administering loans to GTC during the POI. GTC argues that the national and provincial five-year plans are aspirational in nature and do not provide funding or other benefits to GTC. GTC further argues that during verification, NDRC and Guizhou DRC officials stated that five-year plans were government hopes for the industrial sector, not compulsory goals, and that there is no mechanism in place to monitor to what extent the goals are being met. GTC argues that none of the five-year plans suggest that there were policy lending

[48] We have used five-year Bloomberg U.S. corporate BB-rated bond rates to calculate the adjustment for long-term loans. To calculate the adjustment for discount rates, we used fifteen-year Bloomberg U.S. corporate BB-rated bond rates. The fifteen-year rates are the Bloomberg U.S. corporate BB-rated bond rates, which most closely approximate the fourteen year AUL in the OTR tire industry.

programs for the tire industry or for GTC during the POI, and that the GOC and Guizhou five-year plans in effect during the POI contain no references to GTC or to the tire or rubber industries.

GTC argues that banks in China determine lending rates through negotiations on the basis of commercially relevant considerations and market principles, and that the four largest commercial banks in which the state maintains an interest, have detailed written procedures that govern risk analysis and loan approval processes, which are similar to those used by banks in the United States and other market-driven economies. GTC states that two of GTC's lenders during the POI, ABC and CBC, explained the detailed market principles used by banks to make lending decision and the terms of the financing, which demonstrate that China has a market-driven banking system that uses commercially accepted factors to determine lending terms to companies such as GTC, and GTC did not receive preferential financing during the POI.

Department Position

We continue to find that GTC and its cross-owned affiliates received preferential lending from SOCBs made pursuant to a government policy to provide loans to the tire industry. The record of this investigation indicates GTC Tire has been a key target for economic development by Guizhou province and Guiyang municipality. For example, the Guizhou 11th Five-Year Plan states that under "the leadership of Guizhou Tyre, {the rubber industry} shall give priority to the 5-million-unit semi-steel radial tire project of Guizhou Tyre." The tires and rubber sector is also specifically mentioned for development in this plan. The Guiyang 10th Five-Year Plan gives priority to the 5-million-unit radial tire project of Guizhou Tyre. In addition, the Guizhou 10th Five-Year Plan specifically mentions GTC's "technology renovation for two tire lines." Moreover, the Guizhou 10th Five-Year Plan states that "policy bank loans and loans from abroad should continue to be allocated according to the plans." The record of this investigation shows that GTC received numerous loans for project development from SOCBs.

Therefore, we continue to find that this program is de jure specific under section 771(5A)(D)(i) of the Act. We also determine the program provides direct financial contributions by the GOC (i.e., government policy banks and SOCBs) pursuant to section 771(5)(D)(i) of the Act. See CFS from the PRC and IDM at Comment 8. Finally, this program provides benefits to GTC and its affiliates equal to the difference between what the recipients paid on loans from government-owned banks and the amount they would have paid on comparable commercial loans, pursuant to section 771(5)(E)(ii) of the Act. As discussed above under Comment E.1, the fact that SOCBs might consider certain commercial indicia in evaluating loans to a company does not, by itself, negate the fact that they are government authorities that provide policy loans.

Comment E.6: Whether There Was a Financial Contribution to TUTRIC

Citing to the Preliminary Determination, TUTRIC argues that the Department initiated its investigation on the preferential lending to the tire industry or government policy loans, and not other potential forms of financial assistance such as for the provision of interest forgiveness and debt forgiveness. Thus, TUTRIC contends that the alleged and initiated programs are limited to the provision of loans at preferential rates, and that TUTRIC has not received any loans post-December 11, 2001.

TUTRIC maintains that the Department should individually analyze each of the five sets of loans that are at issue in this investigation.[49] TUTRIC argues that the four sets of loans that the Department found to be countervailable in the preliminary determination were disbursed prior to December 11, 2001. Thus, TUTRIC argues that any "financial contribution" for the loans at issue was provided long before the December 11, 2001 cut-off date. Citing 19 CFR 351.505(b) and (c)(3), TUTRIC argues that the Department normally considers a benefit from long-term loans to have been received in the year that the firm receives the loan.[50] Thus TUTRIC holds that the Department unlawfully countervailed TUTRIC's four outstanding long-term loans absent the existence of a post-December 11, 2001 financial contribution. TUTRIC cites SSSC from France 01 AR and IDM at Comment 1, that a subsidy will not be countervailable absent the presence of both a "financial contribution" and benefit. Further, TUTRIC cites Delverde, and URAA – Senate Report, to state that a countervailable subsidy is one that meets both "financial contribution" and "benefit conferred." Thus, as explained in the Uranium From Germany, the Netherlands, and the United Kingdom and IDM at Comment 1, TUTRIC argues that for the financial contribution to result in a countervailable subsidy, it must occur during the AUL (or after December 11, 2001 in this case).

TUTRIC cites to section 771(5)(D)(i) of the Act, Cold-Rolled Steel from Brazil, CTL Plate from Korea, and SSPC from Italy, to argue that for loans and grants, a financial contribution exists when there is a direct transfer of funds, and this contribution of a direct transfer of funds occurs at the moment the loans are disbursed. Accordingly, TUTRIC maintains that any financial contribution for the loans at issue, as well as those BOC loans transferred to Cinda, occurred on the respective loan's pre-December 11, 2001 drawdown dates. They go on to argue that, since there has been no direct transfer of funds or revenue foregone after the Department's cut-off date, there is no financial contribution pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act.

TUTRIC argues that its loans can be classified as bad debt since they no longer provide a benefit. TUTRIC cites to Al Tech, and to Steel Products from Austria, at 37217 and 37228-29, stating that the record shows that it made very few payments on principal or interest. Furthermore, TUTRIC claims it benefited from these loans only at the moment it received the funds, thus they are more properly categorized as grants. TUTRIC cites to General Issues Appendix at 37254, and DRAM from Korea 2nd AR and IDM at Comment 1, stating the methods the Department has developed for distinguishing between a grant, debt and equity. TUTRIC cites to Carbon and Alloy Steel Wire Rod from Brazil and IDM Comment 4, and argues that the Department should consider

[49] TUTRIC has consistently treated the fact that it received certain loans from the BOC as public information. However, TUTRIC's treatment of the names of other SOCBs that made loans to it has been inconsistent. See e.g., TUTRIC May Case Brief at 39-52.
[50] Finally, TUTRIC also takes issue with the Department's calculation of the "benefit" from these loans which compounded interest so that the amount of the benefit was many times more than the original principal of these loans.

TUTRIC's loans as grants given the year the loans were disbursed. TUTRIC argues that its non-payment of these loans was a one-time event that occurred almost immediately after receipt of these loans and that the continued non-collection of its loans does not fall within the rubric of a current financial contribution from its banks.

Petitioners and Bridgestone disagree with TUTRIC's argument that its uncollected loans are properly classified as grants, stating that the relevant funds were disbursed as loans rather than grants. Moreover, Bridgestone contends that in 2002, TUTRIC negotiated a new loan agreement with the lending bank. (See TUTRIC Verification Report.) Thus, Bridgestone and Petitioners support the Department's preliminary analyses to treat these outstanding long-term loans as recurring subsidies. Petitioners argue that the Department should not limit its ability to identify and measure subsidies prior to December 11, 2001 or any other cut-off date.

Department Position

We disagree with TUTRIC's argument that its loans should be treated as grants received in the year the loans were disbursed. The fact that TUTRIC made a few payments on principal or interest on the "loans" at issue does not support its contention that its loans were actually grants given the year the loans were disbursed. The record shows that TUTRIC renegotiated repayment terms (including a new repayment period) on certain of these loans years after they were first disbursed. The renegotiation of the repayment terms indicates that parties considered these to still be loans[51] and did not consider these loans to have been grants at the time of their disbursement.

We also disagree with TUTRIC's contention that its non-payment of these loans was a one-time event that occurred almost immediately after receipt of these loans and that the continued non-collection of its loans does not fall within the rubric of debt forgiveness. The record of this investigation clearly shows that certain sets of loans were not forgiven "almost immediately after their receipt." As stated above, TUTRIC renegotiated repayment terms years after TUTRIC received the loans. We note that the renegotiation of the repayment terms of the loans indicates that parties did not consider these loans to have been forgiven "almost immediately after receipt of these loans."

As discussed in the Government Debt Forgiveness to TUTRIC section above, the end of the renegotiated repayment period for some of these loans ended after December 11, 2001. We find that these loans were forgiven by SOCBs after December 11, 2001, the date that Department has determined it can identify and measure subsidies in the PRC, thus conferring a direct financial contribution pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. For other sets of loans, we find that any debt forgiveness occurred prior to the December 11, 2001 cut-off date. Accordingly, we are not countervailing debt forgiveness that falls into this latter category.

[51] Pursuant to 19 CFR 351.505(b), the Department normally considers the benefit from loans as "having been received in the year that the firm otherwise would have had to make a payment on the comparable commercial loan." Thus, loans confer a benefit over the duration of the period in which the loans are outstanding. However, contrary to Petitioners' argument, that does not render the long-term loans to be recurring subsidies.

2. BOC/Cinda Loans

TUTRIC argues that neither the transfer of debt between BOC, Cinda and Avenue Asia nor the ultimate debt settlement between Avenue Asia and Dolphin Group constitute countervailable subsidies. TUTRIC claims that the transfer of TUTRIC's and DCB's debt by the BOC to Cinda did not alter the total amount outstanding on either TUTRIC's or DCB's books, and that neither company received any discount or forgiveness of their debt prior to the transfer to Cinda in 2004. TUTRIC cites to DRAMS from Korea, and further argues that in 2005, Cinda transferred the debt to Avenue Asia, a private company. Thus, TUTRIC maintains that no financial contribution arose for the transfer of these unpaid loans.

TUTRIC maintains that the record shows that Avenue Asia is a private, foreign-owned entity. TUTRIC contends that section 771(5)(B) of the Act states that a government authority must be involved for either a direct or indirect grant of a subsidy to constitute a financial contribution. Thus, consistent with DRAMS from Korea and IDM, TUTRIC maintains that private entities, such as Avenue Asia, cannot be found to have conferred a financial contribution absent a finding of entrustment or direction by the GOC.

TUTRIC cites to section 771(5)(D)(i) of the Act, Cold-Rolled Steel from Brazil, CTL Plate from Korea, and SSPC from Italy, to argue that for loans and grants a financial contribution exists when there is a direct transfer of funds, and that this contribution of a direct transfer of funds occurs at the moment the loans are disbursed. Accordingly, TUTRIC maintains that the financial contribution for the BOC loans transferred to Cinda occurred on each loan's pre-December 11, 2001 drawdown dates. TUTRIC goes on to argue that, since there has been no direct transfer of funds or revenue foregone after the Department's cut-off date, there is no financial contribution pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act.

Petitioners contend that the Department should rely on adverse facts available for TUTRIC's and its affiliate's BOC loans that were transferred to Cinda, because the GOC failed to provide timely information on the details of the transfer. Petitioners also argue that the Department should rely on adverse facts available with respect to one short-term loan booked on DCB's financial statement because the Department was unable to verify the contradictory information on the record.

Bridgestone also argues that the GOC and TUTRIC have impeded the investigation by their failure to provide certain requested information with regard to TUTRIC's loans, interest waivers and debt transfers. Citing 19 U.S.C. 1677e(b) and Nippon Steel, Bridgestone urges the Department to use "facts available," and an inference that is adverse to the interest of TUTRIC when selecting from the facts available because TUTRIC has not participated in the investigative process to the best of its ability. Bridgestone further argues that the Department should find that any loans made to TUTRIC by Chinese financial institutions, including any loans forgiven or otherwise discharged, were pursuant to Tianjin Municipal industrial policies.

TUTRIC disputes Petitioners' argument that the Department should apply adverse inferences for TUTRIC's and DCB's debt related to the BOC's sale to Cinda. TUTRIC argues that the

Department has sufficient information on the record to evaluate these loans and find them to be not countervailable. TUTRIC argues that it was not provided with a financial contribution given the fact that TUTRIC and DCB had to face the full value of the debt in the negotiation, and TUTRIC had no idea what price Avenue Asia paid for the debt.

Department Position

Some debts owed by TUTRIC to the BOC were transferred from the BOC to Cinda, a state-owned asset management company, and subsequently from Cinda to Avenue Asia, a private capital group. Despite our repeated requests to TUTRIC and the GOC for information on the BOC's transfer of TUTRIC's loans to Cinda, neither TUTRIC nor the GOC provided complete information. Rather, TUTRIC stated that it had no "access to any agreements between BOC and Cinda or between Cinda and Avenue Asia,"[52] and the GOC stated these transactions were highly confidential, proprietary and the parties "have not consented to the GOC to disclose this information."[53] However, this information is necessary for our determination because the transfer of TUTRIC debts by the BOC to Cinda, and then to Avenue Asia, is directly relevant to the question of whether these debts were forgiven, who forgave these debts, and when they were forgiven.

As described above in the Government Debt Forgiveness to TUTRIC section, we find that necessary information with regard to the transfer of TUTRIC/DCB's debt to Cinda is not on the record, and we further find that TUTRIC and the GOC withheld requested information regarding the transactions between the BOC and Cinda and between Cinda and Avenue Asia. Therefore, pursuant to section 776(a) of the Act, we are resorting to facts available. We also find that neither the GOC nor TUTRIC put forth its maximum efforts in responding to our requests for information. The record indicates that the GOC owns and controls Cinda. It is insufficient for the GOC to claim that Cinda has "not consented to allowing the GOC to disclose this information." Therefore, pursuant to section 776(b) of the Act the Department has used an adverse inference in selecting from the facts available. As an adverse inference, we have determined that these loans were forgiven since TUTRIC did not meet the terms of the renegotiated loans by the end of the renegotiation period and there is no other evidence on the record supporting a reasonable expectation that TUTRIC would repay this debt.

Comment E.7: Whether TUTRIC's Loans from Certain Other Banks Were Forgiven

TUTRIC argues that certain SOCB's[54] ongoing acceptance of TUTRIC's non-payment of its outstanding loans do not constitute an additional financial contribution since there was no direct transfer of funds after the loans were disbursed prior to the December 11, 2001 cut-off date. TUTRIC argues that the Department should treat these uncollected loans as grants benefiting

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52 See TUTRIC 2nd Supplemental Questionnaire Response at 10.

53 See GOC 2nd Supplemental Questionnaire Response at 4. See, also, GOC 4th Supplemental Questionnaire Response at 8.

54 "Certain Other Banks" loans are loans TUTRIC received from banks whose names remain business proprietary in this investigation. For a detailed discussion of these bank loans, see TUTRIC Final Calculation Memorandum.

TUTRIC made in the year of receipt. Further, TUTRIC argues that the program under investigation only alleges the issuance of loans at preferential rates, not failure to collect on bad debts, and since Petitioners did not allege and the Department did not initiate on a debt forgiveness program, the Department cannot countervail the non-collected loans.

Department Position

Contrary to TUTRIC's argument, the Department is not prohibited from investigating and determining whether a loan has been forgiven because we did not initiate on a debt forgiveness program. First, the Department can investigate any subsidy that it discovers during the course of an investigation. See section 775(1) of the Act. Second, the Department was investigating whether preferential loans were provided to the OTR Tire industry. As such, we were examining all information pertaining to these loans, including whether or not any payments were made on these loans. Third, debt forgiveness is a separately defined financial contribution from loans and, as such, is a new countervailable event at the point of the debt forgiveness. See section 771(5)(D)(i) of the Act. Finally, consistent with the Department's regulations regarding loans and debt forgiveness, at the point when there is no reasonable expectation that a loan will be repaid, the Department may find that the loan is forgiven and treat the forgiven amount as a grant at the point of loan forgiveness. See 19 CFR 351.505(d)(2).

The record of this investigation shows that TUTRIC renegotiated the repayment terms (including the amount due and repayment period) on some of its other outstanding loans in the late 1990s. The record also shows that the renegotiated repayment periods for these other renegotiated loans ended after December 11, 2001. We have determined that these loans were forgiven at the end of the repayment period since TUTRIC/DCB did not meet the repayment terms either during or at the end of the renegotiated repayment period. Moreover, the record indicates that the SOCBs at issue made no effort to collect the outstanding loans from TUTRIC/DCB and there is no other evidence on the record indicating that the SOCBs had a reasonable expectation of repayment. This debt forgiveness is specific under section 771(5A)(D)(iii)(I) of the Act, as it was limited to TUTRIC/DCB and constitutes a financial contribution under section 771(5)(D)(i) of the Act. A benefit exists under 19 CFR 351.508(a) equal to the renegotiated amounts that were forgiven. Much of the information used in the Department's analysis is business proprietary. (For a full discussion of our analysis, see TUTRIC Final Calculation Memorandum.) For other sets of loans, we find that any debt forgiveness occurred prior to the December 11, 2001 cutoff date. Accordingly, we are not countervailing debt forgiveness that falls into this category. See TUTRIC Final Calculation Memorandum.

F. Starbright-Specific Issues

Comment F.1: Due Process

The GOC argues that the Department denied its right to due process under administrative law as well as the statutes by initiating investigations on newly alleged subsidies that were not alleged in the original petition and by denying the GOC a chance to address loan guarantees during the verification of Starbright. To support its argument, the GOC cites Gibson v. Berryhill at 579; PPG Industries 1 at 1332; and Sichuan Changhong Electric at 1327. In the aforementioned cases, the courts have ruled that parties in administrative proceedings have a right to be heard in a fair and impartial manner. The courts also stated in the cited cases that due process requires the Department, at a minimum, to adhere to the procedures which Congress set out in statutes and the Department implemented regulations.

First, the GOC argues that the Department's initiation of investigations of newly alleged subsidy programs that were not in the petition violated its right to due process since the requirements the Department uses to judge subsidy allegations during the petition process are much more stringent than in the new subsidy allegation process. The GOC notes that the Department did not initiate on Petitioners' and Bridgestone's allegation of debt forgiveness during the initiation but did initiate later after Petitioners' and Bridgestone submitted additional information supporting their claims that such a program existed. The GOC goes on to argue that the Department's practice of initiating programs on a rolling basis throughout the investigation did not afford the GOC adequate time to investigate the new subsidies and coordinate, as well as translate, information from the various provincial and municipal governments in order to properly respond to the Department's questionnaires.

The GOC further argues that it was denied due process because the Department did not give it an opportunity to address the loan guarantee allegation before countervailing the program in the May 28, 2008 CIO Memorandum of Starbright and Hebei Tire. The GOC contends the Department did not raise the issue of loan guarantees until it issued the verification outline on April 18, 2008. The Department stated in the Starbright interim analysis that the GOC failed to make available documents and/or officials from Chinese banks to answer the Department's questions regarding this program. The GOC claims that it did not receive the verification outline in a timely fashion (because of the time differences, the GOC states that it did not receive the outline until April 21, 2008 while the Department's verification was due to begin April 24, 2008). The GOC further claims the information the Department requested regarding loan guarantees was proprietary to Starbright and Hebei Tire and thus the government was not privy to the companies' loan guarantee information. The GOC goes on to state that it also could not obtain loan guarantee information from the lending banks because the banks are not government entities and thus the government could not compel them to respond to the Department's request for information.

Petitioners and Bridgestone counter that the Department afforded the GOC its due process rights. Petitioners argue that the essential elements of due process, as stated by the CIT, are notice and the opportunity to be heard. See Barnhart at 303. Both Petitioners and Bridgestone note that the GOC has had opportunities to comment and be heard regarding the issues pertaining to the investigation.

Regarding the GOC's claim that it was not afforded due process in responding to the new subsidy allegations, both Petitioners and Bridgestone maintain that the GOC had time to respond to the allegations. Petitioners and Bridgestone contend that the GOC addressed the new subsidy allegations in its questionnaire responses. Petitioners note that trade remedy proceedings impose burdens on respondents; however, Petitioners state that this in and of itself is not a due process concern. See Tianjin Magnesium at 1342. Bridgestone argues that the Department has the right under section 775 of the Act to investigate any practice, subsidy, or subsidy program discovered during a proceeding that appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding. Petitioners and Bridgestone note that in accordance with 19 CFR 351.301(d)(4)(i), a petitioner or other domestic interested party may submit countervailable subsidy allegations up to forty days before the scheduled preliminary determination. Petitioners and Bridgestone argue that their new subsidy allegations were submitted within the deadlines mandated in the Department's regulation and thus the GOC's right to due process was not violated.

Petitioners and Bridgestone also counter that the GOC was not denied due process with respect to the verification of Xingtai Municipality, where Hebei Tire/Starbright is located. Both Petitioners and Bridgestone note that in its letter protesting the Department's cancellation of the originally scheduled Starbright verification, the GOC stated that it had undergone extensive preparation for the verification that was originally scheduled for March 13-14, 2008. See Letter to the Department, "Objection to Cancellation of Starbright Verification" at 2 (March 11, 2008). Petitioners maintain that, if the GOC was prepared for the original verification, then it should have been ready for the rescheduled verification in late April.

Petitioners counter the GOC's argument that it was not prepared to discuss loan guarantees with the Department at verification by noting that the Federal Circuit has previously ruled that the Department has wide discretion and latitude in conducting verification. See American Alloys at 1475. Petitioners also note that the GOC had the opportunity to present its views on the loan guarantee program. In support of its argument, Petitioners cite the CIT's decision in the NTN Bearing case where the court said as long as NTN had the opportunity to express its views before the final determination, due process was satisfied. See NTN Bearing 2 at 1432. Bridgestone notes that the GOC was aware of the Department's intent to investigate loan guarantees as early as October 5, 2007. Bridgestone concludes that the reason the GOC did not have ample time to prepare for the verification, as well as other time issues, was due to the fact that the GOC and Starbright failed to provide requested information.

Department Position

The Department disagrees with the GOC's argument that we did not afford it due process throughout this investigation. As Petitioners and Bridgestone note, the CIT stated in Barnhart that "{p}arties must be afforded notice and an opportunity to be heard throughout the course of an administrative proceeding of this nature. The requirements of due process are not met when one party to the adversarial proceeding is precluded from participation by lack of notice." See Barnhart at 303. Throughout the investigation the Department has provided the GOC, as well as the other Respondents, ample notice and ample time to respond to information on the record. We granted several GOC requests for extensions of time to reply to our questionnaires.

With regard to the new subsidy allegations, we note that the procedures for alleging new subsidies are set forth in our regulations. Pursuant to 19 CFR 351.301(d)(4), Petitioners and domestic interested parties may allege subsidies up to 40 days before the date of the preliminary determination. There is no requirement in the Act or regulations for consultation with the foreign government when there are new subsidy allegations in an already initiated investigation or in an administrative review; the Act explicitly provides only for consultations after the Department receives a petition. Accordingly, the new allegations in this investigation, and the Department's decision to examine the subsidies that were newly alleged, were consistent with the regulatory procedures. That said, the Department stands ready to meet with any interested party that wishes to share its views or concerns during the course of the investigation, and that willingness has been amply demonstrated in this proceeding. The GOC's argument that is was denied due process even though the Department followed its regulations simply is untenable.

With regard to loan guarantees in particular, the Department disagrees with the GOC that it was not made aware that the Department would need or want to verify this program. The Department first asked the GOC for "complete responses to the original questionnaire and the new subsidies allegation questionnaire regarding . . . subsidies received by Hebei Tire" on November 13, 2007. The new subsidies questionnaire referred to in our November 13 request included questions regarding an alleged program of "Debt Forgiveness from State-Owned Banks to Hebei Tyre." As discussed below, the subsidies countervailed pursuant to Hebei Tire's provision of loan guarantees are nothing more than debt forgiveness, simply stemming from the guarantees in question. We repeated our request to the GOC for complete questionnaire responses regarding Hebei Tire on January 9 and February 19. Moreover, besides these requests for information about debt forgiveness to Hebei Tire in general, on March 24, 2008 (one month before verification), we identified these guarantees specifically as a possible source of subsidies, referring the GOC to information on the record identifying the banks involved, and providing other pertinent information (<u>see</u> question A.4.h. of part 1 of the Department's questionnaire to the GOC (March 24, 2008). Starbright had only provided the Department with information identifying these guarantees as a potential source of subsidies on February 29, and did not provide complete information until April 9 (slightly more than two weeks before the start of verification). Finally, the Department stated in the March 24 questionnaire that the information submitted by the GOC would be subject to verification.

The Department issued the March 24 questionnaire to the GOC, as well as one to Starbright, in response to requests from both parties that we reconsider our decision to cancel Starbright's verification (a decision we made because of Starbright's and the GOC's decisions not to provide requested, critical information). <u>See</u>, <u>e.g.</u>, Letter to the Department from the Ministry of Commerce of the PRC to the Department (March 12, 2008). Once we received responses to these questionnaires on April 8 and April 9, and determined to reschedule verification, we acted quickly to issue revised verification agendas incorporating the voluminous information parties had provided to remedy the inadequate record. As such, a draft of the revised agenda was emailed to counsel for the GOC on the evening of April 17, Friday morning Beijing Time (six days before the start of verification), and a final version was emailed and placed on the record the following day. <u>See</u> Letter to the GOC, <u>Countervailing Duty Investigation: New Pneumatic Off-the-Road Tires from the People's Republic of China</u> (April 18, 2008).

Therefore, the GOC's argument that it was not given adequate notice to address Hebei Tire's loan guarantees, or to prepare for verification of these guarantees, is unsupported by the record. The Department notified the GOC of its concerns with loan guarantees at least a month before verification began, and could have provided even more notice, if the GOC (and Starbright) had been more forthcoming with information the Department requested beginning back in November (five months before verification began). We also note the GOC did not offer at verification to provide any information regarding these guarantees. If preparation time had been its concern, it could at least have offered a partial response to this part of the agenda, but no such offer of a compromise was offered or implied by GOC officials. See the Hebei Province Verification Report at 13 and 14.

Comment F.2: Application of Total Adverse Facts Available

Bridgestone contends that the Department should apply total adverse facts available to Starbright since Starbright has failed to cooperate with the Department to the best of its ability throughout the investigation. As support for its argument, Bridgestone cites to section 776(a)(2) of the Act, which states that the Department may use facts available when parties withhold information, fail to provide information in the form or manner requested, or impede an investigation. Bridgestone notes that throughout the investigation, Starbright has failed to give the Department the information that was requested regarding the 2006 change in ownership because Starbright had deemed the information irrelevant and/or stated that it was not able to obtain the information. Bridgestone goes on to note that once Starbright provided the information, after the Department had initially cancelled the verification, it became evident that Starbright's previous statements were not accurate. Bridgestone further notes that even after Starbright provided the information requested by the Department, there were still gaps regarding Hebei Tire's relationship with other state-owned entities. Bridgestone concludes that due to the lack of cooperation and the still missing information, the Department should apply total adverse facts available when calculating the countervailing duty for the final determination.

Starbright counters that the Department should reject Bridgestone's request for total AFA since it has cooperated with the Department and underwent a verification of its information with the Department. Starbright maintains that it fully cooperated with the Department, in spite of the allegedly unfair procedural treatment it has received, and has not purposely done anything to impede the Department's investigation. To support its argument, Starbright cites a CIT case where the court ruled that even when a company fails verification, total AFA may not be warranted. See Fujian Machinery. Starbright also notes that the Department has previously refused to rely on total AFA when the case record indicates that a respondent had cooperated to the best of its ability in an investigation and had provided the Department with sufficient, verifiable information (even if some of the information was erroneous) to calculate a margin. See Steel Reinforcing Bars from Turkey 04/05 AD at 65086 and IDM at Comment 2.

Starbright also addresses Bridgestone's argument regarding Starbright's failure to provide information on some of the companies that are affiliated with it and its predecessor Hebei Tire.

Starbright counters that it did not have access to, and not for a lack of trying, the information of these affiliated companies because Starbright did not have any means to make the companies comply with any information requests since Starbright did not control the companies in question. Starbright concludes that Bridgestone's argument for total AFA is not warranted and should be rejected by the Department.

In its rebuttal brief, the GOC argues that Petitioners' and Bridgestone's arguments for applying total AFA have no merit. The GOC states that it has sought to cooperate in all aspects in responding to documentation and corresponding translations requested by the Department. The GOC notes that it has provided the Department with more than ten detailed factual submissions, regarding more than thirty programs on which the Department has initiated an investigation. Additionally, the GOC notes that officials at the national, provincial and municipal levels all participated and cooperated with the Department during the various verifications. As such, the GOC states that it has provided the Department with requisite information needed for this final determination.

Department Position

As noted by Petitioners and Bridgestone, the Department made several attempts to obtain information from the GOC and Starbright. Bridgestone also notes correctly that it was not until after the Department initially cancelled verification that Starbright and the GOC provided the Department with the previously requested information regarding its predecessor Hebei Tire and its change in ownership. The Department disagrees with Bridgestone, however, that the application of total AFA is warranted. Section 776(a) states that, if a party withholds information that has been requested, the Department may rely on facts otherwise available in reaching its decision, and section 776(b) states that if a party has failed to cooperate to the best of its ability in complying with a request for information, the administering authority may use an inference that is adverse to the party when selecting from the facts otherwise available. However, section 782(e) of the Act states that the Department shall not decline to consider information submitted by an interested party if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and, (5) the information can be used without undue difficulties.

Although Starbright and the GOC did decline several times to provide the requested information about Starbright's CIO which, in turn, led to the Department's initial decision not to verify, subsequent to that initial decision not to verify, the Department reconsidered its decision. In undertaking this reconsideration, we evaluated the views of all of the parties (including Petitioners' and Bridgestone's views), and decided to provide Starbright and the GOC with a final opportunity to submit the requested information. See Department's Questionnaires to the GOC and Starbright (March 24, 2008). In those questionnaires, the Department stated that it would reconsider its decision not to verify Starbright and the local governments that have jurisdiction over the company if Starbright and the GOC provided complete responses to the questionnaire concerning Starbright's change in ownership. In the cover letter to the questionnaire, we stated that we needed the information regarding Starbright's purchase of Hebei Tire to analyze fully

Starbright's claim that the sale at issue was at arm's length and for fair market value. The Department informed Starbright that, if the company or the GOC decided not to provide the information requested, then the Department would use facts otherwise available with possible adverse inferences. See the Cover Letter of the Department's March 24, 2008 Questionnaire to Starbright. The GOC and Starbright filed responses to these questionnaires, respectively, on April 8 and April 9, 2008.

Our examination of the GOC's and Starbright's responses to this questionnaire led the Department to conclude that there was sufficient information on the record to conduct verification. See Letter to the GOC, Countervailing Duty Investigation: New Pneumatic Off-the-Road Tires from the People's Republic of China (April 18, 2008) and Letter to Starbright, Countervailing Duty Investigation: New Pneumatic Off-the-Road Tires from the People's Republic of China (April 21, 2008) to which the verification outlines were attached. The Department then verified Starbright, as well as the governments of Hebei province and the city of Xingtai, from April 24 through May 1, 2008. We issued verification reports on May 13, 2008 and May 14, 2008. See (Hebei Province Verification Report) and (Starbright Verification Report). Although certain issues were identified during the course of verification, many of which are related to how to interpret certain evidence on the record, the Department did not find that Starbright or the GOC had failed verification, and, as such, the Department subsequently issued its CIO Memorandum relying on the information submitted by the GOC and Starbright.

Because the Department decided to provide the GOC and Starbright with a final opportunity to submit the requested information, and because the GOC and Starbright provided sufficient information by the deadline established for that final opportunity, and because the Department determined the information was verifiable, and did, in fact, verify, the questionnaire responses to the extent possible, the application of facts available with an adverse inference in accordance with sections 776(a) and (b) of the Act was no longer warranted. While it could be argued that Starbright and the GOC did not act to the best of their abilities in responding to the Department's original requests for information, the fact is that they did ultimately provide the requested information after the Department decided to give them one final opportunity, and we did in fact use that information in reaching our determination in the CIO Memorandum. Thus, the requirements set forth in section 782(e) for declining to use the information submitted by the GOC and Starbright have not been met.

With regard to the GOC's argument that AFA should not be applied because it has cooperated in all aspects of this investigation, including numerous responses, translations of documents, and cooperation at all levels of government during the various verifications, we note that we have not applied AFA in reaching our determinations with respect to Starbright or for any other company except for one instance involving TUTRIC's loans. With regard to the determination of debt forgiveness for one set of loans to TUTRIC/DCB (i.e., the TUTRIC/DCB renegotiated loans transferred to Cinda), we applied facts available with an adverse inference. This determination, which is discussed in detail in the section Government Debt Forgiveness to TUTRIC above, is the result of the GOC's refusal to provide information concerning Cinda and this debt transfer which was necessary for the Department to analyze these loans and whether they were forgiven.

Comment F.3: Application of the CIO Methodology

Starbright argues the Department's application of its CIO methodology was "deeply flawed" for several reasons. It first notes that all GOC shares in Hebei Tire were divested in 2000. Thus, it continues, facts cited by the Department regarding whether the 2000 restructuring was completed in all other respects are irrelevant. It then reviews the several documents it has placed on the record of the investigation demonstrating the GOC's shares in Hebei Tire were divested in 2000: 1) the approval of the 2000 transaction by the municipal finance and state asset management bureaus; 2) the 2000 equity transfer agreement; 3) the 2001 application for change of company registration; 4) the 2001 capital verification report; and, 5) selected portions of Hebei Tire's corporate annual inspection reports filed between 2000 and 2006. It also notes the Hebei Province Verification Report indicates the XSASAC was not responsible for supervising Hebei Tire at the time of the APA.

It further argues that the 2005 restructuring only concerned the conversion of Hebei Tire's land use rights and the compensation of its former state-owned employees, neither of which, in Starbright's view, is indicative of the company's control or ownership by the government at the time. It claims that the Department inaccurately associates allocated land-use rights with state-ownership or control, and that Hebei Tire's employees "merely had rights vested from and before the 2000 privatization that could not be abridged." Likewise, according to Starbright, the Department's focus on the due diligence "concerns" of Hebei Tire's ownership is equally irrelevant. It argues the consummation of the transaction without any challenges dispels any such concerns.

Starbright argues there is no basis, legally or logically, for the Department's presumption that the sharing of directors between a private enterprise and an SOE subjects the private enterprise to the control of the GOC.[55] It claims this presumption requires three "major, unsubstantiated conclusions:" 1) That the SOE is controlled by the GOC; 2) that the directors and employees of the SOE are controlled by the GOC in their pursuits and capacities outside the SOE; and, 3) that the directors and managers, not the shareholders, control Hebei Tire. In fact, it continues, not only are these conclusions unsubstantiated, but they are contrary to the evidence on the record.

Starbright also sees no indication of government control in the partial ownership of Hebei Tire by Gejiazhuang Village. It references, among other information, the ownership agreement between Hebei Tire and the village, which states "{Gejiazhuang Village} will not be involved in the operation and management of the Plant or be burdened by the risk of the Plant's business." See Starbright 5th Supplemental Questionnaire Response at Exhibit V-CVD-14. It also notes that, in any event, Gejiazhuang Village has not been shown to be part of the GOC.

Finally, Starbright argues the Department erroneously concluded that the 2000 restructuring policies provided for management of SOEs to remain in charge of day-to-day operations and strategic decisions even after reform was completed. According to Starbright, the Department

[55] The SOE at issue was, while an ongoing concern, owned by the GOC and supervised by XSASAC. It shared board members and management with Hebei Tire.

misconstrues the implications of such policies on management's ownership share of the post-reform company, and, therefore, the Department's conclusion is based upon a "completely false premise."

The GOC endorses the arguments of Starbright. It refers to the same documents noted above in arguing Hebei Tire has been a privately held enterprise since 2001 (the approval of the 2000 transaction by the municipal finance and state asset management bureaus, etc.). It also notes the Department examined lists of the companies supervised by XSASAC at verification, and found the lists did not include Hebei Tire. It claims the record (see GOC 4th Supplemental Questionnaire Response at Exhibit GOC-SUPP4-5) clearly indicates all Hebei Tire employees changed status from state employees to private company employees on September 30, 2000, contrary to the Department's conclusion that these employees still held state employee status at the time of the 2006 transaction with Starbright.

It then argues that, in general, village committees cannot be considered "authorities" or "public entities" under the Department's five-factor test, and that, therefore, any ownership of Hebei Tire by a village committee is irrelevant to whether Hebei Tire is state controlled. The GOC specifically takes issue with Bridgestone's claim that Brake Rotors from the PRC 03/04 AR demonstrates village committees should be treated as government authorities. According to the GOC, besides the conclusions referred to by Bridgestone, Brake Rotors from the PRC 03/04 AR also notes that the authority and autonomy of village units is not uniform from village to village. Moreover, according to the GOC, Bridgestone fails to mention the unique facts of that case; in particular, the village committee "frequently and significantly exerted control in export-related activities and decisions, including personnel decisions and contract negotiations." Brake Rotors from the PRC 03/04 AR and IDM at Comment 7. The GOC then reiterates its argument that village committees fail to qualify as government authorities under the Department's five-factor test.

Petitioners argue Starbright misinterprets the Department's analysis by not grasping the significance of complete relinquishment of control in the CIO methodology. In this regard, they note the "eight" board members and four senior executives shared by Hebei Tire and the SOE at issue are a legacy of the SOE's prior ownership of Hebei Tire. They emphasize the nature of the board members, noting the shared members include the chairman of the board and the general manager.

Petitioners also take issue with Starbright's comparison of the Department's conclusion that the SOE at issue is a public entity with the Department's separate rates analysis in AD proceedings. They argue Starbright overstates the significance of TRBs from the PRC 94/95 AR – AD, noting the case's statement that "{a} separate-rate determination does not presume to speak to more than an individual company's independence in its export activities."

Petitioners disagree with Starbright's claims that Hebei Tire was controlled solely by its shareholders, and not by the SOE at issue. They note several business-proprietary facts in claiming "strong ties" between Hebei Tire and the SOE. By contrast, they claim the rights of the Hebei Tire shareholders were very limited.

They also take issue with the arguments of both Starbright and the GOC that village committees should not be considered authorities. They claim that the Act applies to public entities within the territory of the GOC, not just the GOC itself, and that therefore distinctions between the authority of the GOC and the villages are irrelevant. They then note the public functions administered by the village committees.

Finally, Petitioners claim that, despite disagreeing with the Department's conclusion regarding the state employee status of Hebei Tire's employees, the GOC failed to address the evidence relied upon by the Department in reaching that conclusion.

Bridgestone claims the 2006 sale of assets to Starbright was the clear result of the GOC's policies to restructure ailing SOEs and maintain employment, as opposed to commercial negotiations between private entities attempting to maximize profits, citing several documents it earlier placed on the record of this investigation, among other items on the record. Because the transaction was carried out pursuant to government policies, it cannot be considered a private-to-private transaction. Bridgestone claims there are several other reasons to reach this same conclusion, including: 1) Hebei Tire was, according to Bridgestone, an SOE, or at least controlled by the government, until the 2006 transaction; 2) Hebei Tire was controlled through the SOE at issue through their common board members and other means; 3) the partial ownership of Hebei Tire by the village committee of Gejiazhuang Village; 4) the 2000 restructuring was never completed, and Hebei Tire's employees thus remained state employees; and, 5) all parties involved with the 2006 transaction, according to Bridgestone, considered Hebei Tire to be an SOE. Bridgestone then reviews business-proprietary information on the record it believes supports each of these five claims.

<u>Department Position</u>

As explained in the <u>CIO Memorandum</u>, the Department's decision to examine whether the 2006 asset sale to Starbright was at arm's length and for fair market value was, in part, a result of our finding that the government retained control over Hebei Tire subsequent to the 2000 "privatization." <u>CIO Memorandum</u> at 7. Continued government ownership of Hebei Tire post-2000 (through a local village committee) was only part of this analysis. We also relied on other indicia of control. Thus, Starbright's citations to documents indicating the state's divestment in Hebei Tire in 2000 are not dispositive. Likewise, its suggestions that the Department's determination was premised on finding Hebei Tire to be government owned are a mischaracterization of our analysis and conclusions.

In the <u>CIO Memorandum</u>, we noted that, within the context of our CIO methodology, a privatization requires the complete relinquishment of control over the formerly state-owned enterprise, and cited the <u>Practice Modification Notice</u> at 37127. We concluded that "{b}ecause there was not complete relinquishment of control over Hebei Tire by the government or other public entity after the 2000 restructuring, we preliminarily find that Hebei Tire was not a purely private entity at the time of the negotiations and sale to Starbright in 2005 and 2006." <u>CIO Memorandum</u> at 7. For this final determination, we continue to find that, because the GOC did not completely relinquish control over Hebei Tire, it was not a purely private entity at the time of the negotiations and sale to Starbright in 2005 and 2006. Therefore, the Department properly examined whether the transaction was for fair market value.

We agree with Petitioners that Starbright does not recognize the significance of "complete relinquishment of control" in the CIO methodology. Instead it appears to argue that, in order to find that subsidies were not extinguished by the CIO, it is necessary to demonstrate the opposite: that the GOC had nothing short of complete, unassailable domination over Hebei Tire. While the degree of the GOC's control over Hebei Tire may be open to argument, and while other parties may also have held a degree of control over Hebei Tire, the record provides ample evidence that the GOC retained a significant level of control over Hebei Tire leading up to the 2006 transaction. Likewise, we do not find it determinative that, as the GOC notes, Hebei Tire was shown at verification not to be under the direct supervision of XSASAC.

The facts regarding the ongoing relationship between the GOC and Hebei Tire are detailed on page 7 of the <u>CIO Memorandum</u>. Insofar as this information can be publicly summarized, we note a few of the relevant facts: Hebei Tire and its previous owner, a state-owned holding company, continued to share the same senior management and board members (four senior managers and six of eight board members, including the same general manger and board chairman). The two companies continued use of the same property and offices (the Starbright 4th Questionnaire Response at 4), and the two companies' names were often used interchangeably (<u>id</u>.). The record indicates GPX itself had difficulty discerning any separation between Hebei Tire and its former state-owned parent until late into the sales negotiation process (<u>id</u>. at 5-6, discussing GPX's "uncertainty of Hebei Tire's ownership" in its letter of intent, and at 5, discussing GPX's inclusion of the state-owned holding company in a land agreement as a "precautionary measure"). Hebei Tire was also partially owned at this time by the government of a local village. <u>See</u> <u>CIO Memorandum</u> at 7.

Regarding the senior management and board members shared by Hebei Tire and its former SOE parent, we agree with Petitioners that it is significant that this overlap in control is not a coincidence, but a legacy of the SOE's prior ownership of Hebei Tire. This and other facts regarding Hebei Tire and the SOE before and after the 2000 transaction, such as their continued use of the same property and offices, and the interchangeability of their names, indicate how little changed pursuant to the 2000 transaction.

We disagree with Starbright that Hebei Tire's partial ownership by the government of a local village indicates no degree of government control. As the Department has recently determined: "The Department has set up a rebuttable presumption that companies owned by village committees should be treated as government authorities. Consequently, where respondents have not provided information on the record to indicate that companies owned by village committees are not state controlled, we find those companies should also be classified as an 'authority.'" <u>LWRP from the PRC</u> and IDM at 26. Starbright's case-specific arguments regarding the committee's control over Hebei Tire rely, as noted above, on an excerpt from the ownership agreement between Hebei Tire and the village committee, which states "Gejiazhuang Village will not be involved in the operation and management of the Plant or be burdened by the risk of the Plant's business," and other evidence indicating the village committee is a passive shareholder.

While it may not have been involved in the day-to-day operations and management of the plant, business proprietary information indicates it still exercised the rights of a shareholder and participated in the significant decisions of Hebei Tire as any other shareholder would. See Final CIO Memorandum. Moreover, it is significant that, at verification, village committee officials stated that "when the Hebei Tire factory was established on their land, they received assurances from the factory regarding the number of village residents that would be employed; or at least it was their policy at the time to insist on such assurances." The village committee's provision of land to Hebei Tire not only established it as one of Hebei Tire's lessors but also as its partial owner (the land being its equity contribution). Thus, its ownership interest in Hebei Tire was not purely commercially motivated, but also motivated by the public interest. Therefore, in light of our examination of village committees in LWRP from the PRC, the village committee's ownership interest in Hebei Tire is another indication of GOC control over Hebei Tire.

Finally, as we noted in the CIO Memorandum at footnote 5, although the Department may assume that an arm's length transaction negotiated between purely private, unrelated parties, each acting in its own interest, would normally result in a transaction at fair market value, there is no irrebuttable presumption that this is so. Where evidence on the record indicates that such a transaction was not at fair market value, the Department will consider such evidence. Petitioners and Bridgestone have presented evidence in this case, which has been further supported by respondent's own submission and information at verification, that the 2006 CIO was not at arm's length and was not for fair market value. We have therefore conducted a complete analysis of all aspects of the 2006 CIO, including whether it was for fair market value.

Comment F.4: The Arm's Length Nature of the Transaction

Starbright first objects to the Department's conclusion that the 2006 transaction was not at arm's length because the shareholder-employees of Hebei Tire knew they would become the employees of Starbright, and the Department's corollary conclusion that employers and employees are affiliated. It cites PET Film from India 1st AR, where the Department indicates that employers and employees are not necessarily affiliated and that evidence of control must still be found. It also cites Frozen Fish Fillets from Vietnam 3rd AR, where the Department found, given the specific facts of that case, that an employer-employee relationship was not sufficient for affiliation.

Starbright criticizes in particular the Department's conclusion that Starbright was affiliated with Hebei Tire's employees at the time of the transaction. First, according to Starbright, the employees' future employment by Starbright was far from certain. They cite the provisions of the APA referred to by the Department and argue these provisions were not commitments to hire any particular employees. They also note that only half of Hebei Tire's employees were hired by Starbright, and that Starbright itself did not exist at the time the APA was signed or negotiated (the APA was signed by another GPX subsidiary). Finally, Starbright argues the Department failed to find control by Starbright over the employees, as is required by PET Film from India 1st

AR, and even if such control were found, it would be inconsequential to the transaction, as the employees did not hold two thirds of the voting rights required to approve the transaction.

Petitioners rebut by claiming Starbright misses the significance of the employer-employee relationship. According to Petitioners, Starbright's control over the employees is not relevant. Instead, what is relevant is that these employees, while still employed by Hebei Tire, had an interest in the ongoing operations and profitability of Starbright, as the Department stated in the interim analysis. It cites Starbright's own case brief, where Starbright states "{t}he employees wanted to protect their jobs and without a new owner of the factory, their jobs were at risk," as proof of the factual premise of the Department's conclusion. Likewise, Bridgestone claims the important fact is that because the Hebei Tire shareholder-employees knew they would become employees of Starbright, their loyalty was not to their former, but rather to their future employer.

Starbright next objects to the Department's second reason for finding the transaction not to be at arm's length. According to Starbright, rather than representing both buyer and seller in the transaction simultaneously and manipulating the auction of Hebei Tire's equipment, Hebei Tire's chairman simply consulted with the auction house on what the specified reserve price would be, as permitted by the auction house's rules. His actions were those of a concerned property owner who merely wished to convince the auction authorities that the GPX price was reasonable.

According to Petitioners, however, Hebei Tire's chairman had no incentive to ensure a fair auction price for the equipment from the view point of a seller, because the proceeds from the auction would only go to the bank that held the mortgage on the equipment. In fact, according to Petitioners, because the APA provided for the adjustment of the total payment for Hebei Tire's assets (land, buildings, equipment) to offset any difference between the auction price and a predetermined value for the equipment, the chairman had an incentive to keep the auction price for the equipment as low as possible. Bridgestone agrees that the record indicates the chairman acted on behalf of both parties.

Department Position

While Starbright argues that the Department cannot rely on the relationship between Hebei Tire and its employee-shareholders for finding that the 2006 transaction was not at arm's length, we note that this was not the sole basis for our determination. In fact, the involvement of Hebei Tire's chairman in the equipment auction process also demonstrates that this was not an arm's length transaction. His role in this process indicates that the seller and buyer were not acting independently of one another and were not acting in their own interests within the meaning of the Modification Notice. The chairman of Hebei Tire approached the auction house, responsible for the sale of a significant part of Hebei Tire's assets, in effect representing both buyer and seller simultaneously, in an attempt to convince the auction house to accept the price he had negotiated with Starbright. See Starbright Verification Report at 11. According to Starbright, his actions were consistent with auction house rules and were those of a concerned property owner who merely wished to convince the auction authorities that the GPX price was reasonable. As Petitioners explain, however, he could not have been representing solely the concerns of Hebei Tire in contacting the auction house. The price he encouraged the auction house to accept was not higher than the value of the loans the assets secured. Thus, the bank would be entitled to all proceeds from the auction. Moreover, according to Starbright, Hebei Tire was under the impression the foreclosure proceeding would terminate all debt Hebei Tire had remaining with the bank. See Starbright's June Case Brief at 44. Thus, he could not have been concerned that Hebei Tire would be left with unsettled debt if the auction proceeds were insufficient.

While we conclude that the involvement of Hebei Tire's chairman in the equipment auction is a sufficient reason for determining that the 2006 transaction was not at arm's length, we note some concerns with Starbright's arguments regarding the relationship between Hebei Tire and its employees. We do not agree with Starbright that an arm's length determination within the context of the CIO methodology should turn on affiliation concepts applied in other antidumping and countervailing duty contexts. Instead, what is significant in this context is whether the buyer and seller each acted in its own interests and that the interests of the buyer and seller were independent of each other. This is evident from the language of the Practice Modification Notice, which states that in a CIO analysis, we are "guided by the SAA's definition of an arm's-length transaction … as a transaction negotiated between unrelated parties, each acting in its own interest…." Practice Modification Notice at 37127 (emphasis added); see, also, id. at 37130.

In this sense, what mattered in our analysis regarding the employees is whether Hebei Tire had to take into consideration the concerns of its employees, who, presumably did not want the success of Starbright, their future employer, jeopardized by an overly burdensome sales price. Starbright argues the employee-shareholders of Hebei Tire who were eventually hired by Starbright did not have control of Hebei Tire because they owned less than a majority of that company. At the time the employee-shareholders were required to approve the transaction, however, the exact number and names of employees to be hired by Starbright was not known, and thus all employee-shareholders had some interest in the future of Starbright at the time of approval. Moreover, other benefits were to be provided to the employee-shareholders if the transaction was completed, such as the employee settlement fees discussed on page 4 of the CIO Memorandum, and other benefits, the details of which are business proprietary. See Final CIO Memorandum. These benefits were not provided solely to those employee-shareholders who were hired by Starbright, but, in some cases, to all Hebei Tire employee-shareholders. Thus, we believe the particular facts of Hebei Tire's relationship with its employees are indicative, if not determinative, of our conclusion that this transaction was not at arm's length.

Comment F.5: Whether The Purchase of Hebei Tire's Assets Was for Fair Market Value

Starbright claims the Practice Modification Notice grew out of analyses of the privatizations of large European steel companies. By contrast, it continues, in this case the Department is analyzing the change in ownership of a small company with no state-ownership that was not required to follow the Chinese privatization procedures, because the GOC already considered the company to be fully privatized. Had the GOC considered Hebei Tire to be state-owned, Starbright argues, it would have been required to follow the privatization procedures that essentially mirror those set forth in the Practice Modification Notice, such as obtaining objective analysis and conducting the sale through open, public bidding.

Thus, according to Starbright, the Department should not focus on the criteria laid out in the interim analysis, but instead should focus on the "bottom line" of the methodology: whether the seller sought to maximize its returns on the sale. Towards this end, there is no evidence to suggest Hebei Tire did not seek to maximize its profit in this transaction, claims Starbright.

Starbright claims two documents on the record in particular demonstrate that Hebei Tire sought to maximize its returns: The declaration of the co-chairman of GPX supplied by Starbright in its 5th Supplemental Questionnaire Response, and the MOU entered into by Hebei Tire and Starbright, in conjunction with the APA. The testimony of the GPX co-chairman describes the negotiation process with Hebei Tire, the resoluteness of Hebei Tire's chairman during the negotiations, and GPX's belief during the negotiations that no other buyer would be interested in Hebei Tire. The relevancy of the MOU involves business-proprietary information.

In addition to these general objections to the application of the CIO methodology in the interim analysis, Starbright also objects as follows to the Department's analysis under the specific analysis factors of the Practice Modification Notice.

Objective Appraisals

Starbright argues the Department erred in concluding Hebei Tire did not obtain objective, timely, and complete appraisals. It claims that the Department concluded the appraisals were untimely because they were received one week before the APA was signed, but that the final purchase price for the equipment at auction was not established until the auction was completed and after an amendment was added to the APA in June 2006. Even if the APA did establish the final transaction price, Starbright argues the appraisals would still be relevant, citing SSSC from Italy, where the Department found analysis conducted when the bidding process was underway to be timely. Furthermore, Starbright argues the appraisals were taken into account by Hebei Tire as its chairman provided a copy of the equipment appraisal to the auction house to serve as the basis for setting the reserve price.

Next, Starbright claims the appraisals need only be within the range of the price paid, and not actually used or exclusively used to set the price. It cites the Practice Modification Notice for this claim, where we state that a sales price at or above the value cited in an appraisal is not necessarily dispositive.

Finally, it claims the completion of only an asset appraisal, rather than a more comprehensive analysis of the sale, is entirely consistent with the "unique" situation of the Hebei Tire transaction. It refers to SSWR from Italy – Section 129 IDM, in which it claims the Department found that a firm's unique circumstances can cause the Department to depart from the typical requirements of its CIO methodology and that the use of an asset valuation can be entirely consistent with private, commercial sales practices.

Petitioners argue, relying on business-proprietary information, that Starbright's arguments regarding the timing of the appraisal reports are meritless.

Bridgestone, viewing the auction house as seller of the equipment, not Hebei Tire, argues there is no evidence as to how the auction house determined the price of the equipment. Moreover, according to Bridgestone, the fact that the sale took place at a price pre-arranged by Hebei Tire and Starbright after the intervention of Hebei Tire's chairman indicates that no asset appraisal was used to value this equipment.

Regarding the remaining assets, Bridgestone agrees with the Department's preliminary conclusion that the timing of the appraisals is relevant. Moreover, according to Bridgestone, the objectivity of the relevant appraisals is brought into question by comparison of these appraisals with other information on the record regarding the value of these assets, and by the desire of parties to ensure "that Starbright alone would purchase the assets and that Starbright would continue to employ Hebei Tire's employees."

Artificial Barriers to Entry

Starbright argues the Department erred in concluding Hebei Tire undertook inadequate measures to ensure fair market value. First, it argues Hebei Tire's limited marketing in Xi'an and Hebei province is of no real consequence. Advertisements would not have been useful because "{a}t any given time it is safe to assume that most OTR tire producers in the world are aware which OTR tire factories are for sale." Second, the number of potential purchasers was already limited by factors having nothing to do with Hebei Tire's sales efforts. Third, the number of potential purchasers was further limited by the poor state of Hebei Tire's plant and other assets. Starbright cites the declaration of its co-chairman to support these three arguments, as well as a presentation given to the Department regarding the quality of Hebei Tire's plant and other assets.

Petitioners characterize Starbright's arguments as "self-serving conclusions" and that "Starbright has not provided the Department with any evidence that there was even an attempt to generate more than one prospective buyer." Bridgestone argues that, despite Starbright's claims, the market for Hebei Tire's assets was "artificially limited" and "contrived" in order to ensure acquisition of the assets by Starbright, citing facts the Department relied on in the preliminary determination. It also questions Starbright's interpretation of SSWR from Italy – Section 129 IDM, in which, by Starbright's account, the Department found a transaction to be for fair market value despite there being only one bidder. By Bridgestone's reading, SSWR from Italy – Section 129 IDM actually involved multiple rounds of bids in an open, unlimited process, and a broad-based outreach by the Italian government resulting in ten prospective bidders, including steel companies and investment banks alike.

Highest Bid Was Accepted

Starbright also objects to the Department's conclusion that the involvement of Hebei Tire's chairman in the auction process was somehow relevant. As it claims previously in addressing the arm's length nature of the transaction, Starbright again claims the chairman's actions were consistent with auction house rules, and the price he discussed with the auction house was consistent with the appraised value of the equipment involved. Moreover, the record indicates the auction house, Hebei Tire, and Starbright all contemplated the possibility of higher bids by other parties and Starbright needing to raise its bid in order to succeed. The fact that no one else did bid is simply due to the "terrible state of disrepair of Hebei Tire's assets."

Finally, Starbright urges the Department look at the totality of the circumstances, which, it claims, is consistent with the Department's approach in SSWR from Italy – Section 129 IDM, where the Department determined a privatization was for fair market value despite the record presenting a "mixed picture."

Bridgestone argues this factor in the analysis "necessarily assumes that the transaction was borne out of a process in which the seller solicited and obtained multiple bids." Bridgestone then reiterates its conclusion that Hebei Tire ensured there would be no other bidder than Starbright.

Department Position

We continue to determine the 2006 transaction was not for fair market value, for all the reasons given in our CIO Memorandum. Before discussing the Department's analysis under the factors provided in the Practice Modification Notice, Starbright provides some general comments on the application of the CIO methodology.

It claims it is unreasonable to apply a methodology developed for the privatizations of large European steel companies in a "slavish" manner to a small company with no state-ownership. We do not agree with Starbright's assumptions or conclusions. To start, we disagree that the methodology laid out in the Practice Modification Notice somehow only contemplated or was intended to be applied to privatizations of large steel producers. As is made clear in the title of the notice itself, the new methodology was promulgated as a change to the Department's practice more broadly, regardless of industry, country, or size of company involved. Moreover, we do not believe the private or state-owned status of a company indicates what type of process it should be expected to undertake. We certainly do not believe it is unreasonable to expect a private company (or partially privatized company) to undertake as rigorous a sales process as a state-owned company. We state in the Practice Modification Notice: "In making {the determination regarding fair market value}, the Department will normally examine whether the government, in its capacity as seller, acted in a manner consistent with the normal sales practices of private, commercial sellers in that country." Practice Modification Notice at 37127 (emphasis added). Thus, the standard of "private, commercial sellers" set out in the Practice Modification Notice is equally applicable regardless of whether the company being sold is private or government-owned. Furthermore, we note that this is the standard set forth in the statute for determining whether other subsidies are countervailable (see, e.g., equity infusions and loans). See section 771(5)(E) of the Act.

Moreover, the respondent has not demonstrated that private commercial sellers in China pursue substantively different goals or processes when selling a company, and there is no record evidence on which to make such a finding. As the Practice Modification Notice makes clear, there is no presumption that a change in ownership per se disturbs the "baseline" presumption that non-recurring subsidies continue to benefit the recipient for a period normally corresponding to the AUL. Rather, parties must affirmatively demonstrate that, among other things, the sale was at arm's length and for fair market value in order for the Department to find that countervailable subsidies have been extinguished. In this case, the respondent has not shown that private, commercial sellers in China routinely ignore standard considerations in a sale of this magnitude, such as objective analyses, entry barriers, highest bids, etc.

Starbright also argues the Department should focus on the bottom line of the methodology: Whether the seller sought to maximize its return on the sale. It cites two documents on the record it believes demonstrate Hebei Tire's desire to maximize its returns: The declaration of a GPX co-chairman and the MOU entered into between Hebei Tire and Starbright in conjunction with the APA. Regarding the former, the declarations do not instruct the Department where to find evidence on the record that the sales process was designed or structured to ensure fair market value. Regarding the MOU, which is business proprietary, the Department believes the details of this document demonstrate, if anything, Hebei Tire lacked an adequate incentive to seek fair market value. See Final CIO Memorandum.

Objective Appraisals

Starbright faults the Department for determining that Hebei Tire did not rely on objective, timely, and complete objective analysis. According to Starbright, this conclusion was "purely conjectural, factually inaccurate, and legally immaterial." Starbright does not fully explain, however, what exactly is "factually inaccurate." For example, it does not deny that the appraisals were dated only one week before the APA was signed and months after the negotiation process was underway (beyond some of its own conjecture that perhaps Hebei Tire had access to these appraisals before the date they were released, footnote 7 of page 32 of the Starbright June Case Brief); nor does it deny the reports were commissioned as a part of a pro forma package to be submitted to municipal and provincial agencies.

Starbright does, however, make the misleading argument that it is irrelevant that the appraisals were dated only one week before the APA was signed because a final amendment was added two months later, implying the final amendment had something to do with the total price of the transaction. In actuality, the amendment did not affect the total price of the transaction, but only confirmed that the auction price for the auctioned equipment equaled the equipment price previously agreed to in the APA. See Starbright June Case Brief at 31-32. If it had not, there would have been no effect on the total price of the transaction, as an offsetting "balance payment" provided for in the APA would have adjusted the total purchase price back to the pre-auction level.

Regardless of Starbright's objections to our findings, further review of the record of this investigation reveals plainly that Starbright itself reached the same conclusion regarding the irrelevancy of these appraisals to the sales process. See Final CIO Memorandum for business-proprietary details.

Finally, Starbright claims the appraisals need only be within the range of the price paid, and not actually used or exclusively used to set the price. Contrary to such a claim, the appraisals must be used in the sales process. As explained in the Practice Modification Notice, the relevant questions are: "Did the government perform or obtain an objective analysis in determining the appropriate sales price? Did it implement the recommendations of such objective analysis for maximizing its return on the sale, including in regard to the sales price recommended in the analysis?" Practice Modification Notice at 37127.

Artificial Barriers to Entry

We disagree with Starbright's claims that Hebei Tire's failure to take steps to create a competitive bidding process was of no real consequence. Its claims regarding the small size of the OTR tire industry are not supported by any data or documentation, besides the declarations of GPX's co-chairman. During the respondent selection phase of this investigation hundreds of possible producers/exporters were identified by the Department in the PRC alone using data collected by U.S. Customs and Border Protection. See Respondent Selection Memorandum at 2. We do not accept Starbright's presumption that all of these companies in the PRC alone, let alone tire-related producers/exporters outside the PRC (keeping in mind it was ultimately a U.S. company that purchased Hebei Tire), would necessarily have been aware that Hebei Tire was for sale absent sufficient public advertisement.

Starbright does not explain why other producers, outside the OTR tire industry, would not have been interested in some or all the equipment (such as producers of tires for on-road trucks). New entrants also may have been interested in the assets. Moreover, Starbright does not explain why the assets had to be sold together (perhaps buildings and equipment could have been sold separately).

In any case, there is more to creating a bidding process than notifying other industry members that a plant is for sale (assuming arguendo that other members of the OTR tire industry did know Hebei Tire was for sale). Advertising also involves providing information regarding quality of assets, quantity of assets, type of assets, terms of sale, possible acceptable price ranges, among other information. There would be a wide range of information a potential bidder for a tire factory would want. The provision of such information might have enticed some interest from even a small pool of potential bidders.

Starbright's arguments regarding the small size of the industry reflect the same misconception of the CIO methodology the Department has identified many times elsewhere in this IDM. Even assuming Starbright's claims regarding the size of the industry and the uselessness of Hebei Tire taking any steps towards promoting the sale of its assets are correct, these claims do not provide any affirmative evidence that Hebei Tire undertook a process designed and structured to ensure fair market value. To the contrary, these arguments serve to depreciate further the value of any steps Hebei Tire did take (i.e., whatever doubts there were regarding the efficacy of local TV and newspaper advertisements to begin with are only aggravated by Starbright's claims that even global advertising would have been pointless). Again, it is the burden of the party seeking subsidy extinguishment to establish that it is entitled to such extinguishment.

Starbright also states that prior to GPX's expression of interest, Hebei Tire had negotiations with "Dynamic Tire of Canada, as well as two Chinese companies . . . ." Starbright June Case Brief at 35. Dynamic Tire of Canada was a predecessor of GPX (Starbright Verification Report at 2) and the negotiations Starbright is referring to are the negotiations that led to the purchase by GPX (id. at 16). Thus, Dynamic Tire of Canada hardly qualifies as a separate bidder. The other two Chinese companies are mentioned briefly in Starbright's November 27, 2008 questionnaire response. They were not mentioned during verification, which included significant discussions regarding Hebei Tire's history since 2000 (id. at 14-17), and the Department was not provided with even basic information concerning these "expressions of interest" (such as when they occurred).

Highest Bid Was Accepted

Under this factor Starbright once again discusses its objections to the Department's conclusions regarding the involvement of Hebei Tire's chairman in the equipment auction. The Department has already addressed these objections under our response to arguments regarding the arm's length nature of the 2006 transaction. It also raises the quality of Hebei Tire's assets as a reason why no one other than GPX would have been interested in bidding. The Department believes the quality of Hebei Tire's assets is irrelevant to whether the sale was for fair market value, as good deals can be had on low quality assets and bad deals can be had on good quality assets.

Comment F.6: Whether Starbright Purchased "Substantially All" of Hebei Tire's Assets

Starbright argues evidence presented at verification plainly demonstrates that Starbright purchased substantially all of Hebei Tire's assets within the meaning of the Department's CIO methodology. In particular, it cites the Department's conclusion at verification that Starbright purchased all the fixed assets on Hebei Tire's books. It cites section 771(5)(F) of the Act in arguing that the relevant assets for this part of the CIO methodology are its fixed or productive assets: "A change-in-ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the administering authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable . . ." (emphasis added). It also argues focusing on fixed assets and not current assets for this purpose is consistent with the Department's association of capital goods, buildings, and land with non-recurring subsidies, which are the type of subsidies at issue under the CIO methodology. Nevertheless, Starbright continues, if the Department were to look at both fixed and current assets, it should adjust the value of current assets in accordance with information gathered at verification regarding the difference between the book value and fair value of Hebei Tire's current assets.

Petitioners cite to CTL Plate from Belgium 2nd SR, where the Department determined the Belgian government had not sold substantially all of two steel producers when it continued to own 25 percent of each company after the transactions were completed. They then argue Starbright's 2006 purchase should also be considered to have been for not substantially all the assets of Hebei Tire, given the percentage of Hebei Tire's book value Starbright purchased.

In response to Petitioners, Starbright reiterates its arguments that taking book value or current assets into consideration is inappropriate. Starbright also argues that CTL Plate from Belgium 2nd SR is not analogous to the transaction under analysis in this case because CTL Plate from Belgium 2nd SR involved the transfer of shares, whereas the Hebei Tire-Starbright transaction involved the transfer of assets. According to Starbright, it is relevant that shares are fungible, but assets vary in their importance to the operation of a company.

Petitioners respond to Starbright by arguing there is no requirement that the Department focus on productive assets. They also argue the Department should use the book value of assets, and not adjust Hebei Tire's balance sheet on Starbright's behalf to reflect fair value. Likewise, Bridgestone argues the Department should not make downward adjustments to Hebei Tire's remaining assets based on "conjecture" regarding their fair value presented at verification.

Department Position

We continue to find it is not necessary to reach a determination regarding whether Starbright purchased all or substantially all the assets of Hebei Tire because we are finding that the sale to Starbright did not extinguish prior subsidies on other grounds. However, we note a few concerns with Starbright's arguments. First, there is nothing in the Practice Modification Notice suggesting that the requirement that the "all or substantially all of the assets" standard includes only fixed assets. Starbright has not cited to any prior cases where, in applying the methodology of the Practice Modification Notice, the Department limited the standard to only fixed assets.

Second, Starbright is essentially arguing that the Department must make determinations as to what the precise market value of Hebei Tire's assets is. However, our fair market value analysis is based on an examination of the sales process, not an analysis of the seller's books and records or on precise market values for particular categories of assets. Practice Modification Notice at 37129. In this sense, we agree with Petitioners and Bridgestone that adjusting the value of Hebei Tire's current assets would involve "conjecture," on our part as much as Starbright's. We also disagree with Starbright's argument that we should recognize a distinction between assets and shares in this regard, which is not a distinction we have previously recognized in applying our CIO analysis.

Comment F.7: Whether the Department Erred in Finding that Hebei Tire's Non-Recurring Subsidies Pass Through to Starbright

Starbright argues the Department incorrectly applied SSPC from Italy to the Hebei Tire transaction in determining that debt remaining with Hebei Tire could be treated as debt forgiveness attributable to Starbright. According to Starbright, the Department created a per se rule whereby it is presumed a purchaser assumes a seller's liabilities in toto when it acquires the seller's assets. Such a per se rule in change-in-ownership situations, Starbright continues, is impermissible under Delverde. Moreover, Starbright argues, the Department has completely failed to articulate under what conditions an asset sale definitely demonstrates that a portion or all of the liabilities held by the seller must be assumed by the buyer.

Finally, Starbright appears to be arguing that the Department must make findings regarding financial contributions and benefits to the buyer in a change in ownership on a case-by-case basis, or perhaps only in cases involving transactions between "private parties." In particular, Starbright appears to be arguing that the Department must demonstrate how debt forgiveness passes through the change in ownership from Hebei Tire to Starbright, or perhaps it believes the Department concluded the debt itself passed through, and the Department must demonstrate how the pass-through of debt is possible. Likewise, it emphasizes its belief that the Department must demonstrate how the pass-through of debt forgiveness (or debt) benefitted Starbright.

Bridgestone argues the Department correctly applied SSPC from Italy, finding significant similarities between that case and the instant case. It also argues with Starbright's analysis of Delverde, arguing that the per se rule prohibited by the Federal Circuit was eliminated from the Department's change-in-ownership methodology by the Practice Modification Notice, and that no such similar per se rule was employed in the interim analysis, given the Department's examination of the arm's length nature and fair market value of the transaction. Bridgestone also argues that, as an alternative to applying SSPC from Italy, the Department could have concluded debt forgiveness to Hebei Tire is attributable to Starbright as concurrent subsidies, given that the purchase of Hebei Tire "would not have occurred absent these subsidies."

Department Position

We respond to Starbright's arguments by first separately identifying the two analytically distinct issues being raised. The first is whether debt forgiveness occurred when productive assets were removed from Hebei Tire, leaving Hebei Tire largely with debts which it had little ability to subsequently pay off. The second question is to what extent any countervailable subsidy benefits arising as a result of that debt forgiveness are ultimately attributable to Starbright.

The SSPC from Italy precedent informs us on the first issue, i.e., whether there was any debt forgiveness to begin with. SSPC from Italy, however, was not the first, nor the only instance, in which the Department has found such debt forgiveness to occur,[56] and although the precise facts and timing of the events in each case may differ somewhat, the basic "butterfly" principle still applies.[57] As we stated in SSPC from Italy at 15523: "It is the Department's practice to allocate otherwise untied liabilities remaining in a shell corporation to the new, viable operations that had been removed from the predecessor company." We also stated:

[56] We note that in addition to SSPC from Italy, there are other proceedings where the government has found debt forgiveness. See, e.g., Carbon and Alloy Steel Wire Rod from Trinidad and Tobago and IDM at "Debt Forgiveness Provided in Conjunction With CIL's Purchase of ISCOTT"; see, also, Steel Products from Austria at 37221 and SSSC from Italy at 30628.

[57] By "butterfly principle," we mean the basic principle that government debt that is left with a "shell" company, with few or no productive assets and, therefore, little or no means of repayment, constitutes debt forgiveness in that the new "butterfly" entity that received the productive assets was not required to assume those debts.

"... the majority of ILVA's viable manufacturing activities had been separately incorporated (or "demerged") into either AST or ILP; ILVA was primarily a shell company with liabilities far exceeding assets, although it did contain some operating assets later spun off. In contrast, AST and ILP, now ready for sale, had operating assets and relatively modest debt loads. . . We determine that AST (and consequently the subject merchandise) received a countervailable subsidy in 1993 when the bulk of ILVA's debt was placed in ILVA Residua, rather than being proportionately allocated to AST and ILP." Id. at 15512.

The facts surrounding Hebei Tire's debt are broadly the same as those in SSPC from Italy in key respects. When the majority of the productive assets of Hebei Tire were sold to Starbright, but the debts remained with Hebei Tire, which had little prospect of ever repaying at least the majority of the remaining debts given it no longer had any means of generating significant revenue, that effectively constitutes debt forgiveness, consistent with the Department's past practice. By its own admission, after the 2006 CIO, Hebei Tire was no longer an ongoing concern, but continued to exist only for the purpose of wrapping up its operations. As indicated in previous responses, Hebei Tire's function is solely to wind down its business. See, e.g., page 17 of the Starbright 2nd Supplemental Questionnaire Response.

The second question is to whom that debt forgiveness is attributable. The facts in SSPC from Italy are instructive in this regard even though the debt forgiveness in that case occurred at a different point in time from the subsequent privatization. As is evident from the quotation above, in SSPC from Italy the debt forgiveness occurred in 1993 at the time when AST (a government-owned entity) was incorporated as a separate entity from ILVA. The finding in that case is clear that the debt forgiveness was to the new "butterfly" entity, AST, that received the productive assets but not the debts. AST was then subsequently privatized in 1994, and the question in that case was whether the previously bestowed debt forgiveness continued to benefit AST after its privatization.[58]

Likewise, in the instant case, we find that the debt forgiveness occurs at the point of the 2006 CIO, i.e., the point in which the assets are transferred to "butterfly" company Starbright, but the debts are left in the "shell" company Hebei Tire. It is at this point that Starbright received a subsidy. Although this debt forgiveness could arguably be viewed as a new subsidy to Starbright, we do not need to reach a decision as to whether this is a new subsidy to Starbright or a subsidy to Hebei Tire that, due to the nature of the CIO, was attributable to Starbright. The resulting countervailable subsidy to Starbright under either analysis is the same; e.g., either way the allocation stream begins in 2006 (see, e.g., Comment F.9 below for the Department's position regarding the facts of debt forgiveness in this case).

Finally, we disagree with Starbright that we have created a per se rule, proscribed by Delverde. The Delverde decision dealt with the question more generally of whether the Department can presume conclusively that prior subsidies continue to benefit a company after that company is sold

[58] We note that the privatization analysis applied in SSPC from Italy was based on an earlier privatization methodology which the Department has since abandoned.

to new owners. Under the prior "gamma" CIO methodology that the Department relied upon at the time, the Department presumed irrebuttably that subsidies received while the company was still under the previous ownership could not be extinguished by the sale to new owners. Under the new CIO methodology of the Practice Modification Notice, the Department no longer makes such an irrebuttable presumption but, rather, examines the nature of the CIO to determine whether any prior, non-recurring allocable subsidies are extinguished. The Delverde decision did not address direct debt forgiveness to "butterfly" companies.

Comment F.8: Whether Any Benefit Found by the Department Should Be Limited to the Difference Between the Appraised Value and the Value Paid

According to Starbright, the Department's finding implies that the value given by Starbright for Hebei Tire's assets does not extinguish any of the presumed subsidy. It appears to draw an analogy between our change-in-ownership methodology and how we calculate the benefit from the provision of a good or service at less than adequate remuneration. It again relies on Delverde, which indicates the Federal Circuit's endorsement of such an analogy. Thus Starbright argues any benefit should be limited to the difference between the price it paid for the assets and the appraisal value of those assets.

Bridgestone responds to this argument by quoting the Practice Modification Notice at 37137-38, where the Department stated "{w}here the Department determines the baseline presumption has not been rebutted because, inter alia, the transaction was not at arm's length and for fair market value or because there were severe market distortions, we will find that the company continues to benefit from the prior subsidies in the full amount of the remaining unallocated balance of the subsidy benefit." (Emphasis added.) Moreover, Bridgestone continues, the Department's interim analysis indicates there is no reliable appraisal value with which the benefit could be calculated under Starbright's proposal.

Department Position

Starbright's argument was fully considered and rejected by the Department at the time it promulgated the CIO methodology that has been applied in this case. The Department clearly stated in the Practice Modification Notice, as Bridgestone notes above, that where a CIO is determined not to extinguish subsidies, those subsidies will be attributed to the successor company in the full amount. Practice Modification Notice at 37137-38. Among the reasons for rejecting this argument, the Department explained: "Moreover, we also note that there are practical reasons for finding that subsidy benefits continue in their entirety under such circumstances. For example, some commenters suggested that we determine that the amount of continuing benefit is the difference between the actual transaction price and the (higher) fair market value. However, in circumstances where our analysis is focused on the process through which the company or its assets were privatized, such a 'shortfall' approach could be impossible because there may not be any precise 'fair market value' available for such a calculation." Id.

Comment F.9: Debt Forgiveness – Unpaid Loans and Other Primary Debt

Starbright maintains that Hebei Tire's debt was not forgiven and thus Starbright did not receive any subsidies from Hebei Tire's debt forgiveness. Starbright contends that the Department is in error in relying on SSPC from Italy in determining any benefit passed through to it from Hebei Tire. Starbright notes that in SSPC from Italy, after the privatization, a shell company, ILVA Residua, was created to account for all of the liabilities of the precedent companies AST and ILP. It was noted that ILVA Residua could not under any circumstance make good on the liabilities of AST and ILP. See SSPC from Italy at 15513. Starbright argues that Hebei Tire's situation is different because Hebei Tire was effectively in bankruptcy when it was purchased by Starbright and that the bank did not forgive its debt. Starbright further argues that Hebei Tire carried the debt on its books and that the bank sold some of Hebei Tire's equipment at a court-ordered auction in order to collect on some of the debt. Starbright notes that since the court ordered the auction of some its equipment, it is a reasonable assumption that Hebei Tire would write off the remaining debt not covered by the court ordered sale. Starbright further notes that writing off the remaining debt would be in line with the Department's findings in SSSC from Korea 1st AR and Salmon from Norway where the Department said that debt forgiveness to a company in receivership is not countervailable and that subsidies are extinguished in a liquidation bankruptcy proceeding. See SSSC from Korea 1st AR and Salmon from Norway.

Starbright also argues that Hebei Tire still had assets to pay its debts after it was purchased by Starbright. The Department stated in the CIO Memorandum that Hebei Tire's debts were forgiven because Hebei Tire no longer expected a significant future income. Starbright contends that while Hebei Tire's hard assets were sold, the company did retain some assets that could be used to pay the remaining debt. Starbright points to Hebei Tire's 2006 balance sheet as evidence of the company's remaining cash balance and post-sale long-term assets. See the Starbright 5th Supplemental Questionnaire Response at Exhibit V-CVD-7. Starbright also notes that it used some of Hebei Tire's remaining assets to repay a debt that the Xingtai court ordered the company to settle in 2007. See Starbright 5th Supplemental Questionnaire Response at Exhibits V-CVD-7 and V-CVD-12. Starbright counters Petitioners' and Bridgestone's argument that the facts in CWP from the PRC apply in the instant case by noting that the Department found in CWP from the PRC that the remaining assets of the predecessor company had no value. Accordingly, the Department did not make any adjustments. See CWP from the PRC and IDM at Comment 13. Starbright maintains that although it purchased substantially all of Hebei Tire's assets, Hebei Tire's remaining assets had real value. Starbright notes that Hebei Tire had several million RMB in current assets from which it could draw after the sale. See Starbright Verification Report at Exhibit 17. Starbright maintains that the Department cannot conclude that all of Hebei Tire's subsidies passed through to Starbright while at the same time ignoring Hebei Tire's current assets that could have been used to pay the company's remaining liabilities.

Petitioners counter that Hebei Tire's debt forgiveness is countervailable and was not forgiven through a bankruptcy proceeding. Petitioners also hold that the Department should not take into consideration whether or not Starbright could have paid off Hebei Tire's remaining debt. Petitioners further state that the Department was correct in assuming that Hebei Tire's lender would not be repaid since the company was not expecting any significant future income and the company had written off the debt in its books. Petitioners argue that the Department's treatment of this debt as debt forgiveness is consistent with the Department's past practice in CWP from the PRC and SSPC from Italy. See CWP from the PRC and IDM at 8 and SSPC from Italy at 15508.

Bridgestone adds that the Department was correct in relying on SSPC from Italy to determine whether Hebei Tire's debt was forgiven. Bridgestone notes that in SSPC from Italy, as well as in other Italian steel cases, the Department countervailed debt forgiveness subsidies in both state-to-state sales transactions as well as in privatizations. See, e.g., SSWR from Italy; SSSC from Italy; and CTL Plate from Italy.

Bridgestone also counters Starbright's argument that Hebei Tire's remaining assets could have been used to repay its debts after the 2006 change in ownership. Bridgestone cites the fact that Starbright initially denied, but then finally admitted in its 5th Supplemental Questionnaire Response, that Hebei Tire had any outstanding debts to state-owned banks. Bridgestone argues that the delay in placing the information on the record regarding Hebei Tire's outstanding debt has impeded it and the Department from examining Starbright's claim that Hebei Tire's outstanding debt could have been repaid. Bridgestone concludes that the Department should affirm its finding in the interim analysis that Hebei Tire could not expect any income that would allow it to pay off its debts.

Starbright counters Petitioners' and Bridgestone's arguments that the instant case is similar to the circumstances in CWP from the PRC and SSPC from Italy. Starbright contends that Hebei Tire was a privately-held company at the time of the 2006 sale. Starbright notes that in SSPC from Italy, the issue was the extent to which subsidies previously conferred upon a state-owned entity passed through in a privatization that occurred a full year after the last subsidy was found to have been conferred. Starbright further notes that in SSPC from Italy the Department applied a distinct CIO methodology in which it estimated the portion of the privatization purchase price attributable to prior subsidies to determine the extent to which the prior subsidies passed through to the privatizing purchaser. See SSPC from Italy at 15509. Starbright maintains that it has demonstrated throughout the investigation that its purchase of Hebei Tire in 2006 was a transaction between two privately-owned parties and not a privatization like the situation in SSPC from Italy.

Starbright maintains that Hebei Tire's liabilities were not part of the sales terms when Starbright agreed to purchase the company. Starbright argues that the 2006 Hebei Tire transaction is different from previous CIO analyses conducted by the Department in that in the previous cases the Department determined that subsidies passed through because the terms of sale involved debt forgiveness. Starbright cites the Delverde case to support its argument. According to Starbright, the court distinguished the facts of the Delverde case from the facts at issue in Saarstahl. See Delverde at 1365. Starbright concludes that the Department's sole reliance on SSPC from Italy, where the circumstances surrounding the change in ownership were completely different from the Hebei Tire-Starbright transaction, is insufficient in light of the fact-specific inquiry that is required for evaluating the unique circumstances of each case involving changes in ownership, as dictated by the court's ruling in the Allegheny Ludlum case. See Allegheny Ludlum 2.

Starbright concludes that the Department should change its methodology from the interim analysis and for the final determination offset Hebei Tire's liabilities using either the adjusted value of the current assets or the total value of current assets in Hebei Tire's books. See Starbright Verification Report at Exhibit 17.

Department Position

In the CIO Memorandum at 12-14, the Department determined that unpaid loans and loan guarantee obligations constituted debt forgiveness. We invited parties to comment on whether other debt remaining on Hebei Tire's balance sheet should also be countervailed. We continue to determine that the unpaid loans constitute countervailable debt forgiveness. The Department disagrees with Starbright's position that the loans in question were not forgiven. As stated in the CIO Memorandum: "{B}y 2006 Hebei Tire no longer expected a significant future income, had no means of repaying the loans, had already taken steps to repay other lenders, and would soon write off its remaining {loans in question}. At such time, any plans of Hebei Tire to settle its loan debt were plainly completed or underway, and the {bank} could no longer have had an expectation of being part of such plans." CIO Memorandum at 14 (citations omitted). We also noted the applicability of SSPC from Italy. While some of the facts relied on by the Department in the CIO Memorandum occurred after Hebei Tire and Starbright reached an agreement (at least after the APA was signed), we believe it is important to note Hebei Tire's inability to repay the debts it was left with, given its lack of significant income and productive assets, was a predictable result of the transaction, one that could be foreseen by all parties, including Hebei Tire, Starbright, government authorities that approved the transaction, and creditors, including banks, that did not object to the transaction (as was their right under the Interim Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors, in Exhibit SCVD-6K of the Starbright 1st Supplemental Questionnaire Response; see, also, Hebei Province Verification Report at 2-3).

The Department also continues to determine loan guarantee obligations are countervailable. The details of arguments regarding the guarantees, such as the timing of related debt forgiveness, the "novelty" of finding subsidies from the provision of loan guarantees, and possible double counting, are addressed in the comment below.

In the CIO Memorandum, we noted that Hebei Tire retained other debts, including accounts payable, on its books after the 2006 asset sale to Starbright. We stated that we were not making a determination at this time on the possible countervailability of these debts; however, we invited parties to comment for the final determination on whether these other debts constitute debt forgiveness to Starbright. Petitioners and Bridgestone have argued that we should countervail these debts in full, while Starbright has argued that the Department must offset debt forgiveness by deducting the book value of its current assets plus investments, which could have been used, theoretically, to pay off this remaining debt. While we do think that some of the other debt remaining on the books of Hebei Tire may be countervailable, Petitioners and Bridgestone did not cite sufficient evidence on the record that would allow the Department to assess with any reliability whether the creditors are private parties or government authorities, and whether such debt would be considered a recurring or non-recurring subsidy. At the same time, we do not disagree with Starbright that it may be appropriate to adjust the amount of debt forgiveness, consistent with SSPC from Italy, by deducting a portion of Hebei Tire's liquid assets, which could have been used to pay off some of this remaining debt. However, Starbright has not cited sufficient evidence for the Department to determine the appropriate amount of adjustment with any reliability. For example, in SSPC from Italy, the Department only used certain types of liquid assets (e.g., cash, bank accounts) to adjust the remaining liabilities. The information on this record is not sufficiently complete to enable us to determine which remaining assets on Hebei Tire's books would be comparable to those used in SSPC from Italy. Thus, there is insufficient information on the record for the Department to determine whether the remaining liabilities constitute debt forgiveness to Starbright and whether there is a basis for making any adjustment to such debt forgiveness for remaining assets. If a CVD order is issued and an administrative review is requested, we will evaluate these issues.

As Starbright claims, there is precedent for the Department determining debt extinguished in the context of a bankruptcy proceeding to be non-countervailable. However, even though it is clear Hebei Tire was experiencing financial difficulty, there is no evidence on the record of this investigation that Hebei Tire was going through any formal bankruptcy proceeding. It is the structured process of a bankruptcy proceeding, providing the same opportunities for debt extinguishment to all companies in China, that would be necessary to find the forgiveness of Hebei Tire's loans and other debt non-specific. Without such a predictable and widely available proceeding, this forgiveness was, as stated in the CIO Memorandum, specific to Hebei Tire in accordance with section 771(5A)(D)(iii)(I) of the Act. Where the Department has determined that debt forgiveness provided in the context of a bankruptcy proceeding is not countervailable, it has usually been because we have found such forgiveness was provided, inter alia, according to generally applicable bankruptcy rules that are available to all companies and, therefore, was not specific. See, e.g., Hot-Rolled Steel from Thailand, Stainless Steel Sheet and Strip in Coils from Korea, Carbon and Alloy Steel Wire Rod from Germany and IDM at 24. Starbright has not demonstrated that, notwithstanding the evidence that this debt forgiveness was specific, it was provided pursuant to a generally applicable bankruptcy proceeding.

Regarding Starbright's arguments concerning SSPC from Italy and its accusations that the Department has created a per se rule in violation of Delverde, see Comment 7, above.

Comment F.10: Debt Forgiveness – Loan Guarantee Obligations

Starbright maintains that the Department should not countervail loan guarantees since Hebei Tire was not the direct recipient of the benefit. Starbright argues that, according to the CVD law, the government bestows a subsidy to an intended recipient or a specific person. See section 771(5)(B) of the Act. Starbright contends that the loan recipient, and not Hebei Tire as the guarantor, received a benefit. Starbright further contends that it is the loan recipient's responsibility to repay the loan and thus the borrower would be the recipient of any benefit for debt forgiveness. Starbright points to Article 31 of the Guarantee Law of the People's Republic of China, which states that if a guarantor has to repay a loan it guaranteed for a borrower, the guarantor can seek recompensation through legal means. See the GOC 4th Supplemental

Questionnaire Response at Exhibit GOC-SUPP4-8. Starbright also points to the fact that the Department determined in a previous case that if a guarantor repays the loan of a defaulted borrower, then the borrower is still liable to the guarantor. See CTL Plate from Italy and IDM at Comment 12. Starbright also cites the preamble of the Department's CVD regulations which states "…debt forgiveness benefits the capital structure of a company by reducing long-term liabilities…" See CVD Preamble at 65393.

Starbright also argues that it is erroneous for the Department to assign the benefits of the loan guarantee program to Hebei Tire, and not to the borrowers or other guarantors that are not subject to the investigation. Starbright notes that Hebei Tire was a co-guarantor with another company for a loan that another borrower did not repay. Starbright argues that in accordance with the Department's interim analysis calculations, the defaulted loan would count as debt forgiveness towards all three parties. Starbright concludes that the Department has never countervailed loan guarantees where the respondent was the guarantor and not the borrower.

Starbright also notes that some of the guarantees are not countervailable because they were subject to court orders before December 11, 2001, which is the cut-off date for measuring subsidies as stated in the Georgetown Steel Memorandum. See Georgetown Steel Memorandum at 2-4. Starbright further notes that at the time the guarantees were made, Hebei Tire, the borrowers, and the lending banks were all government entities and that the Chinese economy was controlled by the government in a manner similar to the economy of the Soviet Union. Starbright states that the guarantees that took place before the December 11, 2001 cut-off date were merely transactions between different GOC entities. In support of its argument, Starbright also cites the final determination of CWP from the PRC, where the Department reiterates that subsidies cannot be measured before the December 11, 2001 cut-off date. See CWP from the PRC and IDM at Comment 2. Based on the arguments above, Starbright concludes that the Department should not have selected 2006 as the time when the loan guarantees were forgiven.

Starbright goes on to argue that some of the loan guarantees are not countervailable because one of the borrowers went into liquidation bankruptcy in February 2001. In support of this argument, Starbright cites SSSC from Korea where the Department found that debt forgiveness to a company in court receivership cannot be countervailed. See SSSC from Korea 1st AR. Starbright also cites the due diligence reports conducted for Hebei Tire which state that the outstanding debt that Hebei Tire guaranteed was a legal risk to the company and not an obligation. See the Starbright 4th Supplemental Questionnaire Response at Exhibit FSCVD-7 and the Starbright 5th Supplemental Questionnaire Response at Exhibit V-CVD-1. Starbright concludes that the court-ordered receivership and the due diligence report support its claim that the debt was attributable to the borrower for whom Hebei Tire guaranteed the loan and that once the borrower went into bankruptcy, the debt in question was extinguished.

Starbright argues that the basis for the Department's finding of debt forgiveness for loan guarantees is faulty because the Department assumed that Hebei Tire was required to repay the loans of the defaulted borrowers, that Hebei Tire's obligation to repay was due to the fact that the borrowers refused to pay, and that debt was forgiven. Starbright goes on to argue that the Department's logic for countervailing loan guarantees is flawed because there is a company that guaranteed a loan on which Hebei Tire defaulted that the Department countervailed, while the Department is also countervailing as debt forgiveness a loan that Hebei Tire guaranteed for the same company.

Maintaining that the Department should not assume that the debt from the loan guarantees was forgiven because Hebei Tire could not prove or disprove whether the borrowers repaid the loans, Starbright notes that, as the guarantor, Hebei Tire would not know if or when a borrower repaid a loan that the company guaranteed and thus would not know when its obligation to repay the loan was triggered. Starbright further notes that it reported to the Department information on loans that it guaranteed for companies with whom it was affiliated and for loans where the courts notified Hebei Tire that the borrower had defaulted. See Starbright Verification Report at Exhibit 25. Starbright notes that it provided the Department with examples of payment demands made to Hebei Tire by lenders of loans guaranteed by the company. See Starbright Verification Report at 22-23. Starbright states that Hebei Tire was only approached for repayment of guaranteed loans when the borrowers defaulted. Starbright argues that if Hebei Tire was not approached for repayment of a defaulted guaranteed loan, then the company assumes that the borrower must have repaid the loan. Starbright concludes that its explanation for not having repayment information for certain loans it guaranteed is reasonable and that the Department should not assume that all loan guarantees were outstanding and forgiven.

According to Starbright, the Department should not assume that the debt incurred from the guaranteed loans was forgiven based on the fact that the GOC was unwilling to discuss the matter at verification. Specifically, Starbright notes that in the CIO Memorandum the Department stated that, at verification, the GOC would not discuss loan guarantees or ask one of the lenders to do so. Starbright states that the Department's assumption is unfair since the lender in question was one of many banks that issued loans guaranteed by Hebei Tire. Starbright also argues that many of the loan guarantees expire in 2007. See the Starbright 4th Supplemental Questionnaire Response at Exhibit FSCVD-7, Appendix 13-2.

Starbright finally argues that the Department needs to perform a complete CIO analysis of Hebei Tire's 2000 privatization in order to determine if the privatization extinguished this subsidy and thus whether any benefits from the loan guarantees passed through to Starbright since the majority of the guarantees were made before 2000. Starbright notes Hebei Tire had court orders to repay loans it had guaranteed dated from between March 2000 to August 2000 while the actual privatization was not approved until September 26, 2000. See the Starbright June Case Brief at Attachment A and the Starbright 1st Supplemental Questionnaire Response at Exhibits SCVD-6C through SCVD-6D.

Petitioners counter Starbright's argument that loan guarantees are not countervailable since there is no benefit to the guarantor. Petitioners argue that guarantors are afforded a benefit when the borrower has defaulted on a loan and the guarantor does not have to pay. Petitioners note that Hebei Tire was issued court orders to pay for certain loans it guaranteed; however, it appears that no one ever attempted to collect the debt and no one appears to have any knowledge as to whether or not the debt was repaid. In support of its argument that loan guarantees provide a benefit to the guarantor, Petitioners cite a Xingtai Municipal circular which has language mentioning the exemption of loan guarantees as part of its plan to lower the loan burden on SOEs and to promote the reform of SOEs. See the Starbright Questionnaire Response at Exhibit 27, for the 2006 Work Focus of State-Owned Assets and Supervision and Management Commission of Xingtai Municipality (January 26, 2006).

Bridgestone argues that loan guarantees are countervailable, contrary to Starbright's argument, because the debt forgiveness of loan guarantees does provide a financial contribution under section 771(5)(D)(i) of the Act. Bridgestone argues that the forgiveness of a potential liability is a financial contribution. Bridgestone notes that Hebei Tire was ordered by the court to repay a loan that it guaranteed; however, the banks never enforced the order of repayment. See the Starbright 5th Supplemental Questionnaire Response at Exhibit V-CVD-16. Bridgestone also notes that the GOC considers loan guarantees to be liabilities that impede SOE reform. In support of its argument, Bridgestone cites the 2006 Work Focus of State-Owned Assets Supervision and Management Commission of Xingtai Municipality, which states that the government shall, in conjunction with banks, work to solve the debt linkage among enterprises, exempting guarantee responsibility of enterprises, and decreasing asset-liability ratio. See the Starbright Questionnaire Response at Exhibit 27; Bridgestone November 5, 2007 submission at Exhibit 5; and Bridgestone's September 5, 2007 New Subsidy Allegation submission at Exhibits 44-45. Bridgestone concludes that, since the amount was never collected, a financial contribution was conferred to Hebei Tire.

Petitioners and Bridgestone also disagree with Starbright's contention that guarantees subject to court order before December 11, 2001 are not countervailable. Petitioners argue that the date when the loan guarantees were made is not relevant since the benefit was received in 2006 when Hebei Tire was no longer able to pay off any loans it guaranteed. Bridgestone maintains that the new translations of documents submitted by Starbright as Attachment A to its June Case Brief do not demonstrate that the guarantees are no longer enforceable. Bridgestone further maintains that without the relevant information from the banks and the courts, the Department cannot verify any information regarding whether or not the guarantees are still outstanding.

Petitioners further argue that Hebei Tire's obligation for certain loan guarantees was not extinguished when the borrower became bankrupt, noting that the Department does not have the information necessary to evaluate this claim since neither Starbright nor the lender provided the Department with the necessary information. In addition, Petitioners note that the Department asked the lender at verification for information regarding loan guarantees but the lender did not comply with the Department's request. See Hebei Province Verification Report at 14.

Petitioners disagree with Starbright's notion that, since it did not receive any notice regarding defaults on some of its guaranteed loans, the loans must have been repaid. Petitioners contend that as a guarantor, it is reasonable to assume that Hebei Tire would have information on loans for which the company is liable.

Petitioners also disagree with Starbright's argument that the Department is double counting the benefit of loan guarantees. To support its position, Petitioners cite Article 12 of the Guarantee Law of the People's Republic of China which states "guarantors shall assume joint responsibility and the creditor can demand any one of the guarantors to pay the whole debt; and any of the guarantors has the obligation to pay the total debt." See the GOC 4th Supplemental Questionnaire Response at Exhibit GOC-SUPP4-8. Petitioners maintain that there is no double counting since the cross-guarantee relationship does not negate the guarantor's responsibility to the lender.

Department Position

The Department disagrees with Starbright that there were no benefits from loan guarantees made by Hebei Tire. Starbright claims that "rather than attributing the subsidy to the borrower who received the funds and the alleged repayment waiver, the Department attributes the benefit to Hebei Tire, the guarantor, who received nothing." Starbright both misunderstands the Department's determination and overcomplicates the issue at hand. The Department countervailed debt forgiveness from state-owned commercial banks, nothing else. The fact that such debt forgiveness stems from loan guarantees is largely irrelevant, as would be the source of any other forgiven debt provided by a government authority. It is inaccurate to suggest the Department's determination was somehow "novel." Debt forgiveness is provided for in the Department's regulations (19 CFR 351.508), and nothing in the regulations, or the preamble to the regulations (CVD Preamble at 65375), limits countervailing debt forgiveness to particular types of debt arising from particular types of transactions, such as loans. The regulations refer to "debt obligations," a term that appears to provide for a wide array of means by which an enterprise could incur debt to a government authority. Starbright's argument is akin to arguing that the Department would be doing something novel or unprecedented by countervailing the provision of a particular good or service at less than adequate remuneration without having previously countervailed the provision of exactly the same good or service.

As we did in our CIO Memorandum, it is useful to divide these guarantees into two groups. Regarding the first group of guarantees, it is beyond dispute that the guarantees created debt owed by Hebei Tire, albeit sometimes jointly, to SOCBs. Starbright itself attached the nine relevant court judgments to its June Case Brief. Starbright's misunderstanding of the nature of these subsidies leads it first to argue the subsidies are non-countervailable because the dates of the court judgments are before the 2001 cut-off date. However, when the debt was created is irrelevant. What matters is the date the debt was forgiven. The forgiveness of a debt obligation or liability is the countervailable event, and therefore we look to when that forgiveness occurred, similar to what we have done in the case of TUTRIC's forgiven loans, as discussed elsewhere in this IDM. As the Department explained in the CIO Memorandum, and as explained elsewhere in this IDM, we have determined Hebei Tire's debt was forgiven in 2006.

Starbright next argues that the legal and financial due diligence reports it commissioned indicate that the obligations underlying the first group of guarantees either were extinguished by bank inaction before the 2001 cut-off date or were extinguished by the bankruptcy of the primary borrower. It goes so far as to state that "the conclusion of the legal due diligence analysis was that, for a vast majority of the {first group of guaranteed loans} . . . , Hebei Tire held no obligation to pay" (emphasis in the original), and that "each of these reports conclude that Hebei Tire was not responsible for the debts which were covered by {the primary borrower} in bankruptcy restructuring." As discussed in the Final CIO Memorandum, we find that these statements are not reasonable characterizations of the business-proprietary content of either due diligence report.

The record does indicate, as Starbright claims, that the primary borrower did enter bankruptcy in 2000 and that the proceeding was terminated in 2003. See the English translations of civil judgments 21 and 75 in Attachment A of the Starbright June Case Brief. The record does not indicate what loans might have been covered by the proceeding, however, or what effect the proceeding may have had on Hebei Tire's obligations as guarantor. In other words, if the liquidated assets of the primary borrower were insufficient to cover its debts, would Hebei Tire, as an ongoing concern and guarantor, be left to make up the difference? These questions are particularly important given the evidence for the primary borrower's bankruptcy is a court judgment holding Hebei Tire individually responsible for part of the primary borrower's debt. In fact, according to Hebei Tire's characterization, two of the judgments hold Hebei Tire individually responsible for obligations of the primary borrower which survived bankruptcy. See the Starbright June Case Brief at 52-53 (citing Civil Judgments 21 and 75). Starbright's description of the proceeding begs the question: Why would some obligations (or at least Hebei Tire's liability) survive the bankruptcy proceeding and not others? Starbright does not address this question but simply concludes "{a}n overwhelming majority of the {primary borrower's debt" which pre-dated the bankruptcy was covered by the bankruptcy proceeding." It provides no citation for this conclusion, apparently relying only on its broad reading of the due diligence reports.

Even if the record did indicate the "vast majority" of the primary borrower's debt (and Hebei Tire's obligations as guarantor) was extinguished by the bankruptcy proceeding, this would not necessarily preclude the Department from finding countervailable debt forgiveness. As discussed above, in a different context, the Department has determined bankruptcy proceedings can render debt extinguishment non-specific, when conducted, among other things, in a structured manner that is generally available to all companies. In this case, however, the record contains no information regarding the process applied to the primary borrower. Thus, we have no means of determining whether this is the type of proceeding that would render any debt extinguishment non-specific, or whether it may have been a proceeding conducted with special advantages for the primary borrower.

Finally, regarding the first set of guarantees, Starbright claims the Department must perform a "complete CIO analysis" of Hebei Tire's 2000 "privatization" to determine whether the benefits stemming from these guarantees were not extinguished. Once again, this argument appears to be the result of Starbright's inability to distinguish between incurring debt versus debt forgiveness. As noted above, these debts were incurred before the 2001 cut-off date and before completion of the 2000 CIO. In the CIO Memorandum, however, we determined debt forgiveness took place in 2006, after both the cut-off date and the 2000 transaction. In any case, the CIO methodology presumes subsidies are not extinguished by a CIO unless a party demonstrates extinguishment.

Regarding the second group of guarantees, Starbright notes Hebei Tire has clearly stated the underlying loans have been repaid or were still outstanding during the POI. However, as noted in the Starbright Verification Report at 22-23, Hebei Tire was unable to support these claims.

Regarding the loans which reportedly have been repaid, Hebei Tire officials stated they would not be provided with any documentation from the lender notifying them that their obligations had been terminated. However, the record indicates Hebei Tire likely would have been provided with such documentation. See Final CIO Memorandum for business-proprietary details. In addition, it seems unlikely that a guarantor would not be kept up to date by the lender on the status of such large obligations, or, at the very least, that it would not be provided with such an update if it had requested one. It is also unlikely that it could not have obtained documentation from the primary borrowers—presumably if Hebei Tire's relationships with the borrowers were close enough to provide guarantees or "cross-guarantees" then presumably the relationships were close enough that the borrowers would have been willing to provide some documentation to Hebei Tire. Thus, Starbright's argument that the Department is requiring Hebei Tire "to prove the negative" is without merit. We only requested that it provide evidence that its obligations had been terminated (e.g., a letter acknowledging such from the lender) or that the underlying debt was ongoing (e.g., a letter acknowledging such from the lender). It provided no such evidence.

Finally, regarding this second set of guarantees, Starbright claims the GOC only refused to allow the Department to discuss loan guarantees with one bank. The Department requested the bank in question respond to questions at verification regarding loan guarantees because that bank was involved with other significant issues pertaining to Starbright, and thus would already be playing a central role during meetings with the municipal government. In any case, the Department believes the clear intent of GOC officials during verification was that we would not be allowed to meet with any bank regarding loan guarantees.

The Department does agree with Starbright that our preliminary determination regarding these guarantees should be modified with regard to the universe of parties to which the debt forgiveness is attributable, given the findings of the court judgments on the record and the unique facts of this case. Specifically, because the court judgments plainly indicate that Hebei Tire and the other entities were determined to be jointly liable for the amounts, it is appropriate to divide the amounts. See, e.g., the English translation of Civil Judgment 83 at Attachment A of the Starbright June Case Brief. Therefore, for the first set of guarantees, we are dividing the liability of each court judgment by the number of parties held jointly liable and countervailing only the amount attributable to Starbright. Because there are no such judgments regarding the second set of guarantees, we are countervailing the entire amount.

Comment F.11: The Countervailability of Starbright's Granted Land Use Rights

Starbright argues that the conversion of Hebei Tire's land use rights from allocated to granted is not countervailable. Starbright states that in the Preliminary Determination, the Department countervailed the provision of land at LTAR for SOEs (emphasis added). Starbright states that Hebei Tire was a private entity at the time it was sold, and thus not an SOE that could have benefitted from such a land program.

Starbright goes on to argue that the Department erred in finding this program specific to it pursuant to section 771(5A)(D)(i) of the Act. Starbright notes that the Department made its land countervailability decision based on the Xingtai Reform Implementing Circular. See the Starbright 5th Supplemental Questionnaire Response at Exhibit V-CVD-15. Starbright maintains that the regulation cited by the Department is not specific to any industry or company that went through the privatization process. Starbright concludes that in light of this fact, the Department cannot find the provision of land at less than adequate remuneration specific.

Petitioners and Bridgestone argue that the Department should continue to countervail Starbright's land use rights because Starbright's land lease is specific pursuant to section 771(5A)(D)(ii) of the Act. Countering Starbright's argument on non-specificity, Petitioners note that the Xingtai Reform Implementing Circular was specific to the companies that were originally selected for restructuring in 2000 and finishing the process in 2005 and not, as Starbright argues, available to any and all companies. See Hebei Province Verification Report at 7. Petitioners and Bridgestone also note the land lease was specific since the government converted Hebei Tire's land use rights as part of the company's sale to Starbright. Bridgestone notes that the approval for the CIO from Xingtai municipality was, in part, based on the value and volume of exports the new entity would generate. See the Starbright 1st Supplemental Questionnaire Response at Exhibit SCVD-8. Bridgestone also contends that the Hebei Tire-Starbright land lease was provided pursuant to the terms of the Hebei Provincial 11th Five-Year Plan regarding attracting foreign investment. See the Starbright Questionnaire Response at Exhibit 7.

Department Position

The Department continues to find the provision of granted land use rights to Starbright countervailable. Starbright first argues that, in the Preliminary Determination, we countervailed "the provision of land for less than adequate remuneration for SOEs," and that this program is inapplicable to Starbright, a non-SOE. We note, first of all, that we also initiated an investigation of the provision of land use rights to FIEs, such as Starbright. This program was determined only to be not used in the Preliminary Determination, not non-countervailable. Second, the land in question was allocated to Hebei Tire when it was indisputably an SOE in 1996 (see Hebei Tire's 1996 Land Use Certificate at V-CVD-15 in the Starbright 5th Supplemental Questionnaire Response), and, as noted previously by the Department, Hebei Tire maintained its allocated rights until 2005 under policies designed for SOEs undergoing reform. See CIO Memorandum at 14. The subsequent conversion and sale of these rights to Starbright was the final step in this reform process. Id. Thus, Starbright received these rights pursuant to policies specifically designed for the reform of SOEs, which is the basis of the Department's finding of specificity under section 771(5A)(D)(i) of the Act.

Starbright next argues that the Department should not rely on the Xingtai Reform Implementing Circular since "this regulation . . . is generally available to all companies, in all industries, that underwent privatization." Although section 771(5A)(D)(i) of the Act provides that a program is specific if it is expressly limited to "an enterprise or industry," the Act further clarifies that the term "enterprise or industry" includes a group of enterprises or industries. The Department has found many programs limited to FIEs to be specific under section 771(5A)(D)(i) of the Act, despite the fact that these programs were not limited to "an enterprise" or to any particular industry, because FIEs constitute a "group" of enterprises.

In this case, the policy at issue was apparently, as Starbright claims, available to all companies undergoing reform at the time the implementing opinions were issued, and did not discriminate among industries. However, the provisions within the regulation, or something similar, were not available to all enterprises within the municipality (i.e., non-SOEs, SOEs not undergoing reform). In fact, the regulation specifies the exact number of firms who are eligible to take advantage of the regulation. Although we do not need to reach the issue of de facto specificity, we note that this number obviously constitutes a tiny fraction of the total number of enterprises within the municipality.[59] Therefore, the Department continues to find Starbright's granted land use rights specific pursuant to section 771(5A)(D)(i) of the Act.

Comment F.12: The Countervailability of Starbright's Land Leased from Local Villages

Starbright and the GOC also argue that the land Starbright rents from the village committees is not countervailable since the village committees are not government authorities. Starbright and the GOC note that the Department uses the following criteria in order to determine if an entity should be considered the government in countervailing duty cases: 1) government ownership; 2) the presence of the government in the entity's board of directors; 3) the government's control over the entity's activities; 4) the entity's pursuit of governmental policies or interests; and 5) whether the entity is created by statute. See Magnesium from Canada at 30954. Starbright contends that neither of the village committees meets the five aforementioned criteria. Starbright cites certain sections of the Village Committee Law, in support of its argument. See the Starbright 1st Supplemental Questionnaire Response at Exhibit SCVD-6J. Starbright notes that article 2 of the Village Committee Law states that the function of village committees is for the villagers to manage and administer village affairs in a democratic fashion. Article 4 states that the town government can assist the village committees but cannot interfere in the affairs of the village that are within the scope of the villagers' self-government. Starbright further notes that articles 10-14 of the Village Committee Law state that village committee members are elected by the villagers and are not appointed by the government. Starbright concludes that the sections of the village committee law cited above point to the fact that there is no government ownership or control of the committees and no government members of the village committees' boards. Thus, village committees are not government entities and therefore the land leased by Starbright from the village committees is not countervailable.

The GOC also argues in its brief that village committees are not government entities since these committees are not subject to government ownership nor is there a government presence within the village committees. The GOC goes on to note that it has no role in the selection or dismissal

[59] While the exact number of companies to which the regulation applies is business-proprietary information, page 7 of the Hebei Province Verification Report states that "several" companies had been selected to undergo the second or further restructuring in 2005.

of village committee board members. The GOC also cites various sections of the Village Committee Law to support its contention that village committees are not government entities. Specifically, the GOC cites Article 27 which states that

> members of government departments, public organizations, units of the armed forces, and enterprises and institutions owned by the whole people, which are located in the countryside, shall not join organizations of the villages committees; member of collectively-owned entities that are not run by the villages may choose not to join the organizations of the villagers committees.

The GOC concludes that the provisions of the Village Committee Law demonstrate that village committees should not be considered an "authority" or a "public entity" pursuant to section 771(5)(B) of the Act.

Petitioners note that the land Starbright leases from the committees of its neighboring villages should also be countervailed. Petitioners and Bridgestone disagree with Starbright's argument that village committees are not government entities by citing the Department's finding in Brake Rotors from the PRC. In that case, the Department found that a village committee was an arm of the central government. See Brake Rotors from the PRC 03/04 AR and IDM at 18. Petitioners also note that the village committee officials stated at verification that the village administers land in accordance with government policies, makes decisions about the leasing of village land, negotiates agreements with lessees based on the employment of village residents, and uses the funds made from leasing the land to cover the costs of village overhead, roads, etc. See Starbright Verification Report at 5-6 and Hebei Province Verification Report at 4-6.

Bridgestone notes in its rebuttal brief that the GOC has previously stated that there is no private-entity ownership of land in China. See GOC May Case Brief at 46. Bridgestone concludes that if there is no private ownership of land and the village committees are responsible for granting land-use rights, then the village committees must be government entities. Bridgestone also notes that at verification the Department reviewed documentation from Hebei Tire which identified the same village committee in question as a government entity. See Starbright Verification Report at Exhibit 17.

In its rebuttal brief, the GOC disagrees with Bridgestone's argument that the Department's decision in Brake Rotors from the PRC 03/04 AR regarding village committees is applicable to the instant case. To support its argument, the GOC states that in Brake Rotors from the PRC 03/04 AR, the village committee in that case "frequently and significantly exerted control in export-related activities and decisions, including personnel decisions and contract negotiations." See Brake Rotors from the PRC 03/04 AR and IDM at Comment 7. The GOC goes on to state that this is not the case in the instant investigation.

Department Position

The Department disagrees with the GOC's and Starbright's contention that village committees are not "government authorities." In the recent final determination for LWRP from the PRC, the

Department reaffirmed its earlier finding in Brake Rotors from the PRC 03/04 AR that the governing body of a village (i.e., a village committee) is a government authority. See LWRP from the PRC and IDM at Comment 5. While the GOC and Starbright have provided arguments as to why village committees in general should not be considered government authorities, as noted, the Department has recently determined village committees are properly characterized as government authorities. The GOC and Starbright have not presented conclusive evidence that the particular village committees in this case are extraordinary and therefore merit different treatment from the Department's previous findings regarding village committees in China.

In fact, the Department finds the specific facts of this case buttress the general conclusion that village committees are government authorities. At verification in the instant case, the Department met with officials from both village committees that lease land to Starbright. See Starbright Verification Report at 6. As noted by Petitioners, the village committee officials explained that funds collected from the leased land are used for road repairs, trash removal, etc.; i.e., the funds are used to provide the types of services typically associated with a government authority. Id. Moreover, the officials stated that in meeting with potential lessees they might negotiate agreements including promises to employ a certain number of village residents and promises involving other "matters of concern to village residents." Id. In other words, the officials conduct their business, including matters of land leasing, with the greater public good in mind. The record facts in this case therefore do not undermine our previous findings.

Given our determination that village committees are government authorities, we determine there is a financial contribution under section 771(5)(D)(iii) of the Act. We also determine the leasing of land use rights by the two village committees is specific as part of the Xingtai SOE reform policies, discussed in the comment above, and described throughout the CIO Memorandum, which would not have been completed absent the asset sale to Starbright. CIO Memorandum at 6-7. Accordingly, we find that the leases are specific within the meaning of section 771(5A)(D)(i) of the Act, as part of SOE reform policies that, by their nature, are limited to SOEs. While these leases were not expressly contemplated by the SOE reform policies, as were the granted rights discussed above, they were an integral part of the transaction between Hebei Tire and Starbright, as Hebei Tire's facilities cover the village tracts as well as the principal tract. As Starbright explained on page 21 of its 1st Supplemental Questionnaire Response: "The necessity for Starbright to purchase land use rights from Hebei Tire as well as to sign two long-term leases with surrounding villages is a result of the physical location of the Hebei Tire compound on three separate parcels of land."

We also note the leases might also be de facto specific under section 771(5A)(D)(iii) of the Act. While we do not have information regarding the use of such leases by groups of enterprises or industries, even if the leases are not de facto specific under subsections (I) through (III), Starbright's leases are apparently inconsistent with the PRC's Land Administration Law of 2004 (see the GOC Factual Submission at Exhibit 6), making them specific under section 771(5A)(D)(iii)(IV). As noted in the Hebei Province Verification Report at 5: "The {provincial land bureau officials} stated that only manufacturers owned, at least in part, by the village collectively or by a resident of the village could use unconverted village land." The land leased to

Starbright by the two village committees, however, was not converted from agricultural land (i.e., village land) to construction land. Starbright Verification Report at 6. Starbright is not owned in part by either village collectively or by residents of the villages.

Both Starbright and village committee officials stated there was an "unwritten grandfather clause" that exempted land that has historically been used as industrial land from having to comply with the provisions of the 2004 law. Given no documented evidence of such a grandfather clause, no indication or even a suggestion of such a grandfather clause in the 2004 law, or any mention of such an exception by GOC land officials during verification, it appears "the manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others," and thus the provision of land use rights to Starbright is specific under section 771(5A)(D)(iii)(IV) of the Act.

Comment F.13: Submission of New Factual Information

On June 9, Starbright submitted replacement pages for its June 4 case brief. The replacement pages redacted untimely new factual information, which the Department had earlier rejected from the record. The relevant information included an excerpt from a public PRC law and Starbright's interpretation of the excerpt's implication. No part of the PRC law had previously been placed on the record of this investigation, nor had it been referred to previously. Along with the replacement pages, Starbright submitted its protest to the Department's decision to reject this information.

Starbright challenged the Department to explain "logically" how a public law can be deemed to represent factual information. It also challenged the Department to distinguish "taking judicial notice" of various laws and regulations relied on for separate rates analysis from rejecting the public law at issue in this investigation.

Department Position

The Department properly rejected Starbright's references to a PRC law not placed on the record within the deadlines of 19 CFR 351.301. This regulation provides that factual information in a countervailing duty investigation is due no later than seven days before the date on which verification is scheduled to commence. See 19 CFR 351.301(b)(1). The Department can extend this deadline by requesting information at any time, but it did not do so with respect to the untimely information in dispute here. Further, 19 CFR 351.102(b) states that "factual information" includes statements of fact and documentary evidence. The Department interprets its regulations as meaning that foreign laws are factual information that must be placed on the record. Indeed, foreign laws are always placed on the record in countervailing duty investigations. Often they are the very evidence that a subsidy has been bestowed. It does not matter if the foreign laws are publicly available. The Department cannot be presumed to be aware of all foreign laws throughout the world. U.S. laws that guide the Department need not be placed on the record because they are the very laws that we administer and under which we operate. Likewise, U.S. court decisions, Federal Register notices, and WTO decisions need not be on our record because they pertain to matters of law, not matters of fact. Accordingly, the U.S. statute, regulations, court rulings, administrative cases, and WTO reports are cited by parties in making legal arguments before the Department. Foreign laws, cited to the Department, as here, are not referenced for the purpose of making legal arguments concerning interpretation of U.S. law or international obligations, but rather for the purpose of determining relevant facts, such as specificity and the like, and therefore, as a factual matter, whether a countervailable subsidy was provided to the respondent. Thus, foreign laws in this context do not occupy the same position as U.S. statutes, regulations, court rulings, and administrative precedents. Foreign laws do not bind or guide us in any way, but rather only inform our factual determinations of what happened regarding a particular respondent or foreign country in any given period of investigation or review.

Various aspects of a body of foreign law are subject to interpretation and dispute, such as: 1) whether the law is currently enforceable; 2) over which jurisdiction the law is applicable; 3) what case law and other statutory or regulatory laws are relevant to the application of the law; 4) how the law is applied in practice by the agency charged with its enforcement; and, 5) the intent of the promulgating body. Perhaps most significantly, the language and terms of the law will be subject to interpretation and dispute. It seems unlikely many laws could be interpreted based solely on the “four corners” of the law itself and with no possible dispute over the meaning of its language. Thus, it is a matter of simple fairness that laws with which the Department is unfamiliar should be placed on the record in accordance with 19 CFR 351.301, so that all interested parties will have an opportunity to comment, rebut each other’s interpretations, provide clarifying information, etc. In addition, in order to interpret properly the law at issue, the Department itself would have needed time and opportunity to ask clarifying questions and to discuss the law at verification, if necessary, with relevant GOC officials, who obviously would be the most relevant authority for understanding this particular law.

With regard to Starbright’s argument that the Department consider the law under an administrative equivalent of judicial notice, we note the use of discretion is inherent within this concept; i.e., the Department, assuming it has the authority to take “administrative notice,” takes notice of a law or other facts if it believes doing so will not deprive any party of its rights to comment. This could not have been done regarding the law in question without reopening the record and collecting additional information. Given Starbright did not excerpt the law until June 4, slightly more than a month before the Department’s final determination is due, such steps were not practicable. Even if these steps had been practicable, it would be pointless to have limitations on the record such as 19 CFR 351.301 if they were to be ignored every time a party discovers there is additional information available that might be relevant to the proceeding.

Finally, we note that Starbright has argued that the Department has taken “administrative notice” of other public laws of the PRC in our separate rates analysis. Starbright provided no citations to support this claim. In so far as we have taken “administrative notice” of PRC laws for separate rates purposes, doing so occurred near the beginning of the proceeding, when all parties would still have ample time to comment on the foreign laws, and, most importantly, ample time to place them on the record. By contrast, Starbright did not just wait until June 4 to refer to an excerpt of the law in question, but did not even mention the excerpt or the law in general at anytime earlier in this proceeding, or otherwise give the Department or other parties any indication reference to the law might be necessary.

G. Other Countervailable Programs

Comment G.1: Whether Non-Tradeable Share Reform (NTSR) Is Specific

Petitioners support the Department's preliminary finding that NTSR is specific because it contends only publicly listed companies with "substantial amounts" of NTS may participate in the program. Petitioners Case Brief at 52. Petitioners further state this limits participation in NTSR to SOEs. Petitioners also note that, during verification, the Department confirmed that only companies with NTS may participate in NTSR.

Both the GOC and GTC contest the Department's specificity conclusion with respect to NTSR, though GTC relies on the GOC's case brief to support its position. Contrary to the Department's preliminary finding that NTSR is limited to listed companies with NTS, the GOC argues that essentially all listed companies in the PRC at the time NTSR was implemented were eligible to participate in the reform. In addition, the GOC submits that NTSR does not provide a benefit specific to any particular Chinese enterprises or industries.

The GOC cites to the NTSR Circular that describes the goals of NTSR as broadly applicable to "all listed companies" and that the program "was implemented across a broad range of industries by over 1,350 companies throughout Chinese provinces and municipalities." See Petitioners NTS New Subsidy Allegation at Exhibit 2. The GOC notes that all listed companies with shares issued prior to their initial public offering (which necessarily resulted in a split-share or non-tradeable share structure) may participate in NTSR, regardless of whether those NTS were issued to SOEs, FIEs, or private enterprises. In particular, the GOC stresses that a company's eligibility to participate in NTSR is not contingent on whether that enterprise's non-tradeable shareholder is state-owned. The GOC additionally notes the Department has previously recognized a program as not de jure specific where it was available to a broad group of participants regardless of their region or sector. See CSSP from Turkey. Thus, in light of the NTSR Circular language referring to "all listed companies," and given the broad application of NTSR across industries and regions in the PRC, the GOC argues that NTSR is sufficiently similar to other programs found to be not de jure specific in past CVD investigations to warrant equivalent treatment in this investigation.

The GOC states that NTSR also fails the test for de facto specificity, citing the lack of record evidence that would support finding any of the elements under section 771(5A)(D)(iii) of the Act. The GOC states that actual recipients of the alleged subsidy were not limited in number, as demonstrated by the more than 1,350 companies taking part in NTSR. Citing the wide variety and geographic diversity of the industries represented by the companies participating in NTSR, the GOC further states there is no evidence that any enterprise or industry is a predominant participant in NTSR or received a disproportionately large amount of the alleged subsidy pursuant to NTSR. Finally, the GOC notes that it is the shareholders of listed companies, not GOC agencies or officials, who initiate and facilitate NTSR, in accordance with their respective company's reform plan. Thus, the GOC contends the de facto element regarding whether the GOC's discretion in granting a subsidy favors one enterprise or industry over others is not applicable in this case, since NTSR participants do not rely on the GOC's discretion in deciding whether to implement the reform. Therefore, the GOC argues that the NTSR is neither de jure nor de facto specific and, consequently, that the Department must reverse its finding of a countervailable benefit.

In their rebuttal briefs, the GOC and GTC argue that the Department should dismiss Petitioners' argument that alleged subsidies granted to shareholders participating in NTSR are specific. The GOC and GTC maintain that de jure or de facto specificity cannot be found with respect to a broadly applicable program such as NTSR because all listed companies with NTS are eligible to participate (regardless of region or industrial sector), including companies whose non-tradeable shareholders are not state-involved enterprises (e.g. FIEs or private entities).

Department Position

Section 771(5A)(D) of the Act outlines the specificity requirements for domestic subsidies. The GOC has claimed that NTSR is not specific because it is not limited to enterprises in particular industries or groups of industries. Moreover, the GOC argued that essentially all listed companies in the PRC at the time NTSR was implemented were eligible to participate in the reform. There is no information on the record to support this claim (i.e., the number of publicly listed companies at the time of the NTSR). However, the record does show that the underlying criterion for participation in NTSR and the concomitant stamp tax exemption is that listed companies must have NTS. As such, eligibility for NTSR is necessarily limited to a group of enterprises, i.e. listed companies that have NTS. Accordingly, we continue to find that the NTSR, including the stamp tax exemption, is specific within the meaning of section 771(5A)(D)(i) of the Act.

Petitioners have argued that eligibility for NTSR is limited to publicly listed companies with "substantial amounts" of NTS and that this limits participation in NTSR to SOEs. Although a percentage of the NTS that underwent NTSR were SOE-owned (e.g., GTC's NTS), there is information on the record that indicates other NTS which underwent NTSR were owned by private parties. See GOC Verification Report at 17-18 and Petitioners NTS New Subsidy Allegation at Exhibit 1. However, it is clear that NTSR, and the potential benefits thereunder, is limited only to companies with NTS. The fact that the number of such companies is 1,350 does not demonstrate that NTSR, including the stamp tax exemption, is not specific. Although we need not address this issue since we have this program to be de jure specific, information on the record indicates there were over three million privately owned companies in the PRC in 2003. See Petition at Exhibit CVD 3 (June 2006 WTO Trade Policy Review of the PRC at 136). Thus, there are undoubtedly tens of thousands of shareholding companies in the PRC, all of which would want a waiver of stamp tax obligations for share purchases, sales, or transfers. As such, the number 1,350 does not, on its own, demonstrate that NTSR is not specific. Consistent with this information, the Department finds that eligibility for NTSR is limited to listed companies with NTS, regardless of the nature of the entity owning such shares.

Comment G.2: Whether GTC Received a Benefit from the Transfer of Bonus Shares to its Tradeable Shareholders Under NTSR

Petitioners maintain that NTSR is countervailable in that it enabled an SOE, GAMC, to transfer 44,863,286 bonus shares in GTC, valued at more than RMB 178 million, to GTC's tradeable shareholders for no consideration.

The GOC and GTC reiterate their general description of the NTSR carried out in the PRC (as provided in their submissions of December 10, 2007, and February 27, 2008) and agree with the Department's finding in the Preliminary Determination that the transfer of bonus shares from GTC's state-owned shareholder to GTC's tradeable shareholders was not a countervailable benefit to GTC itself. The GOC and GTC further contend that Petitioners erroneously describe the bonus share transfer as conferring a benefit, via unwarranted or incommensurate compensation, on GTC's tradeable shareholders. The GOC and GTC argue that, as verified by the Department, the agreement negotiated and agreed upon between GTC's tradeable shareholders and GAMC to exchange non-tradeable shares for tradeable shares was for consideration and balanced public and private shareholders' interests. Specifically, the GOC and GTC submit that GTC's tradeable shareholders were given fair and adequate consideration in that they received some of GAMC's shares to compensate for their exposure to risks of share dilution and diminished value (with respect to their existing tradeable shares) once GAMC exercised the right to sell its newly tradeable shares on the market. The GOC and GTC further contend that the share transfer did not benefit GTC itself.

Department Position

We continue to find that, even assuming there was a government financial contribution, the transfer of bonus shares did not benefit the respondent during the POI, within the meaning of section 771(5)(E) of the Act. We note that in certain circumstances, such as the sale of a company or shares in a company, the Department does not normally distinguish between a company and its owners.[60] We find that the circumstances of this case are such that it is also appropriate here not to distinguish between the company, GTC, and its shareholders, nor are we distinguishing between individual shareholders (i.e., the government-controlled GAMC and the private shareholders). Rather, for purposes of this analysis, we find that the company together with all of its shareholders constitutes the respondent. Under this approach, the transfer of bonus shares from GAMC, GTC's largest shareholder, to GTC's other shareholders essentially amounted to an intra-company transaction.[61] Although the NTSR resulted in a change in the nature and liquidity of previously non-tradeable shares, the transfer of shares in GTC from GAMC to other shareholders provided no new equity infusion or other new resources to the respondent as a

[60] See Practice Modification Notice at 37137. This methodology was developed in response to an adverse WTO dispute settlement finding. There was also domestic litigation on this issue. See Allegheny Ludlum.

[61] The fact that GTC as a company would receive the money paid from violation of the selling arrangement in the agreement negotiated between the A shareholders and GAMC lends support to this view. See GTC NTS New Subsidy Allegation Response at Attachment GTC-NTS-2.

whole.[62] Consequently, since no benefit was conferred on the respondent, we continue to find that the transfer of bonus shares did not constitute a countervailable subsidy.

Comment G.3: Whether GTC Received a Benefit from the GOC's Exemption of Stamp Taxes on Share Transfers Under NTSR

GTC argues that the Department erred in finding that the alleged stamp tax waiver provided a countervailable benefit to GTC because record information shows that only GTC's shareholders were affected by the share conversion and resulting tax implications, and that GTC as a company did not receive any equity or tax-related benefit under NTSR. GTC alternatively argues that even if the stamp tax waiver is ultimately determined to be a countervailable subsidy, the Department's calculation of the purported benefit to GTC should include only the "foregone revenue" attributable to GTC's private shareholders. Both the GOC and GTC contest the Department's preliminary conclusion that the GOC's tax authority provided a countervailable benefit to GTC based on the Department's policy of not distinguishing between a company and its shareholders when determining whether a benefit has been granted in the privatization context. See Post-Preliminary Analysis at 11.

Respondents argue that the Department did not explain how the alleged benefit of stamp tax exemption conferred on shareholders of a company participating in NTSR is also a benefit to the company itself. GTC states that during verification, SAT officials confirmed that buyers and sellers of shares in the secondary market must pay a stamp tax pursuant to the GOC's Notice of the Ministry of Finance and the State Administration of Taxation on Adjusting the Stamp Tax Rate of Securities (during the POI, the stamp tax rate was 0.1% of the stock value). See GOC Verification Report at 18. The GOC also confirmed that none of GTC's shareholders (both GAMC and the tradeable shareholders) paid any stamp tax during the POI for the shares transferred under NTSR. Thus, the respondents contend, any alleged benefit from the stamp tax exemption was received exclusively by GTC's shareholders and not GTC.

Respondents note that the Department's reasoning for imputing the alleged benefit of the stamp tax waiver to GTC stems from application of the policy announced in Practice Modification Notice at 37136. Specifically, Comment 10 of the Practice Modification Notice addresses situations where concurrent subsidies are allegedly provided to a buyer for the purpose of encouraging or facilitating privatization. See Practice Modification Notice at 37136. However, the GOC and GTC argue the Practice Modification Notice is not applicable under the factual circumstances of this case and that the Department's reliance on Comment 10 is unlawful for two primary reasons.

[62] GTC's accounting records show the share transfer as a debit to shared capital-state shares, and a credit to shared capital-public shares, while GAMC recorded it as a debit to paid-in capital, and credit to a long-term investment. See GTC NTS New Subsidy Allegation Response at 6. Indeed, Petitioners noted that GTC's 2006 financial statement indicated that the number of state-owned GTC shares decreased and the number of privately-held GTC shares increased by the exact same amount during the same period. See Petitioners NTS New Subsidy Allegation at 2.

First, the GOC and GTC argue that the Department's approach under Comment 10 and the Practice Modification Notice improperly attributes an alleged subsidy received by company shareholders (both state-owned and private) to the company being privatized (here, GTC). The respondents argue that the Federal Circuit has held that, in determining whether a subsidy continues to benefit the post-privatized company, the Department's analysis must examine the facts and circumstances of the alleged subsidy, rather than relying on any per se rule. Delverde at 1363. The respondents argue that, in this investigation, the facts and circumstances relating to the share transfer between GAMC and GTC's other shareholders indicate that GTC itself received no stamp tax savings and thus received no benefit.

Second, the GOC and GTC contend that Comment 10 relates to factual circumstances that do not exist with respect to NTSR (i.e. where a government seller foregoes fair market value of a sale price in order to offer some incentive to a potential buyer), and does not address the particular situation whereby both potential investors and the governmental shareholder (GAMC, in this case) receive an alleged benefit from the transaction. Respondents argue that under NTSR, both the non-tradeable shareholder (GAMC) and tradeable shareholders are eligible for the same treatment and thus the exemption of stamp tax payments will not affect the negotiated price of the NTS. The GOC and GTC conclude that the Department's dependence on Comment 10 is inappropriate in this investigation and cannot support its preliminary determination to countervail the stamp tax waiver under NTSR.

GTC additionally argues that even if the Department ultimately finds the stamp tax waiver confers a countervailable subsidy, the Department's calculation of the purported benefit to GTC is flawed. The Department's calculation considers the total amount of stamp tax waived under NTSR during the POI as the amount of revenue foregone by the GOC. As noted above, the GOC confirmed that the stamp tax waiver was granted to both GTC's private shareholders and state-owned shareholder (GAMC). However, GTC contends that the Department's calculation of the alleged benefit to GTC should not include the taxes exempted from GAMC. In line with its overall concern that the Department cannot lawfully examine alleged subsidies in the PRC (see Comment A.1), GTC argues that the Department cannot countervail the amount of "foregone revenue" owed both by the GOC (via its governmental shareholder GAMC) and to the GOC. Thus, GTC argues that if the Department countervails the stamp tax waiver as part of NTSR in its final determination, its calculation should include only the "foregone revenue" attributable to GTC's private shareholders (not GAMC).

Petitioners agree with the preliminary finding that the GOC's waiver of stamp tax with respect to GTC constituted a countervailable subsidy, but submit that the Department's calculation of benefit for the final determination should account for the waiver of stamp tax with respect to both the transfer and receipt of the bonus shares. In support of this view, Petitioners note that, at verification, SAT confirmed that purchasers and sellers of shares in the secondary market typically must pay a stamp tax on such transactions. See Post-Preliminary Analysis at 8. In addition, the SAT has confirmed that owners of both tradeable shares and NTS did not pay any stamp tax on share transfers made pursuant to NTSR during the period of investigation. Id. Petitioners contend that the bonus share transfer should be characterized as a secondary market transaction between two investors, and thus both the seller and recipient should have paid stamp tax on the bonus share transfer.

In their rebuttal brief, Petitioners note that the GOC's actual waiver of stamp taxes pursuant to the bonus share transfer has not been contested by the GOC or GTC. In addition, Petitioners support the Department's reliance on Comment 10, citing in particular the definition of concurrent subsidies as those "given to facilitate, encourage, or that are otherwise bestowed concurrent with a privatization." Practice Modification Notice at 37136. Petitioners point out that, as verified by the China Securities Regulatory Commission, the GOC holds some ownership interest in most of the companies with NTS and that NTSR was directed at facilitating the PRC's transition to a market economy, which together demonstrate that the stamp tax waiver was aimed at encouraging the privatization of NTS. See GOC Verification Report at 17. Finally, Petitioners contest the argument of the GOC and GTC that the stamp tax waiver only conferred a benefit on GTC's shareholders and not the company itself, since the Department need not distinguish between the shareholders and the company (since the benefit is to both of them) or whether one of the shareholders is the GOC (because the subsidy stays with the company).

Department Position

The Department disagrees with respondents' description of the information on the record. The record shows that, in order to facilitate NTSR, the GOC waived the otherwise applicable stamp tax on share transfers for share transfers occurring-pursuant to NTSR. Specifically, SAT officials confirmed that neither the transferor nor the transferees of the bonus shares paid any stamp tax on share transfers made pursuant to NTSR during the POI. The argument that the exemption of stamp taxes for both parties would not affect the negotiated price of NTS is irrelevant. The record indicates that both GAMC and GTC's tradeable shareholders would have owed stamp taxes on the transferred bonus shares but for the GOC's exemption of such taxes under NTSR. Thus, we continue to find that the GOC provided a subsidy by not collecting the stamp tax otherwise applicable to most share transfers in the PRC, which constitutes a financial contribution in the form of revenue foregone and confers a benefit to GTC in terms of the stamp tax savings.

As noted above in Comment G.2, we find that in this case it is appropriate not to distinguish between GTC and its shareholders, or between individual shareholders. We note this approach is not the application of a per se rule or of the Department's CIO analysis with respect to the transfer of bonus shares, but rather is limited to the factual circumstances of the stamp tax exemption under NTSR. Accordingly, under this approach, the Department views the tax savings received under NTSR by GTC's individual shareholders as received by GTC itself.

We also disagree with the GTC's contention that the Department's calculation of the alleged benefit to GTC should not include stamp taxes exempted from GAMC. GTC argues that the Department cannot countervail the amount of "foregone revenue" owed both by the GOC (via its governmental shareholder GAMC) and to the GOC. Thus, GTC argues that if the Department countervails the stamp tax waiver as part of NTSR in its final determination, its calculation should include only the "foregone revenue" attributable to GTC's private shareholders (not GAMC). It is clear in the statutory provisions that financial contributions to government-owned corporations that confer a benefit and are specific are subject to the CVD law. See section 771(5)(C) of the Act. In this case, there is not common government ownership of two corporations; there is a government-owned company, GAMC, that holds NTS in GTC and there is a notice from the GOC's MOF and SAT that provides a stamp tax waiver that is specific to NTSR companies. It provides a financial contribution and a benefit to NTSR companies regardless of whether such companies are government-owned. As such, we have included in the benefit calculation that amount of stamp tax exempted on both sides of the transaction.

Comment G.4: **Whether GTC Received a Benefit from the GOC's Exemption of Income Taxes on Income Derived Under NTSR**

Petitioners allege that a countervailable subsidy results from the failure to pay income or capital gains taxes on revenue derived from the sale of the transferred bonus shares. Thus, they argue, the Department should apply its determination broadly to all transactions subject to foregone stamp tax and/or income tax. In addition to the alleged stamp taxes owed by the seller and recipients of the transferred bonus shares, Petitioners contend the Department's final determination should reflect a finding that GTC received a countervailable subsidy worth 20 percent of RMB 178 million, i.e. the alleged income tax or capital gains tax foregone.

In its Post-Preliminary Analysis, the Department stated there was insufficient record information from which to make a determination regarding the alleged waiver of income or capital gains taxes stemming from the bonus share transfer. See Post-Preliminary Analysis at 13. Petitioners counter that there is sufficient record information, specifically drawing attention to: (i) a Notice from the Ministry of Finance and the SAT expressly exempting the collection of income taxes from enterprises and individuals on income from "shares, cash, etc. paid by a non-circulation stock shareholder to a circulation stock shareholder by way of payment consideration" as part of NTSR (Petitioners NTS New Subsidy Allegation at Exhibit 3), and (ii) exhibits indicating that a 20 percent income tax should have been collected by the GOC on revenue derived under NTSR (Petitioners Pre-Preliminary Comments of November 30, 2007 at Exhibit 30). Moreover, Petitioners note that GTC verified RMB 178 million as the value of the transferred bonus shares.

In addition, Petitioners argue that because the GOC and GTC did not provide specific information regarding the taxable revenue gained by GTC's shareholders under the NTSR, the Department should use facts available in determining whether income and/or capital gains taxes were owed with respect to the transferred bonus shares.

The GOC and GTC counter there is no record information to support Petitioners' allegation that GTC received a countervailable subsidy from the alleged waiver of income or capital gains taxes, and thus support the Department insofar as it cannot reach a finding on this issue. In particular, the GOC and GTC note that the verification reports for GOC, Guizhou Province, and GTC do not address the general application of capital gains taxes to NTSR or the specific waiver of such taxes to GTC's shareholders as a result of GTC's participation in NTSR. The GOC and GTC further submit that, even if this issue had been investigated, it would be erroneous to tax the total market value of the transferred shares as revenue (contrary to Petitioners' claim) because there is no support for the argument that the total market value of the transferred shares was income earned during the POI. In addition, the GOC and GTC state that only the shareholders subject to the share transfer (and not GTC) would have owed any alleged foregone revenue from capital gains taxes.

Department Position

In its Post-Preliminary Analysis, the Department noted there was insufficient information on the record on which to base a finding on this issue, including a calculation of the amount of any benefit. Information on the record indicates that the transferred bonus shares were subject to trading restrictions which required the recipients of the bonus shares to hold them for a certain period of time. For instance, as noted in the Post-Preliminary Analysis, original NTS cannot be listed for trading or transferred within 12 months from the day when the NTSR plan entered into force. See Post-Preliminary Analysis at 5, n.18. See also NTS Selling Circular and GTC NTS New Subsidy Response at Attachment GTC-NTS-1. Additional record information indicates that the NTSR reform plan was approved in March 2006 and the bonus shares were transferred in April 2006. Since the bonus shares transferred to GTC's tradeable shareholders could not be resold during the POI, it is not clear how any income related to the shares at issue could be earned by the recipients during the POI. Thus, the Department determines that it does not need to reach a determination of the countervailability of such exemption of income taxes, including capital gains taxes, because there is no benefit in the POI. However, as noted above, we will examine the income tax issue in any subsequent administrative review, if a CVD order is issued.

Comment G.5: FIE Tax Exemptions

Petitioners argue that the Department should continue to countervail tax exemptions and reductions to "productive" FIEs and FIEs in specially designated geographic areas. Petitioners state that under 19 U.S.C. 1677 (5)(D)(ii), programs that exempt or reduce tax liabilities provide a financial contribution in the form of revenue foregone by the GOC and a benefit to the recipients in the amount of the tax savings. Petitioners state that the Department determined the programs were specific because exemptions or reductions were limited to enterprises located in designated geographical regions or to certain "productive" enterprises.

Bridgestone states that the Department should affirm its preliminary determination to countervail tax subsidy benefits provided to FIEs; these include tax subsidies to FIEs based in specially designated geographic areas, and local income tax exemption and reduction programs for productive FIEs. Bridgestone argues that the Department properly found that the "exemption/reduction" of TUTRIC's tax liability was a "financial contribution in the form of revenue forgone by the GOC," the benefit to TUTRIC was in the amount of tax savings, and the exemptions/reductions are specific because they were limited to enterprises located in designated geographic regions and certain "productive" FIEs.

Specifically, Bridgestone states that the Department found that respondent TUTRIC's 2006 tax return indicated that TUTRIC's corporate income tax rate had been "reduced from 30 percent to 24 percent," and this reduction in tax payable was consistent with the available benefit described in Article 7 of the FIE Tax Law, as confirmed by the GOC. Bridgestone also states that the Department found that TUTRIC's 2006 tax return indicated that TUTRIC's standard local rate of 3 percent was waived. Bridgestone further states that the Department properly treated these income tax subsidies as a recurring subsidy and quantified the benefit by calculating the difference in tax payment attributable to the difference in tax rate, then multiplied by TUTRIC's 2006 taxable income. Bridgestone states that TUTRIC did not dispute this preliminary finding and the Department should affirm these findings in its final determination.

TUTRIC disputes the Department's Preliminary Determination, and Petitioners' and Bridgestone's argument, that tax programs limited to FIEs are specific. Citing to the SAA at 929, 930, 931, and section 771(5A)(D)(i) of the Act, TUTRIC argues that the FIE preferential tax program is not specific because the program benefits numerous types of enterprises and virtually all industries, with no limitation on the number, form of enterprise, or type of industry. TUTRIC further cites to the CVD Preamble and PPG Industries 2 at 1240-41, arguing that the FIE tax benefit programs are widely available to numerous enterprises with foreign investment with no limitation on the type or number of industries. TUTRIC argues that the category of enterprises with foreign investment, or the subset of productive or export-oriented FIEs, does not meet the Department's requirement for specificity. Therefore, TUTRIC argues that the Department should not countervail any subsidies alleged to be specific to FIEs.

Department Position

We continue to find that the exemption or reduction in the income tax paid for FIEs located in specifically designated geographic areas is limited to enterprises located in designated geographical regions and, hence, is specific under section 771(5A)(D)(iv) of the Act. The issue of whether FIEs constitute a group of enterprises or industries is irrelevant once we have determined that a program is regionally specific. We also continue to find that the income tax exemption afforded by the Local Income Tax Exemption and Reduction Programs for (i.e., "Productive" FIEs) program is limited as a matter of law to certain enterprises, "productive" FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. TUTRIC is essentially arguing that the program is not de facto specific based on an analysis of who actually uses the program. However, as we have already found the local tax program to be de jure specific, we do not need to reach the question of de facto specificity. The Department found programs limited to FIEs to be countervailable in the CFS investigation. See e.g., CFS from the PRC – Amended Preliminary at 17494 (and confirmed in CFS from the PRC). Therefore, for purposes of our final determination, we are continuing to find these two tax programs countervailable. We note that we did not use the 2006 tax returns as stated by Bridgestone, rather we used the tax return filed during the POI in accordance with 19 CFR 351.509(b).

Comment G.6: Value Added Tax and Tariff Exemptions on Imported Equipment

Petitioners and Bridgestone argue that the Department should continue to find the VAT and tariff exemptions program countervailable for both TUTRIC and GTC. Because GTC provided details on additional imported equipment under this program at verification, Petitioners and Bridgestone state that the Department should recalculate the benefit under this program in the final determination including these additional imports.

The GOC and GTC note that, in the Preliminary Determination, the Department found that the VAT and tariff exemption program provides non-recurring benefits as defined in 19 CFR 351.524(c)(2)(iii).[63] The GOC and GTC argue that this program, in fact, provides recurring benefits as stipulated in 19 CFR 351.524(c)(1). The GOC and GTC state that benefits under this program are "exemptions of indirect taxes or import duties." The GOC and GTC state the fact that these exemptions were used to purchase capital equipment is irrelevant because the allegation is not whether the respondents received "provision of land and equipment" under this program.

The GOC and GTC add that, even if the Department concluded that the program is properly classified under 19 CFR 351.524(c)(2) the Department should determine that the program provides recurring benefits based on the three-factor test (whether the subsidy is exceptional in the sense that the recipient cannot expect to receive additional subsidies under the same program on an ongoing basis from year to year; whether the subsidy required or received the government's express authorization or approval (i.e., receipt of benefits is not automatic); or whether the subsidy was provided for, or tied to, the capital structure or capital assets of the firm). The GOC and GTC state that in applying this test in the Preliminary Determination, the Department only examined the third factor and ignored the other two factors. The GOC and GTC state that the record shows that companies qualify automatically to receive benefits under this program and that

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[63] 19 CFR 351.524(c) – "Recurring"' versus "non-recurring" benefits

(1) Non-binding illustrative lists of recurring and non-recurring benefits. The Secretary normally will treat the following types of subsidies as providing recurring benefits: Direct tax exemptions and deductions; exemptions and excessive rebates of indirect taxes or import duties; provision of goods and services for less than adequate remuneration; price support payments; discounts on electricity, water, and other utilities; freight subsidies; export promotion assistance; early retirement payments; worker assistance; worker training; wage subsidies; and upstream subsidies. The Secretary normally will treat the following types of subsidies as providing non-recurring benefits: equity infusions, grants, plant closure assistance, debt forgiveness, coverage for operating losses, debt-to-equity conversions, provision of non-general infrastructure, and provision of plant and equipment.

(2) The test for determining whether a benefit is recurring or non-recurring. If a subsidy is not on the illustrative lists, or is not addressed elsewhere in these regulations, or if a party claims that a subsidy on the recurring list should be treated as non-recurring or a subsidy on the non-recurring list should be treated as recurring, the Secretary will consider the following criteria in determining whether the benefits from the subsidy should be considered recurring or non-recurring:

(i) Whether the subsidy is exceptional in the sense that the recipient cannot expect to receive additional subsidies under the same program on an ongoing basis from year to year;
(ii) Whether the subsidy required or received the government's express authorization or approval (i.e., receipt of benefits is not automatic), or
(iii) Whether the subsidy was provided for, or tied to, the capital structure or capital assets of the firm.

the program is available on an ongoing basis. As such, the GOC and GTC argue that the Department should find this program provides a recurring benefit.

Both the GOC and GTC argue that, if the Department should continue to find these benefits to be non-recurring, it should not countervail benefits under the VAT and tariff exemption program prior to January 1, 2005. As such, the GOC and GTC argue, the Department should not countervail any benefits under this program.

In their rebuttal briefs, Petitioners and Bridgestone state that, in the Preliminary Determination, the Department appropriately found that VAT and tariff exemptions provided non-recurring benefits since they were used for the purchases of capital equipment. See Preliminary Determination at 71372. Petitioners and Bridgestone state that the GOC's and GTC's arguments to treat these subsidies as recurring benefits are incorrect, and that the three-factor test discussed in the briefs submitted by the GOC and GTC is not appropriate to this case. According to Petitioners and Bridgestone, the three-factor test is appropriate when "a subsidy is not on the illustrative lists" for recurring or non-recurring subsidies under 19 CFR 351.524(c). Petitioners and Bridgestone state that the Department's past practice has found that a VAT exemption program used for capital equipment to be a non-recurring subsidy.

Bridgestone states the GOC and GTC's arguments to not countervail any subsidies received under this program before January 1, 2005 are incorrect. (see Comment A.4, above). As such, Bridgestone states the Department should continue to find all benefits received under the VAT and tariff exemptions program during the full AUL period to be non-recurring subsidies.

Department Position

The Preamble states that if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring." See CVD Preamble at 65393. Moreover, the Department has treated this type of program as a non-recurring subsidy in past CVD cases. See PET Resin From Thailand; see also Hot-Rolled Steel from Thailand. The record of this investigation shows that the program under which GTC and TUTRIC received the exemption of VAT and import duties is a program that provides these exemptions only for imported equipment. Thus, it is the program itself that provides the reason for finding these VAT and tariff exemption to be non-recurring. Contrary to the parties' arguments, it is not use of a benefit that determines whether it is a recurring or non-recurring subsidy.

Accordingly, we continue to find that it is appropriate to treat the exemption of VAT and import duties on capital equipment as a non-recurring benefit. Also, as discussed above, the Department has adopted December 11, 2001 as the date from which it will identify and measure subsidies in the PRC for purposes of the CVD law. (See Comment A.4.) The record of this investigation shows that certain imports of equipment were made both prior to and after December 11, 2001. The Department will continue to countervail only the exemptions of VAT and duties on imports made under this program after December 11, 2001.

Comment G.7: State Key Technology Renovation Project Fund

Petitioners and Bridgestone argue that the Department should continue to find the State Key Technology Renovation Project Fund (State Key Fund) program countervailable. Both Petitioners and Bridgestone state that the Department should continue to ignore GTC's claim that only a certain portion of the merchandise produced by the subsidized production line went towards the production of subject merchandise. Petitioners and Bridgestone argue that GTC has not provided sufficient evidence to demonstrate which subsidies were tied to non-subject merchandise. As such, Petitioners and Bridgestone argue, the Department should countervail the entire amount of the grant received by GTC. Petitioners also argue that the Department should not exempt subsidies granted prior to the December 11, 2001 cut-off date established in the Preliminary Determination. Instead, Petitioners argue that the Department should attribute all benefits received under this program by GTC before and after the cut-off date.

Both the GOC and GTC argue that the Department should not countervail benefits under the State Key Fund. The GOC and GTC maintain that the Department should not countervail any non-recurring subsidies provided prior to January 1, 2005. The GOC and GTC note that the program was terminated in 2003 and that all benefits under the program were disbursed prior to January 1, 2005. As such, the GOC and GTC argue, the Department should not countervail any benefits under this program.

GTC also states if the Department does decide to countervail benefits received under the State Key Fund program, it should only take into account the amount of subsidies dedicated to the subject merchandise in the benefit calculation.

Petitioners and Bridgestone counter that the GOC and GTC's arguments to not countervail the State Key Fund program because the subsidies were disbursed prior to January 1, 2005 are without merit (see Comment A.4 above). Additionally, Bridgestone argues that GTC's argument regarding the amount of funds from this program dedicated to the production of subject merchandise has not been supported by information on the record.

Department Position

In order to find that a subsidy is tied to a particular product, the focal point of the analysis is not on how a subsidy benefit is used but rather on the purpose of the subsidy based on information available at the point of bestowal. See CVD Preamble at 65402 and 65403. Furthermore, the Department does not aggregate a grant or a loan because based on its use. Id. and 19 CFR 351.524.

Thus, for this final determination, we continue to find that GTC has provided insufficient evidence to demonstrate that these subsidies were tied to non-subject merchandise at the point of bestowal, pursuant to 19 CFR 351.525(b)(5). Also, as discussed above, the Department has adopted December 11, 2001 as the date from which it will identify and measure subsidies in the PRC for purposes of the CVD law. (See Comment A.4.) The record of this investigation shows that certain loan(s) and grant(s) were approved both prior to and after December 11, 2001. The

Department will continue to countervail only the loan(s) and grant(s) approved after December 11, 2001.

H. Government Provision of Land

Comment H.1: Whether the GOC's Provision of Land Is a Financial Contribution

Petitioners argue that the Department should continue to find that the provision of land-use rights constitutes a financial contribution as stipulated in section 771(5)(D)(iii) of the Act. Petitioners state that, in the Preliminary Determination, the Department found that all land in China is owned by the state, and that OTR tire producers enjoy land-use rights transferred from the state. Petitioners argue that the Department has previously determined that the term "good" encompasses all property and that the term property includes the right to possess, use, and enjoy a determinate thing, such as a tract of land. See Softwood Lumber from Canada and IDM. Petitioners also argue that the Department's regulations cite "land lease" as one type of the goods and services provided by governments that is a financial contribution. See CVD Preamble at 65378. Additionally, Petitioners argue that the Department has established ample precedence for treating the provision of land and land-use rights as the provision of a good or a service. See e.g., Live Cattle from Canada at 57043-57046. Petitioners hold that since provision of land is a financial contribution provided by the government, the Department should maintain its finding for this final determination.

Bridgestone also argues that the Department should continue to find that the provision of land-use rights constitutes a financial contribution. Bridgestone states that the Department's finding in the Preliminary Determination is supported by both the Department's regulations (see CVD Preamble at 65378) and past practice. See Softwood Lumber from Canada.

The GOC argues that a government action is countervailable only when a financial contribution confers a benefit and is specific. The GOC states that the transfer of land-use rights is not a financial contribution and, thus, not countervailable. Noting that in defining a financial contribution, section 771(5)(D) of the Act uses the term "means" rather than "includes," the GOC argues that the definition is limited only to the four governmental activities set forth under the Act, and that the transfer of land-use rights does not fall under any of these activities. Specifically, the GOC contends that the transfer of land-use rights cannot be characterized as a transfer of funds or potential transfer of funds or liabilities (section 771(5)(D)(i) of the Act), revenue foregone (771(5)(D)(ii)), or as the government purchase of goods (771(5)(D)(iv)).

The GOC states that the Department's Preliminary Determination finding the transfer of land-use rights to be a government provision of a good or service (section 771(5)(D)(iii) of the Act) is incorrect. The GOC argues that land-use rights are neither a good or service. The GOC states that land does not fall within the meaning of a good or service as those terms are defined in

Black's Law Dictionary.[64] The GOC states that land is a tangible, non-commodity asset, which cannot be construed as either a good or a service, and therefore cannot be considered a financial contribution. The GOC argues that the best characterization within the terms of 19 USC 1677(5)(D) of a situation where all land is held in public trust is that land use is "general infrastructure," such as highway use.

According to the GOC, Petitioners' and Bridgestone's claim that land-use rights should be considered a good under the CVD law's financial contribution hierarchy is incorrect. The GOC disagrees with Bridgestone's argument that a good encompasses all property or possessions. The GOC states that the more appropriate definition is property or possessions, especially movable property. The GOC added that when "good" is used in the plural, as it is in the statute, it is defined as "saleable commodities, merchandise, wares,"[65] or as "property or possessions; now in more restricted senses, movable property."[66] The GOC states that a property right is a tangible, non-commodity asset and is considered realty. The GOC states that as a form of realty, such rights should not be included in the definition of goods. The GOC states that this conclusion is especially relevant in China, in which the state is the ultimate owner of the land.

In its rebuttal brief, TUTRIC disagrees with Petitioners' argument that land-use rights in China are similar to a lease and therefore a financial contribution. TUTRIC states that the land use rights provided to TUTRIC and DCB were granted land use rights, which are not the same as a land lease, and as such do not fall within the definition of a good.

TUTRIC adds that neither Petitioners nor Bridgestone have differentiated between the different types of land-use rights in China (i.e., granted land, rented land, and allocated land). Instead, TUTRIC argues that Petitioners and Bridgestone have lumped all land-use rights in China as "leased land." TUTRIC states rented land and allocated land in China are akin to leased land. However, TUTRIC states, granted land is market oriented and is equivalent to owned real estate, which does not fall within the definition of a good.[67] TUTRIC argues the cases cited by Petitioners are relevant to countervailing land leases but provide no precedent for countervailing land ownership. As such, TUTRIC argues that, since granted land-use rights are parallel to ownership, they cannot be considered a good or a financial contribution. TUTRIC notes that regardless of the definition of the land-use rights, TUTRIC's and DCB's land-use rights were established prior to 2001 and, thus, are not countervailable.

Bridgestone disputes the GOC's contention that land is not a good and thus not a financial contribution. Bridgestone states the Preamble to the regulations recognized that land leases fall within the "goods or services" and "financial contributions" addressed by the Act. See CVD

[64] Black's Law Dictionary defines goods as "{t}angible or moveable personal property, other than money" and services as "an intangible commodity in the form of human effort, such as labor, skill, or advice." See Black's Law Dictionary 8th Ed., at 714-715 and 1399, respectively. The GOC also cites to the Uniform Commercial Code's definition of "goods" as "all things (including specially manufactured goods) which are moveable at the time of identification to the contract for sale other than the money in which the price is to be paid…"
[65] The New Shorter Oxford English Dictionary, 4th Ed. (1993), at 1116.
[66] Oxford English Dictionary, at www.dictionary.oed.com.
[67] Black's Law Dictionary "tangible or moveable personal property."

Preamble. Bridgestone states that the land-use rights provided to TUTRIC and GTC fall within the Department's longstanding practice relating to land. See e.g., Softwood Lumber from Canada and Cold-Rolled Steel from Korea.

Bridgestone also disagrees with the GOC's argument that in a situation where all land is held in public trust it should be regarded as general infrastructure. Bridgestone states that the relevant issue regarding infrastructure is whether it was for "broad societal welfare." Id. Bridgestone states that the Department has found that at times roads, bridges and railroads are not general infrastructure if they can provide benefits to "particular industries, as in the case where a road or bridge is built in an industrial park or port facility that is used only by one industry or a group of industries." Id. at 65378-65379. Bridgestone notes that industrial parks are an example of development that "does not constitute a general infrastructure and will be found countervailable if the infrastructure is provided to a specific enterprise or industry and confers a benefit." Id. Bridgestone argues that land-use rights provided to TUTRIC and GTC were specific to these enterprises and provided a recurring subsidy, and as such are not exempt from the Act as general infrastructure.

Petitioners also point out that, contrary to the GOC's arguments, the Department has relied upon common definitions of goods in the past. Petitioners state the Department has defined land as a good in previous cases. See, e.g., Softwood Lumber from Canada and IDM at 24-25 ("the term 'goods' encompasses all 'property.' The term 'property' includes 'the right to possess, use, and enjoy a determinate thing (either a tract of land or a chattel)'") and CVD Preamble at 65378. Petitioners also state that the Department has a precedent of treating the provision of land and land-use rights as the provision of a good or a service. See, e.g., Live Cattle from Canada. Therefore, Petitioners argue, the Department should find that land is a good and find that it constitutes a financial contribution.

Department Position

Although we are not countervailing the provision of land-use rights to GTC and TUTRIC because they were provided prior to the cut-off date (see Government Provision of Land to SOEs (GTC and TUTRIC) above and Comments H.1-H.7), we are addressing the parties' arguments concerning whether land and land-use rights constitute the provision of a good or service because Starbright's land-use rights were provided after the cut-off date, and, as such, have been analyzed. The Department has correctly identified the nature of the financial contribution for the provision of land-use rights as a "good or service," which is supported by the Department's regulations and past practice. The CVD Preamble explains that the Department specifically contemplated land-use rights as "goods or services" as part of our analysis under 19 CFR 351.511(a)(2)(iii), which looks to the government's price-setting philosophy, costs or possible price discrimination. Citing to our past practice, the Department noted that, "{i}n our experience, these types of analyses may be necessary for such goods or services as electricity, land leases, or water, and the circumstances of each case vary widely. See, e.g. Pure Magnesium and Alloy Magnesium from Canada, 57 FR 30946, 30954 (July 13, 1992) and Venezuelan Wire Rod." CVD Preamble at 65378. Furthermore, in the discussion of "general infrastructure," the CVD Preamble states that:

> Any infrastructure that satisfies this public welfare concept is general infrastructure and therefore, by definition, is not countervailable and not subject to any specificity analysis. Any infrastructure that does not satisfy this public welfare concept is not general infrastructure and is potentially countervailable. The provision of industrial parks and ports, special purpose roads, and railroad spur lines, to name some examples (some of which we have encountered in our cases), that do not benefit society as a whole, does not constitute general infrastructure and will be found countervailable if the infrastructure is provided to a specific enterprise or industry and confers a benefit. See, e.g., Korean Steel.
>
> Id.

The statutory definition of a financial contribution is written broadly in recognition that governments have a variety of mechanisms at their disposal to confer a financial advantage on specific domestic enterprises or industries. The SAA confirms that the sweep of the statute is intended to be broad to ensure that such mechanisms are subject to the countervailing duty law:

> Section 771(5)(D) lists the four broad generic categories of government practice that constitute a "financial contribution." The examples of particular types of practices falling under each category are not intended to be exhaustive. The Administration believes that these generic categories are sufficiently broad so as to encompass the types of subsidy programs generally countervailed by Commerce in the past, although determinations with respect to particular programs will have to be made on a case-by-case basis.
>
> SAA at 927.

Land leases were countervailed by the Department in the past, a fact well known to Congress when it enacted the current CVD law. The SAA is "an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application." 19 U.S.C. § 3512; see, also, Tcherepnin at 336 ("remedial legislation should be construed broadly to effectuate its purposes"). Courts have frequently explained that "a statute should be 'construed' not technically and restrictively, but flexibly to effectuate its remedial purpose." See Zandford (citation omitted).

The Department's past practice of examining land and land-use rights, such as land leases, shows that we have treated them as "goods or services." In Steel Wire Rod from Germany, we examined solely government-owned land-leases under our adequacy of remuneration test and assessed under 19 CFR 351.511(a)(2)(iii) whether the government price was consistent with market principles:

> With respect to the leasing of land, some of the options may be to examine whether the government has covered its costs, whether it has earned a reasonable rate of return in setting its rates and whether it applied market principles in determining its prices. In the instant case, we have found no alternative market reference prices to use in determining whether the government has leased the land for less than adequate remuneration. As such, we have examined whether the government's price was determined according to the same

> market factors that a private lessor would use in determining whether to lease land to a company."
>
> See Steel Wire Rod from Germany at 54994.

In that case, we found that the respondent paid a standard rate charged by the Government of Hamburg to all enterprises leasing land similar to the respondents' land and that the prices were set in reference to market conditions. Thus, it was found to be not countervailable. See also Steel Wire Rod From Italy at 40481 (involving the Department's examination of government leasing of land).

Contrary to the GOC's assertion that a "good" can only include things attached to realty but not land-use rights as realty itself, the Department examined grazing rights on public lands and found them to be a financial contribution as described in section 771(5)(D)(iii) of the Act as the provision of a "good or service." Live Cattle from Canada at 57045. Accordingly, the Department has properly determined that land-use rights provide a financial contribution as "goods or services" within the meaning of the Department's statute and regulations. Moreover, the Department has properly used the adequacy of remuneration test to determine whether the sale of land-use rights conveyed a benefit.

Comment H.2: Cut-Off Date for Acquisition of Land-Use Rights

Petitioners state that in the Preliminary Determination, the Department found GTC was an SOE, and as such was entitled to benefits from allocated land-use rights under China's laws. Petitioners argue that based on the information provided at verification the Department should countervail all tracts of land that the Department has reviewed. Additionally, Petitioners state that this should also include land transferred before December 11, 2001.

The GOC and GTC argue that any acquisition of land-use rights in China prior to 2005 is not subject to the CVD law. The GOC and GTC argue that January 1, 2005 is the earliest date from which a reasonable party could have inferred the Department's intention with regard to applying the CVD law to NMEs. (See Comment A.4 above). As such, the GOC and GTC argue any land-use rights transaction in which the terms and conditions were fixed prior to that date do not require a CVD analysis. The GOC and GTC note that the cut-off date used by the Department in the Preliminary Determination and LWRP from the PRC was December 11, 2001. The GOC states that if the Department continues to use this date as the cut-off date all acquisitions of land-use rights made by respondents prior to this date should not be countervailed.

In their rebuttal briefs, the GOC and GTC state that Petitioners' and Bridgestone's argument that the Department should countervail land-use rights regardless of when they were originated is unlawful and contradictory to the evidence on the record. The GOC and GTC state that, as explained in their case brief, the Department should not countervail alleged subsidies prior to January 1, 2005. The GOC and GTC state that the Department has concluded in the Preliminary Determination that land-use rights held prior to December 11, 2001 are not countervailable. The

GOC and GTC state that other ongoing CVD investigations involving China state that subsidies prior to December 11, 2001 are not subject to the CVD law. See, e.g., LWRP from the PRC. As such, the GOC and GTC argue, if the Department does not use January 1, 2005 as the cut-off date, it should not countervail any land-use rights prior to December 11, 2001.

In their rebuttal briefs, Petitioners state that GTC argues that the terms in its land-use rights dictate that they are not subject to the CVD law. Petitioners state that GTC is an SOE and thus is entitled to benefit from allocated land-use rights. Petitioners state that in the Preliminary Determination, the Department found at least one tract of land to be allocated land-use rights.

Department Position

As explained in detail in Comment A.4, the Department has determined that any subsidies provided by the GOC subsequent to December 11, 2001 can be subject to the CVD law, but any subsidies provided prior to this date are not subject to the CVD law. Based on the results of verification and our evaluation of parties' comments, we have determined that the land-use agreements in effect during the POI for GTC and TUTRIC were long-term agreements and all of the essential terms and conditions associated with GTC's and TUTRIC's land use were established prior to the December 11, 2001 cut-off date. Because GTC's and TUTRIC's long-term land use agreements were established prior to December 11, 2001, we have not evaluated whether the government's provision of land-use rights to these companies was countervailable. Furthermore, because we have determined that December 11, 2001 is the date from which subsidies in the PRC can be identified and measured, the issue of whether to use a 2005 cut-off date is moot. Since Starbright's land-use agreements were provided in 2006, they are potentially countervailable. All Starbright-specific land use issues are addressed in Government Debt Forgiveness and the Provision of Land to Starbright Pursuant to Its Change in Ownership above and in Comments F.11-F.12.

Comment H.3: Whether the GOC's Provision of Land Is a Recurring Benefit

Petitioners argue that the Department should continue to find that the provision of land to GTC confers a recurring benefit. Petitioners state that in the Preliminary Determination, the Department found that the most appropriate way to treat the government's provision of allocated land-use rights was to treat it as a recurring benefit based on the reasoning that allocated land-use rights are more similar to a lease or rental agreement than to a one-time purchase. Petitioners argue that this reasoning was based on the fact that only nominal upfront fees are paid with the transfer of allocated land-use rights, and annual fees are assessed for the use of these rights similar to rental fees. Therefore, Petitioners argue, the Department should maintain its position on this matter and continue to find these allocated land-use rights to be recurring benefits.

Bridgestone contends that, at verification, the Department confirmed that when TUTRIC and GTC received their land-use rights, the ultimate ownership remained with the government. Bridgestone also notes that the land-use rights received by TUTRIC and GTC have definitive terms which can be re-negotiated at the conclusion of the land-use rights agreement. Bridgestone notes that the government also retains control over the transfer of land-use rights. On this basis, Bridgestone contends, the Department should find that since no title transfers, the land-use rights at issue are more similar to a longer-term lease. Therefore, Bridgestone argues this transfer should be considered a recurring benefit. Bridgestone states that the Department has previously determined this issue. See Live Cattle from Canada at 57040. According to Bridgestone, whether land-use rights are paid for in installments or in a lump sum is not relevant to the Department's analysis. Rather, Bridgestone argues that whether the title to the land transfers to the beneficiary should determine whether the subsidy is a recurring or non-recurring subsidy.

In its rebuttal brief, Bridgestone notes that the GOC, GTC and TUTRIC argue that land-use rights provided prior to December 11, 2001 are not countervailable, and refers specifically to GTC's argument that non-recurring subsidies prior to this date are not subject to the CVD law. Bridgestone states that regardless of when the land-use rights were provided, they are a form of land lease, and thus a recurring benefit, and countervailable in this investigation. Regarding granted land-use rights, Bridgestone states that the GOC has confirmed that although land-use rights may be transferred to enterprises, the GOC retains ownership of all land in China and that a grantee will generally hold rights somewhat analogous to a tenancy in years: the holding is governed by contract and duration of the grant is for a fixed term based on the nature and use of the tract. See GOC Case Brief, at 41. As such, Bridgestone states, although a beneficiary of granted of land-use rights makes a lump sum payment at the time of the grant, it is still a land lease. Bridgestone adds that the GOC has confirmed that rented land is essentially a sub-category of granted land. See Guizhou Province Verification Report at 13. Therefore, the Department should not make a distinction between rented and granted land, and should consider both to be a form of land lease. Bridgestone states that in light of the GOC's characterization of land as "analogous to a tenancy in years," the Department should find that these land subsidies are recurring benefits. Claiming that the December 11, 2001 cut-off date used in the Preliminary Determination is applicable for non-recurring subsidies only, Bridgestone states that this cut-off date is not applicable for land-use rights at issue for GTC and TUTRIC since they are recurring subsidies.

TUTRIC counters that Bridgestone mischaracterizes its land-use rights. Citing to the Department's regulations for determining recurring and non-recurring subsidies,[68] TUTRIC states that its granted land-use rights are the equivalent to land ownership, in which the land-use right is virtually identical to land that is owned outright. TUTRIC states that the land provided on a fifty-year industrial lease is not a benefit TUTRIC can expect on an ongoing basis from year to year.

[68] "If a subsidy is not on the illustrative lists …, the Secretary will consider the following criteria in determining whether the benefits from the subsidy should be considered recurring or non-recurring:

(i) Whether the subsidy is exceptional in the sense that the recipient cannot expect to receive additional subsidies under the same program on an ongoing basis from year to year;

(ii) Whether the subsidy required or received the government's express authorization or approval (i.e., receipt of benefits is not automatic), or

(iii) Whether the subsidy was provided for, or tied to, the capital structure or capital assets of the firm.

19 CFR 351.524(c)(2).

See TUTRIC Verification Report at 13 and 20. TUTRIC states that since the land-use right is for fifty years, its benefits are not automatic. TUTRIC also notes that all of the company's capital assets sit on the land in question, which is significantly longer than the AUL of tire-making assets. Thus, TUTRIC concludes, if the Department finds the provision of land countervailable in this investigation, it should consider TUTRIC's land a non-recurring benefit.

Petitioners state with respect to allocated land, the Department does not need to measure benefits prior to the POI. In the Preliminary Determination, Petitioners state the Department found that allocated land-use rights are recurring benefits because they "more closely resemble a lease or rental rights agreement than a one-time purchase." Preliminary Determination at 71369-71370. Petitioners argue that regardless of when an allocated land-use rights agreement was entered into, the recurring benefits of those rights need only be identified and measured for the POI. Petitioners state that the Department does not need to examine whether the land-use rights were originally granted during the AUL or any other period applicable to a non-recurring subsidy. Instead, Petitioners argue, these land-use rights should be treated similarly to outstanding loans. Petitioners state that in the case of loans, the recurring benefit is calculated based on the loan amounts and interest payments during the POI – the original date of the loan agreement is irrelevant for the calculation. Petitioners argue that, similarly, as long as land-use rights were used during the POI, the provision of these rights should be considered a recurring benefit during the POI, regardless of when these rights were first granted.

Department Position

Contrary to Petitioners' and Bridgestone's arguments, our analysis of all of the information and documentation on the record has led us to conclude that both GTC's and TUTRIC's land-use rights were provided and approved prior to the December 11, 2001 cut-off date. See GTC Verification Report and TUTRIC Verification Report. It is clear from the record that these two companies' land-use agreements are long-term and were entered into and approved by the relevant government authorities prior to the cut-off date. See GTC Verification Report at 11-14 and TUTRIC Verification Report at 12-13. Therefore, even though these companies may be making yearly payments under these agreements, all of those payment terms were agreed to and approved by the government prior to the cut-off date and there have been no amendments or changes to those agreements that occurred after the cut-off date. Thus, we have concluded that these land-use agreements cannot be reached for purposes of our subsidy analysis.

Simply because a company is paying funds on a yearly basis does not automatically mean that there is a potential subsidy that arises every year. For example, when the Department evaluates long-term government loans that are still outstanding during the period of investigation, we evaluate whether at the point of bestowal, the interest rates charged on the government loan were less than, or higher than, on a comparable commercial loan. If the rate on the government loan was higher than on the benchmark loan, then we would normally not find the loan to be countervailable (see 19 CFR 351.505 (a)(5)(i)), even if during the POI the interest rate on the government loan might be significantly lower than current interest rates. Our decision not to countervail the provision of land-use rights provided to GTC and TUTRIC because all of the essential terms and conditions were established by the GOC before the cut-off date is also consistent with the approach taken in Sulfanilic Acid from Hungary, as well as in CWP from the PRC.

With respect to the government's provision of land-use rights to Starbright, these were provided after the cut-off date. Therefore, we have evaluated Starbright's land-use agreements and determined that the government provided a subsidy to Starbright. For a complete discussion, see Government Debt Forgiveness and the Provision of Land to Starbright Pursuant to Its Change in Ownership above and in Comments F.11-F.12.

Comment H.4: TUTRIC Land Countervailability

Petitioners state that, in the Preliminary Determination, the Department found TUTRIC was an SOE, and as such was eligible for allocated land-use rights. Petitioners state that TUTRIC pays a yearly fee for land-use rights that are more typical of allocated, rather than granted, land use rights. Petitioners add that the upfront fee paid by TUTRIC is more accurately characterized as an expropriation fee. As such, Petitioners argue that TUTRIC's land-use rights were allocated. Additionally, Petitioners state that DCB was provided land from the government free of charge and that DCB pays an annual fee for the land. As such, Petitioners argue, this land should be considered allocated land-use rights and included in TUTRIC's land benefit calculation.

TUTRIC argues that the Department should continue to not countervail either TUTRIC's or DCB's land for this final determination. TUTRIC also notes that in the Preliminary Determination, the Department limited the application of this program to companies with allocated land-use rights. TUTRIC states that the Department erred in suggesting that the land was allocated, arguing that information on the record indicates that the land-use rights were granted. TUTRIC notes, for example, the Tianjin land bureau granted the land-use rights for a 50-year period. TUTRIC argues that this limitation to a finite period of time is not a characteristic of allocated land-use rights, which do not expire. TUTRIC argues that in the LWRP from the PRC – Post-Preliminary Analysis, the Department found that a 50-year land-use term was granted.

TUTRIC also notes that the Department has found that allocated land-use rights may not be used by an FIE or a foreign joint venture company, even if the company is majority state-owned. See Loan Benchmark Memorandum at Attachment 1. TUTRIC argues that because it is an FIE, the company could not have retained allocated land-use rights when it received its land-use rights in 1994. TUTRIC argues even if these land-use rights were allocated when it received them, those rights were converted to granted status when TUTRIC merged with the Dolphin Group. TUTRIC states that when these companies merged, new certificates were issued stating the land had been granted. See TUTRIC Second Supplemental Response at Exhibit SSCVD-19.

TUTRIC also argues that payment of a fee or tax does not demonstrate whether a land-use right is allocated or granted. TUTRIC states that at verification, the Department verified that land-use fees were paid by TUTRIC on a yearly or bi-annual basis. See TUTRIC Verification Report at 13.

This fee, TUTRIC states, is tied to the land use tax required for FIEs and foreign individuals. As such, this fee is based on the company's status not on the status of the land-use rights.

TUTRIC argues that its payment in 1985 for land was not nominal and does constitute a legitimate upfront fee. TUTRIC states that its payment in 1985 demonstrates that it "purchased its land-use rights, and thus did not require an additional payment in 1998 despite the Department's claim that the amount was not nominal." TUTRIC also states that a comparison of this amount to a world market benchmark cannot indicate whether it is nominal but can only demonstrate whether it was for LTAR. TUTRIC states that for something to be nominal, it must be relative to the context in which the prices were paid (i.e., it must be compared to other prices paid within that market at the same time). TUTRIC states that the price would not be considered nominal if other actual prices in China at that time were close to that price. As such, TUTRIC argues the Department should not reject this upfront payment made by TUTRIC for its land.

TUTRIC also states that all land-use rights were obtained by TUTRIC and DCB in 1998, prior to the December 11, 2001 cut-off date. As such, TUTRIC contends, these land-use rights are not countervailable in this investigation. However, TUTRIC states that if the Department continues to find that these land-use rights are countervailable, it should attribute these subsidies to the consolidated sales of TUTRIC and DCB since the land-use rights are in the Dolphin Group name.

TUTRIC states that both the Petitioner and Bridgestone relied upon findings in the Preliminary Determination, and that such findings were flawed. TUTRIC states that Petitioners and Bridgestone support the Department's finding that TUTRIC's upfront fee was "nominal." TUTRIC disagrees with the Department's methodology to determine whether this fee was "nominal." See Land Analysis Memorandum at 2-3. In order to determine whether the fee was "nominal," TUTRIC states, the Department deflated the Thai Benchmark from 2007 to 1986 and then compared this price to the fees paid by TUTRIC. TUTRIC states that this argument presumes that the value of the land in these two areas is comparable to begin with and that the value of these tracts of land changed at the same levels over twenty years. TUTRIC argues that, at the very least, the Department should compare land in Tianjin at the same period in time to make an estimate of whether the fee is nominal. TUTRIC states that since both TUTRIC and DCB held granted land-use rights by 1998, the Department should revise its land analysis accordingly.

Moreover, TUTRIC argues, the Department ignored crucial facts in its Preliminary Determination that demonstrate TUTRIC's land-use rights were not allocated but granted. First TUTRIC argues that TUTRIC's land was mortgaged. TUTRIC states that the August NME Status Memorandum states that allocate land-use rights do not expire and may not be transferred, leased or mortgaged, whereas granted land-use rights may be transferred, leased or mortgaged. See August NME Status Memorandum at 43. TUTRIC states that the land-use term in this case is fifty years, and as such should be regarded as granted land-use rights. TUTRIC states that in its LWRP from the PRC – Post-Preliminary Analysis the Department clarified the rule for determining whether granted land-use rights are countervailable. Id. at 5 ("the due dates for payment are stated in the contracts for the land-use rights. Where these dates are clearly discernible, we have used them to determine whether the transaction gives rise to a countervailable benefit during the POI. Where they are not discernible, or where we do not have the land-use rights contract, we have relied on the date when the 50-year land-use term began. Any subsidy that does not provide a benefit during the POI is not countervailable in this investigation"). TUTRIC states that the new land-use certificates were issued in March of 1998. TUTRIC argues that these perceived financial contributions were made prior to the December 11, 2001 cut-off date, and any benefits during the POI are not countervailable.

In their rebuttal brief, Petitioners dispute TUTRIC's arguments that its land-use rights are granted because the terms of the rights were limited to fifty years. Petitioners state that whether TUTRIC's land-use rights had time limits is not indicative of whether the right was granted or allocated. Petitioners state that at verification the GOC officials stated that, after 1990, time limits were imposed on newly acquired allocated lands. See GOC Verification Report at 11.

Petitioners also rebut TUTRIC's contention that because the company is an FIE, it is not eligible for allocated land. Petitioners note, at verification, officials from the THAB stated that, "within the context of the post-1990 era, ownership is irrelevant to eligibility for allocated rights, and that only purpose matters." See Tianjin Government Verification Report, at page 7.

Petitioners disagree with TUTRIC's argument that the 1985 payment was not nominal. Petitioners state TUTRIC contends that its land-use rights in 1998 were granted because of its incorporation into Dolphin Group, based on the government statements regarding status of land-use rights in 1998. See Tianjin Government Verification Report at 7 ("given the state of land law in 1998, Dolphin Group could only have been provided with granted rights when it was issued a new certificate"). Petitioners state that TUTRIC appears to argue that the land-use rights in question were "granted" and paid as granted land in 1985. Petitioners argue that TUTRIC contends that this demonstrates that TUTRIC purchased its land-use rights, and thus did not require an additional payment in 1998 despite the Department's claim that the amount was not nominal. Petitioners argue that TUTRIC has provided no evidence demonstrating that these1985 land-use rights were granted. Petitioners contend that information on the record shows that TUTRIC is an SOE, it never paid a grant fee, and that the fee it did pay for the land-use rights was nominal at best. Regarding DCB's land-use rights, Petitioners state that information on the record shows that the land was provided free of charge and that it pays an annual fee for the land. Petitioners state that these facts for both TUTRIC's and DCB's rights are consistent with allocated land-use rights.

Department Position

Since the Department has determined that the essential terms and conditions of TUTRIC's land-use agreements were established prior to the December 11, 2001 cut-off date, it is not necessary to address these arguments. We note that Petitioners' and Bridgestone's arguments concerning whether we should countervail the land-use agreements as recurring benefits are addressed in Comment H.3.

Comment H.5: Whether the GOC's Provision of Land to TUTRIC and GTC Is Specific

Petitioners argue that the Department should continue to find that the GOC's provision of land-use rights is specific. Petitioners state that, in the Preliminary Determination, the Department recognized allocated land-use rights in China are granted on a preferential basis to a limited number of enterprises, primarily SOEs. Petitioners argue that in the Preliminary Determination, the Department found that allocated land-use rights are substantially different from other land-use rights, arguing that they are transferred to certain users for a nominal upfront fee, are time-limited and cannot be transferred. As such, Petitioners argue that the provision of allocated land-use rights is de jure specific because it is limited by law to a group of enterprises.

Bridgestone argues that the GOC's provision of land to TUTRIC and GTC is specific. Bridgestone states that the provision of land-use rights in China is driven by the nation's industrial policies, in which the national government instructs local and provincial authorities to abide by these policies when determining land-use rights and corresponding compensation. Moreover, each land-use rights negotiation results from company-specific negotiations.

Bridgestone maintains that the land-use rights provided to TUTRIC resulted from company-specific negotiations with the Tianjin Municipality. Bridgestone argues that TUTRIC is located in a special industrial zone indicative of the preferential provision of land-use rights. Bridgestone holds that the land-use rights, from which TUTRIC benefits, have definite terms, with ownership of the land remaining with the state. Bridgestone notes that the 1985 Land Use Confirmation Notice issued by the Tianjin Municipal Planning & Design Administration states "the land confirmed in this notice is of collective-farming land, which will be turned into allocated land upon the notice of Municipal Land Acquire office." See TUTRIC Verification Report at 13. As such, Bridgestone argues TUTRIC land-use rights originated from the application of governmental discretion and are thus both de jure and de facto specific as stipulated in section 771(5A)(D)(i) of the Act.

Bridgestone also argues that the Department should countervail the land subsidy benefits provided to DCB. Bridgestone argues that the record demonstrates that the Dolphin Group and DCB are the same company, and that since DCB and TUTRIC are cross-owned, subsidies attributable to DCB are in turn attributable to the consolidated sales of DCB and TUTRIC. Bridgestone states that DCB obtained land free of charge and pays a fee using the same schedule as TUTRIC, which indicates that DCB's land-use rights are allocated land-use rights. Bridgestone adds that TUTRIC has acknowledged that DCB is an SOE and holds allocated land use rights. As such, Bridgestone argues, the Department should find that DCB land-use rights are specific and thus countervailable.

Bridgestone states that land-use rights awarded to GTC resulted from company-specific negotiations with the government. Bridgestone holds that GTC is an SOE and thus receives preferential land-use rights. Bridgestone also states that GTC's land-use rights are specific because the company is located in the Guiyang High-Tech Industrial Zone. Bridgestone states that permission to operate in this zone and the prices charged in this zone are determined by the relevant authorities. Bridgestone states that the Department has countervailed land-use rights in similar zones in previous cases. See, e.g., LWS from the PRC – Preliminary. Bridgestone also states that land-use rights in the Guiyang High-Tech Industrial Zone are specific because they are focused on export-oriented enterprises.

The GOC argues that even if the Department found the transfer of land-use rights to provide a financial contribution and benefit, it is not specific and thus not countervailable. The GOC states that in order to be countervailable a subsidy must be either de jure or de facto specific. The GOC states that in order to find an affirmative finding of de jure specificity, the Department must establish that the administration and transfer of land-use rights in the jurisdiction at issue is expressly limited to an enterprise or industry. In order to do this, the GOC contends, the Department must examine central and local governments land laws to determine whether the laws limit to the provision of land-use rights to an enterprise or industry within the jurisdiction. The GOC argues that there is no evidence that land allocations are made preferentially or exclusively to the OTR industry or enterprises in which the state has an interest. As such, the GOC argues the transfer land is not de jure specific pursuant to 771(5A)(D) of the Act.

The GOC argues that in order to find the transfer of land-use rights to be de facto specific, the Department must examine whether the local authority that provided the land applied its established procedures and methodologies for awarding and pricing the relevant tract. The GOC states that if no exercise of discretion in favor of the recipient is found, the provision of land is not specific. The GOC argues that the record demonstrates that the land-use rights were not provided to all of the respondents in accordance with well-established procedures and methodologies.

GTC argues that the provision of land-use rights to GTC during the POI is not specific within the meaning of section 771(5A)(D)(i) of the Act. GTC states that the only allegation on the record with respect to specificity is based on inferences of preferential treatment to enterprises in which the state has an interest. GTC disputes its designation as an SOE by the Department, arguing that the Department has not provided a definition for the term. See Comment C.1. Additionally, GTC states that it is a publicly listed company that operates without interference from the state. GTC states that there is no evidence on the record demonstrating that land-use rights are provided on a preferential basis to enterprises in which the state has an interest.

In its rebuttal brief, the GOC states that Petitioners' and Bridgestone's allegation regarding specificity of the transfer of land-use rights appears to be based on the contention that the GOC provides allocated land-use rights preferentially to enterprises in which the state has an interest. The GOC argues that there is no record evidence that allocated land-use rights are made preferentially to enterprises in which a state has an ownership interest.

The GOC also disagrees with Bridgestone's argument that certain land-use rights are de facto specific because they were acquired on a contractual basis, involving negotiations between the company and the GOC. The GOC states that all land in China is owned by the state, and so all acquisitions of land-use rights require negotiations with the state. However, the GOC argues, these negotiations were not specific to any enterprise during the POI, and involved commercial as well as administrative considerations. The GOC states that the evidence on the record demonstrates that the land-use transactions at issue took place in accordance with the procedures governing these transactions. As such, the GOC states that the Department cannot find that land-use transactions are specific in this final determination.

GTC disputes the Petitioners' and Bridgestone's argument that GTC's land-use rights are specific because they were received due to GTC's status as an enterprise in which the GOC has an interest. GTC states that the conditions in which it received its land use rights are not specific to the company. Instead, GTC argues, these land-use rights reflect the accepted regulations and procedure of an era in which allocated land-use rights predominated, and granted land-use rights were in limited use. GTC states that it would be unlawful for the Department to countervail all its land-use rights transactions, given the Department's statutory and regulatory mandate to assess the "specificity" of each land-use rights transaction under investigation.

In its rebuttal brief, Bridgestone argues that both TUTRIC's and GTC's land use rights were obtained through discretionary action by the government. As such, the land-use rights at issue are de jure specific under the Act. Regarding TUTRIC's land-use rights, Bridgestone first notes that the GOC has agreed with the Department that the terms of allocated land-use rights are not market-driven, and as such, should be considered specific under the Act. Bridgestone states that the Tianjin Municipality's land-use certificate indicates that the land-use rights provided to TUTRIC were allocated land-use rights. See TUTRIC Verification Report at 13. Despite this, Bridgestone argues, TUTRIC argues that these land use-rights should be considered granted because an FIE could not be provided with allocated land-use rights. Bridgestone states that evidence on the record demonstrates that TUTRIC was provided allocated land-use rights on a preferential basis that warrants a finding of specificity under the Act. To further establish TUTRIC's preferential treatment in other aspects of its land-use rights, Bridgestone notes that TUTRIC only made partial payments on its land fees in 1995, 2001, and 2003, and pays annual fees based on the rate for "Grade 4" land despite the fact that the land-use rights were for "Grade 5" land. See TUTRIC Verification Report at 13.

Bridgestone also disagrees with GTC's argument that the fact that its land-use rights were obtained "when non-market features in land transactions were slow to abate," means that the CVD law should not be applied to its acquisition of those land-use rights. Bridgestone also states that regardless of the category in which the land-use rights were provided to GTC, evidence on the record indicates that the GOC provided land-use rights on a de jure specific basis to the company.

TUTRIC states that the Department should reject Petitioners' and Bridgestone's specificity arguments that: 1) TUTRIC's land was expropriated and thus specific; and 2) TUTRIC's land was collective land and was turned into "allocated" land. TUTRIC states that the argument that expropriation requires special government action and is thus specific, ignores the situation in China in the mid-1980s. TUTRIC states that it was not until the early 1980s that China began to separate land ownership from the right to use land. TUTRIC argues the Department should not use information from that time in determining a possible subsidy benefit the company received during the POI.

TUTRIC states that the mention of the word "allocated" in the 1985 Land Use Confirmation Notice (see TUTRIC Verification Report at 13) has no bearing on the Department's current analysis of specificity. TUTRIC notes that land laws began to change significantly in 1986. See August NME Status Memorandum at 41. As such, the meaning of allocated in the 1985 Land Use Confirmation Notice is different than the current meaning.

Petitioners state the GOC's argument that the provision of allocated land-use rights is not countervailable is incorrect. Petitioners state the Department has recognized that allocated land-use rights in China are granted on a preferential basis to a limited number of enterprises, primarily SOEs. As such, Petitioners argue, the provision of these land-use rights is de jure specific because it is specifically limited by law to a group of enterprises.

Department Position

With respect to GTC and TUTRIC, we need not address these arguments since the essential terms and conditions of their land-use agreements were established prior to the cut-off date. With respect to Starbright, the issue of whether the provision of land-use rights to Starbright is specific is addressed in Government Debt Forgiveness and the Provision of Land to Starbright Pursuant to Its Change in Ownership above and in Comments F.11-F.12.

Comment H.6: Whether the GOC's Land-Use Rights System Operated on Market Principles During the POI

The GOC argues that China's land-use rights system has changed dramatically since 1990, and, as such, it operated on market principles during the POI. The GOC holds that land in China is either owned by the people (i.e., the state) or owned collectively at the local village level. If the land is to be used by a third party, that party will pay a requisition fee. The GOC explains that land-use rights may be transferred through land grants, land lease, or land allocation.

According to the GOC, under granted land-use rights, the state retains ownership of the land itself. The GOC states that the holding of land-use rights is governed by contract and the duration is for fixed term based on the nature and use of the tract of land. The grantee may transfer the land use rights to a third party. The GOC argues that the transfer of land-use rights at both the primary (i.e., state to grantee) and secondary (i.e., grantee to third party) markets is done based on market principles.

The GOC states that "rental" land use rights can also be transferred. The GOC notes that, similar to granted land-use, the holding for rented land is governed by contract, and the duration is for a fixed term based on the nature and use of the tract, the only difference being that payments are made in period installments as opposed to an upfront payment. The GOC notes that while this land-use right may not be sold or mortgaged, it may be subleased.

According to the GOC, the third type of land-use rights transfer, allocation, may not be leased, mortgaged or sold unless it is first converted to a grant. The GOC states that allocated land use rights are not market driven, and that allocated land-use rights transactions typically predate the laws and regulations currently applied to the majority of land-use rights in China. Claiming that

that the practice of allocating land-use rights in exchange for administratively determined consideration effectively ended in 2001, and the incidence of allocated land in China is declining, the GOC argues that the record does not demonstrate that the GOC transfers land for free, nor does it simply give away land.

GTC states that the Chinese market for land-use rights has undergone significant changes over the past two decades, and as a result, a market-oriented, real property sector is emerging. GTC cites to the 1986 General Principles of Civil Law (see GOC Factual Submission at GOC-FACT-1) and the Land Administration Law of 1988 (see GOC Factual Submission at GOC-FACT-4), which provided the basis for commercialization of land-use rights. However, GTC states, despite these developments, China continued to hold many non-market features in land transactions. GTC states that the company received its land-use rights near the time these changes took place, and thus these transactions should not be subject to the CVD law.

Neither Petitioners nor Bridgestone directly addressed this issue in their rebuttal briefs.

Department Position

Based on the results of verification and our evaluation of the parties' comments, we have determined that the land-use agreements in effect during the POI for GTC and TUTRIC were long-term agreements whose essential terms and conditions were established prior to the December 11, 2001 cut-off date. With respect to Starbright, the specific circumstances surrounding its land-use rights do not fall squarely under any of the types of land-use described by the GOC. Therefore, we have addressed comments on Starbright's receipt of land-use rights in Government Debt Forgiveness and the Provision of Land to Starbright Pursuant to Its Change in Ownership above and in Comments F.11-F.12. Accordingly, there is no need to respond to the parties' arguments concerning the various types of land-use rights available in the PRC.

Comment H.7: Land Benchmark

Petitioners argue that the Department should continue to use an external benchmark when measuring the benefits received in the provision of land. Petitioners state that, as in the Preliminary Determination, Thailand continues to provide a reasonable source for a benchmark price. Petitioners note the similarities between the land market in China and Thailand (i.e., geographic proximity, similar per capita income, similar population density) as well as Thailand's competition with China as a production base for foreign investors in Asia. See Preliminary Determination and LWS from the PRC – Preliminary.

Petitioners argue, however, that the Department should make some modifications to this benchmark price in this final determination. Petitioners state that the upfront purchase prices for serviced industrial land plots in Thailand relied upon by the Department were reported as a "per month" price. As such, Petitioners argue that the monthly purchase price should first be multiplied by twelve before it is multiplied by the annual yield percentage for real estate investment trust.

Petitioners suggest a simpler methodology for a benchmark would be for the Department to rely directly on rental rates for industrial property. Petitioners state that the same firm that published the real estate market providing the purchase prices relied upon in the Preliminary Determination also publishes rental rates.

Petitioners also suggest that a separate rental benchmark and purchase price benchmark be calculated. Petitioners state that this purchase price benchmark should be used to measure the benefit conferred by land-use rights not allocated in order to evaluate the significance of upfront transfer fees paid upon purchases of allocated land.

Bridgestone states that in the Preliminary Determination, the Department correctly determined that it could not use market prices in China or world market prices as discussed in the Act to determine the appropriate benchmark rate. See 19 CFR 351.511(a)(2). Bridgestone argues that the Department should continue to calculate a benchmark from "comparable market-based prices in a country at a comparable level of economic development that is in a reasonably proximate region to China." See Preliminary Determination at 71369.

Bridgestone, however, argues that Taiwan provides the most appropriate market benchmark for land-use rights in this investigation. Bridgestone states that based on Taiwan's proximity,[69] proportions of available land in China and Taiwan,[70] Taiwan's significant tire manufacturing operations,[71] and competition between Taiwan and China to attract manufacturing firms and investment,[72] Taiwan is the most comparable market to China. Additionally, Bridgestone notes that data available for land in Taiwan include prices for land use in connection with the manufacture of OTR tires.[73] As such, Bridgestone argues Taiwan provides the most appropriate market for benchmark prices in this investigation.

Bridgestone argues if the Department concludes that Taiwan is not the most appropriate benchmark for this investigation, it should continue to use Thailand for the benchmark. Bridgestone states that Thailand is a market economy near China that is at a similar stage of economic development and manufactures similar products. Additionally, Bridgestone argues that manufacturers look at both China and Taiwan when considering where to locate.

The GOC and GTC argue the Thailand benchmark used in the Preliminary Determination was incorrect. The GOC and GTC argue that the CVD law requires the use of a benchmark in China for land-use rights. The GOC and GTC state that land presents unique issues in determining an appropriate benchmark, stating that land is not a commodity and its value comes from uses to

[69] See Bridgestone Pre-Preliminary Comments at 27-28.
[70] Id.
[71] See "China and You: Expect More Tire Imports in the Years to Come," *Modern Tire Dealer*, March 2006, Bridgestone Land Submission at Exhibit 3.
[72] See e.g., "Taiwan 'must alter' to compete with China," *Financial Times*, June 20, 2002, Bridgestone Pre-Preliminary Comments at Exhibit 10.
[73] See "China and You: Expect More Tire Imports in the Years to Come," *Modern Tire Dealer*, March 2006, Bridgestone Land Submission at Exhibit 3; see also "Tire Storage" Tire Repair Solutions Focus," Bridgestone Pre-Preliminary Comments at Exhibit 10.

which it can be put. The GOC and GTC argue that land value is dependent on its location. As such, the GOC and GTC state that the Department should only assess the adequacy of remuneration under one of two options: 1) benchmark prices in the country under investigation (i.e., China); or 2) determining whether the government price is consistent with market principles in the country under investigation (i.e., China). The GOC and GTC argue that under similar reasoning, an external land price benchmark is not permissible under the statute because the value of land in another country is based on the derived demand for land in that other country and not in the country under investigation.

The GOC and GTC state that the Thailand price used in the Preliminary Determination is based on factors related to factors specific to the country including: transportation costs, utility services, local regulations and taxes. The GOC and GTC state the Department's basis for using Thailand is flawed. The GOC and GTC state that China was, until recently, a centrally planned economy and due to its size has a unique development. The GOC and GTC state that the size of China makes comparing land within different provinces within China very difficult. Further, they argue that the close proximity of Thailand to China does not justify using Thailand as the benchmark for three very different locales within China. The GOC and GTC also note the difference in per capita income in China ($2010) and Thailand ($2990). See Preliminary Determination at 71369. The GOC and GTC also argue that population density in China (141 persons per square kilometer) and Thailand (127 persons per square kilometer) is as indicative of difference as it is similarity. See id.

The GOC argues that China's emerging real property market produces valid benchmarks for land-use rights. The GOC states the sector is driven by market forces. The GOC states that the Department relies heavily on the fact that land in China is state-owned or collectively owned as the basis for not using benchmark prices within the country. The GOC argues that this market structure is not unique to China, stating England has a similar market. The GOC states that the significant issue in this case is not the existence of private land ownership, but what rights to use property exists and whether there is an adequate market and data that can be used to value those rights.

The GOC states that China's market for land use-rights has gone through significant changes over the last two decades. The GOC states beginning with the 1986 General Principles of Civil Law and the Land Administration Law of 1988, China began implementing laws designed to modernize and strengthen land rights within the country. The GOC notes specifically the Circular on Enhancing Administration of State-Owned Assets (see GOC Factual Submission at GOC-FACT-15), which ended the practice of land allocations based purely on administrative determined consideration.

The GOC states that recent findings show that the land market in China is operated on a market basis. The GOC notes a report by the World Bank finding that Chinese property values are largely market determined. See GOC Land Submission at Exhibit 3. The GOC also notes that the 2007 International Property Rights Index, ranked China 42 out of 70 in terms of law and practice regarding property rights and their protection. The GOC states that a number of countries which were found to have weaker property rights protection than China (such as Argentina, Brazil, France, Mexico, Russia, and Venezuela), are treated as market economies by the Department, and the Department routinely accepts property values as determined in these countries.

The GOC states that the Department justified its rationale for an out-of country benchmark in the Preliminary Determination by citing to the Department's finding in Softwood Lumber from Canada. In Softwood Lumber from Canada, the Department rejected the first tier benchmark (i.e., actual transaction prices) in calculating the adequacy of remuneration for stumpage, the right to harvest standing timber, and used the second tier (i.e., world market price) benchmark, offering stumpage prices in the United States.

The GOC states that the Department's finding in that review was rejected by the NAFTA panel. See NAFTA Binational Panel – Softwood Lumber from Canada at 34. In its finding, the Panel stated that it would be impossible to adjust U.S. stumpage prices to make them compare to Canadian stumpage prices. The GOC also states that Article 14(d) of the SCM Agreement states that an in-country benchmark is to be used if available.[74] According to the GOC, the WTO appellate body has concluded that adjusting a benchmark composed of prices in one country to reflect conditions prevailing in another country would be difficult and unlikely to succeed. The GOC states that China's Accession Protocol reinforces the preference for domestic benchmarks and restricts any deviation from the SCM Agreement to circumstances in which there are "special difficulties" in the application of the methodology. See Accession Protocol at art. 15(b). The GOC states that no special circumstances exist in this case. As such, the GOC argues the Department should use an in-country benchmark.

The GOC argues that the Department correctly observed in the Preliminary Determination that land is an in situ resource that does not lend itself to world market price benchmarks. The GOC argues that the unique nature of land renders such an analysis untenable. The GOC holds that the value of land intrinsically is tied to its location and use. As such, the GOC argues, a world benchmark should not be used for this analysis. The GOC argues that for these same reasons, the Department should not use land prices in Thailand as the basis for its land benchmark in this investigation. The GOC also states that the Department has compounded this error by selecting land in Thailand that is not comparable to the land parcels under review in this investigation.

GTC specifically states that comparing land prices in Thailand is even more problematic with regard to Guizhou Province. GTC states that the Thailand prices are based on prices on the outskirts of Bangkok. GTC states that Bangkok is one of the most developed areas in Asia, whereas Guizhou Province is one of China's most remote and under-developed regions. GTC also states that the Department compounded this error in the Preliminary Determination by using the dividend yields from certain REITs with holdings in Thai real properties in order to derive rental values for the chosen Thai industrial land.

[74] See SCM Agreement, Article 14(d): "the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale)."

GTC argues that whether the Department uses Thailand or China as the basis for benchmarks, it should make adjustments to reflect market conditions in Guizhou Province. GTC states information on the record demonstrates that Guizhou Province is one of China's most impoverished provinces. As such, GTC argues that the Department should adjust the benchmark to match GTC's land use-rights.

In its rebuttal brief, Bridgestone disagrees with the GOC's contention that land-use rights in China are governed by market principles. Bridgestone states that, as explained in the Preliminary Determination, the GOC's land-use rights are not market based and transaction prices are distorted because of the government involvement in the market. See Preliminary Determination at 71369. Bridgestone states that GTC's argument that an external land benchmark is not permissible under the statute "because the value of land in another country is based on the derived demand for land in that other country and not in the country under investigation" is incorrect. Bridgestone argues that the statute does not state this and that there are no exceptions written into the regulations stating that external benchmarks cannot be used.

Regarding GTC's criticism of the use of Thailand for a land benchmark, Bridgestone argues that the deficiencies in using a benchmark in China would be greater. Bridgestone argues that the most important factor in selecting a benchmark is whether it is consistent with market principles. See CVD Preamble at 65378. As such, Bridgestone argues the Department's Thailand benchmark is more appropriate than the one advocated by GTC. However, as explained in the case brief, Bridgestone argues, the most appropriate benchmark for this investigation is Taiwan.

Bridgestone also disagrees with GTC's argument that the Department should make a special adjustment to reflect the land market in Guizhou Province. Bridgestone argues that information on the record demonstrates that GTC's argument is incorrect. Specifically, Bridgestone states that the GOC's Ministry of Commerce has described the province "as having 'abundant resources of electric power' with remarkable 'urban construction' and 'competitive enterprises' with 'a great potential to develop the economy of the province.'" See Bridgestone Factual Submission at Exhibit 34. Bridgestone also cites to information demonstrating efforts by both the province and Ministry of Commerce to aid in the commercial development of the province. See id. Bridgestone states that, regardless of the overall economic standing of the province, the Industrial Zone where GTC is located is not inferior to infrastructure in other industry zones. Bridgestone notes that there is no information on the record demonstrating that GTC has trouble transporting materials (i.e., getting raw material inputs or exporting its merchandise).

In their rebuttal briefs, Petitioners state that the record does not support the GOC and GTC's argument that China's land is governed by market forces. Therefore, Petitioners argue that reliance on internal land prices from China (i.e., first tier benchmarks) as the basis of a benchmark is not appropriate. Petitioners state that a world market price for land (i.e., second tier benchmark) is not available. Accordingly, Petitioners argue that it is necessary to use an external benchmark (i.e., third tier benchmark) for this investigation.

In its rebuttal brief, the GOC argues Petitioners and Bridgestone fail to demonstrate that land in Thailand is comparable to land in China. The GOC states that land presents unique issues in regards to the Act and Department regulations. The GOC argues that an external land benchmark is not permissible under the statute or the Department's regulations because the value of land in another country is based on the derived demand for land in that other country and not in China. The GOC argues that none of the market conditions for the price of land in Thailand reflect the prevailing market conditions in China. The GOC also notes that this mistake is compounded based on the fact that the Department did not select land in Thailand that was comparable to the land parcels under review in this investigation.

The GOC also disagrees with Bridgestone's proposed Taiwan benchmark. The GOC argues that Taiwan is more economically developed than China and is almost entirely urbanized. The GOC states that the Department should not rely on any external benchmark in this investigation, and using land prices from Taiwan would only compound this error.

In its rebuttal brief, GTC states that the Department should reject both Petitioners' proposed adjustments to the Thailand benchmark and Bridgestone's proposal to use a Taiwan benchmark. GTC states that these suggestions would result in a benchmark that is even less appropriate for purposes of this investigation.

In its rebuttal brief, TUTRIC argues that using either Taiwan or Thailand benchmarks is inappropriate for this investigation. TUTRIC states that in the Preliminary Determination, the Department appropriately found that land does not lend itself to world market price benchmarks. See Preliminary Determination at 71369. TUTRIC states that the land does not lend itself to a single constructed value either. TUTRIC states that land prices within China vary greatly between provinces and that the use of one price in Bangkok, a city not comparable to Tianjin, Guizhou, or Xingtai, is inappropriate. TUTRIC argues that information on the record allows the Department to use Chinese land prices.

Starbright adopts TUTRIC's general arguments regarding the choice of a land benchmark in this investigation. See Starbright June Case Brief at 58, fn14, and TUTRIC May Rebuttal Brief at 22-23.

Department Position

The Department continues to find that the benchmark land rates used in the Preliminary Determination are the most appropriate benchmark for land-use rights in the instant investigation.

Contrary to the GOC's claims, the Department has followed its established practice of using out-of-country benchmarks where actual transaction prices are significantly distorted because of government involvement in the market. For example, the Department found in CFS from Indonesia and IDM at "GOI's Provision of Standing Timber for Less Than Adequate Remuneration" and Comments 11 and 12, that Malaysian export prices provided the most appropriate basis for determining an external benchmark price to use in assessing stumpage rates in Indonesia. We found that these prices were consistent with market principles within the meaning of 19 CFR 351.511(a)(2)(iii) and were the most appropriate basis for deriving a market-based stumpage benchmark for determining whether the government of Indonesia provided stumpage for less than adequate remuneration. See, e.g., CFS from the PRC and IDM at Comment 10 (using an out of country benchmark for the policy lending program); and CWP from the PRC and IDM at "Benchmarks for Short-Term RMB Denominated Loans" (using an out-of-country benchmark for GOC policy lending).

Furthermore, the Department also used an out-of-country benchmark in Softwood Lumber from Canada. See Softwood Lumber from Canada and IDM at “Provincial Stumpage Programs”; and Softwood Lumber from Canada – Amended at 36076. The GOC argues that, because the Department was forced to revise its benchmark in a NAFTA remand, the use of an out-of-country benchmark in this case may not serve as an example of the Department’s practice. It is important to note that in the remand, the Department continued to find that the out-of-country benchmark was the proper choice. Moreover, we note that NAFTA panel decisions are not precedential. See NAFTA Article 1904.9. Specifically, the Department explained that:

> We disagree with the Panel’s conclusion that there was not substantial evidence to support the Department’s determination that market conditions in Canada and the United States are comparable, and that the adjustments the Department made adequately account for differences. We continue to believe that the resulting benchmarks constitute world market prices for timber that are commercially available to purchasers in Canada, within the meaning of 19 CFR 351.511(a)(2)(ii).

Remand Redetermination, Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination, USA-CDA-2002-1904-03 (January 12, 2003) (available at www.ia.ita.doc.gov). The Department specifically indicated that it was not altering its practice in this respect.

As explained in detail in the Preliminary Determination, the Department analyzed a number of variables in finding that Thailand is comparable to China in terms of its prevailing market conditions and thus appropriate as our benchmark for land values, including the economic similarity of Thailand and China in terms of GNI per capita and comparable population density, the perception that producers consider a number of markets, including Thailand, as an option for diversifying production bases in Asia beyond China, and certain economic and demographic factors. Preliminary Determination at 71369. See also Land Benchmark Memorandum. For instance, China and Thailand have similar per capita GNI income at $2,010 and $2,990, respectively. Preliminary Determination at 71369.

As noted in LWS from the PRC, and contrary to Bridgestone’s suggestion to use Taiwan land prices as a benchmark, Taiwan cannot serve as an appropriate benchmark for land values because Taiwan is not economically similar to China.

Petitioners argue that the Department should modify the benchmark price in this investigation based on its view that we inadvertently used a monthly rate of return as our benchmark for land leases and applied that to annual payments (without first annualizing the monthly benchmark). We have examined the CBRE reports on Asian Industrial Property Markets (See Land Benchmark Memorandum at Exhibit/attachment 3 and 5) and find that Petitioners have not pointed to sufficient evidence demonstrating that the prices to which we applied the reported rates of return indicated in that publication are reported for monthly installment payments. We understand the references in that publication (e.g., on page 8) to "psf per month" to refer to monthly changes in the aggregate data on sales prices. However, this does not mean that the prices themselves are somehow monthly installment payments. This is consistent with a general understanding that sales prices for land do not normally have some temporal component.

Petitioners also argue that the Department should use the direct rental rates they have provided, rather than rental returns. However, the rates provided by Petitioners are not for land rentals but for factory rentals, and thus Petitioners' data is inapposite as a source of comparison.

GTC argues that, regardless of which country is used as a benchmark source, the Department should adjust the benchmark to reflect market conditions particular to Guizhou Province. However, as we are not countervailing GTC's land in this final determination, we find this issue is moot.

I. Not Countervailable Programs

Comment I.1: VAT Export Rebates

TUTRIC contends that the Department should uphold its finding in the preliminary determination that the program alleging excessive VAT export rebates is not countervailable. TUTRIC cites to 19 CFR 351.517(a) which states that benefit derived from exemptions of indirect taxes upon export must "exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption" to be countervailable. TUTRIC further states that the Department preliminarily determined the VAT rebate applicable to exported OTR tires during the POI (13 percent) was less than the VAT levied on domestic sales of OTR tires during the POI (17 percent), and the VAT refund received upon the export of OTR tires does not confer a countervailable benefit. Finally, TUTRIC states the Department's verifications of GOC and TUTRIC confirmed that the VAT refund amount was not excessive; therefore, the Department should continue to find this program to be not countervailable.

Department Position

For the reasons stated above, we agree with TUTRIC that the VAT export rebate during the POI was not excessive. Therefore, the Department continues to find this program is not countervailable.

J. Scope Comments

Comment J.1: Imported Wheel Mounted Tires Certifications

Certain parties concur that wheel mounted tires are not covered by the scope of this investigation. However, Petitioners and Bridgestone assert that such tires should be accompanied by a certification that the importers will not disassemble the wheel mounted tires after importation. Valmont, an importer, stated that it would be willing to certify that the imported wheel mounted tires would not be disassembled after importation but noted that disassembly is unlikely, as it is cost prohibitive. GTC argues that Petitioners failed to present evidence that circumvention would occur or that there is any likelihood that circumvention would occur in the future. GTC also noted that the Department has acknowledged the difficulty in requiring end-use certifications, citing C&A Pipe from Germany.

Department Position

The Department agrees with the parties that wheel mounted tires are not covered by the scope of the investigation. Specifically, there is no evidence on the record that: 1) imported wheel mounted tires are considered to be OTR tires; 2) the industry that produces imported wheel mounted tires is part of the OTR tire industry; or 3) the industry that produces imported wheel mounted tires is included in the definition of the domestic industry in the ITC injury investigation. Wheel mounted tires were not covered by the petition and all parties agree they are not subject merchandise. Further, the Department finds that the request for certification is neither necessary nor appropriate given the evidence on the record of this investigation. Specifically, no party has provided any evidence that parties would import wheel mounted tires and then disassemble them after importation.

Further, the Department must consider how CBP would enforce certification programs. In a limited number of cases, the Department has instituted an end-use certification program to determine the end-use of imported merchandise, where end-use was a defining characteristic of a class or kind of merchandise subject to an investigation or order. However, as stated in the CWP Scope Memorandum, the Department's experience with end-use certification programs is that they are difficult to administer and to enforce particularly where the first customer in the United States is a distributor who inventories the merchandise, often for a significant period of time, before reselling to an end-user or another reseller. See CWP Scope Memorandum at 4.

Although the Department has implemented such certification programs in the past, we generally do so only in limited circumstances. For example, the Department eventually ended the certification program in OCTG from Canada – AD, noting that it was "burdensome" and "difficult to administer." See CWP Scope Memorandum at 4 and Attachment 1 (citing Memorandum regarding "Final Determination - Abolishment of the End Use Certification Procedure," September 4, 1990). In C&A Pipe from Germany at 31975-6, the Department also discussed the difficulties attendant to an end-use certification program and, consequently, stated that it would only implement such a program in that case after evidence had been proffered that would provide a reasonable basis to believe or suspect that substitution was occurring, and then would only apply the program to products for which such evidence existed.

A scope based upon end-use application also raises administrative problems for the Department. In certain instances the actual end-use of merchandise may be unknown to the producers or exporters investigated by the Department. Any certifications or assertions made by the exporter/producer about the end-use of particular sales would be difficult, if not impossible, to verify. As a result, the Department's analysis would depend on a generally unverifiable supposition about the end-use of individual sales, and would be subject to manipulation.

Accordingly, based on all of the above, the Department has determined not to implement an end-use certification with respect to imports of wheel mounted tires.

Comment J.2: OTR Agricultural Tires, Including for Highway-Towed Implements

Petitioners and Bridgestone contend that all agricultural tires are covered by the scope of this proceeding. Further, they argue that tires used for "highway-towed implements" are specifically referenced in the petitions and covered by the scope despite the fact that such tires are designed for partial on-road use. They note that such tires are specifically designed for agricultural use and that the TRA 2007 Yearbook specifically describes them as "farm implement tires for intermittent towed highway and agricultural service."[75] They further argue that the petition and following initiation language, "{t}he vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to, (1) agricultural and forestry vehicles, . . ." clearly indicates that all OTR agricultural tires, including those for agricultural implements, are covered.[76]

GTC contends that tires used for highway-towed implements are excluded from the scope of the investigations, because tires used for highway-towed implements are used on roads and highways, while the current investigations cover only OTR tires. GTC notes that the scope language in the Initiation Notice states that "all of the tires within the scope have in common that they are designed for off-road and off-highway use."[77] GTC argues that whether or not tires are used on vehicles that are associated with or used in connection with "agricultural" activities is irrelevant because the investigations address imports of "off-the-road" tires, not all tires used in agricultural applications. They further note that adding all agricultural tires to the scope of these proceedings would constitute an expansion of the scope, which at this point in the investigation would deprive parties of their due process citing Sodium Hex from the PRC – AD and IDM at Comment 1; OJ from Brazil – AD and IDM at Comment 2; and Allegheny Bradford.

Department Position

Sections 701 and 731 of the Act require the Department to define the scope of merchandise subject to investigation in each AD and CVD investigation. In deciding whether to initiate an investigation and whether an order should be imposed, the statute requires the Department to make determinations with respect to a class or kind of foreign merchandise. See sections 701 and 731 of the Act. If the Department initiates an investigation based upon a petition, it will continue to review the scope of the merchandise described in the petition to determine the scope of the final order.[78] The Department's legal authority to determine the scope of its orders is well-established.[79]

Generally, the Department prefers to define product coverage by the physical characteristics of the merchandise subject to investigation because reliance on end-use application often results in

[75] See Petitioners' Response to the Second Supplemental Questionnaire at Exhibit 7.
[76] See Preliminary Scope Determination at 2. Petitioners noted that in using the word "equipment" the scope description included "implements," citing U.S. v. Perry.
[77] See Initiation Notice at 44122.
[78] See 19 CFR 351.202(b)(5).
[79] See, e.g., Mitsubishi 2.

ambiguity with respect to product coverage at the time merchandise enters the country, which is when CBP must determine whether the importer has properly classified the merchandise as subject or non-subject merchandise.

In these proceedings, the Department found in its preliminary scope determination that the scope of these investigations, as provided in the petitions, is based on technical descriptions and design for OTR use.[80] The scope language in the petitions, adopted in the preliminary determinations, identifies the scope of these investigations as OTR tires designed for use in OTR and off-highway vehicles, subject to the limited number of exceptions enumerated in the scope. Similarly, the Department preliminarily concluded that "{t}here is no record evidence that indicates that the scope of the proceedings applies to all agricultural tires."[81]

The scope language specifically: 1) encompasses agricultural tires designed for OTR use, with the exception of delineated exclusions; and 2) identifies tires for highway-towed equipment and/or implements as merchandise falling within the scope of these investigations.[82] These agricultural vehicles and highway-towed implements may be intermittently used on the road traveling between fields, to markets, et alia, but the intermittent highway use does not negate that the tires' design is generally for OTR use. However, the fact that a tire is used on an agricultural vehicle or implement does not place that tire within the scope of these proceedings unless that tire is a new pneumatic off-the-road tire. Including all agricultural tires at this point in these investigations would constitute an expansion of the scope, which would be in conflict with Department practice and precedent.[83] Therefore, the Department finds that new pneumatic OTR tires designed for agricultural vehicles and/or highway-towed agricultural implements are covered by the scope of these investigations.

Comment J.3: Tubes and Flaps

Petitioners contend that while they never intended "parts" or "unassembled merchandise" to be included in this investigation, there is no basis to exclude tubes and flaps that are shipped and sold together with the tube-type tire. They cite Crawfish from the PRC – AD, where the Department included peeled and unpeeled tail meat even though the petition had not specified both forms. They argue that the tubes and flaps are essential to the operation of the tube-type tire and therefore are components of the tire. They cite Toy Biz, where the court agreed with Customs that components are an essential part of a good, and Rollerblade, where the court distinguishes an accessory as "an object or device not essential in itself but adding to the beauty, convenience or effectiveness of something else." They also cite the court's Customs ruling in Better Homes,

80 See Preliminary Scope Determination at 6.
81 See Preliminary Scope Determination at 10.
82 See Petition at 5.
83 See Sodium Hex from the PRC – AD and IDM at Comment 1 ("Amending the scope language ...would, in effect, serve to expand the current scope of subject merchandise that was subject to this investigation at too late a stage in this proceeding."); OJ from Brazil – AD and IDM at Comment 2 (the Department denied Petitioners' requested change to the scope as it would constitute an expansion of the scope contained in the petition); and Allegheny Bradford (where the CIT reiterated that the Department may not expand the scope of an investigation in the latter stages of a proceeding because of due process concerns).

where the imported merchandise was subject to two orders but the court classified the merchandise by the part of the component that gave the good its essential character, which was as a shower curtain rather than a textile curtain. Noting that the Department's "physically incorporated" standard is vague, Petitioners requested further definition.

GTC, Starbright and TUTRIC argue that tubes and flaps are outside of the scope of these proceedings regardless of whether they are sold separately, with, or attached to the tube-type tires. GTC further contends that tubes and flaps are accessories to, not components of, OTR tires similar to the Department's classification of rims in the preliminary scope determination, and that Petitioners never intended such articles to be included in this investigation. Like Petitioners, GTC contends that the Department did not explain "physically attached" or "physically incorporated" and suggests that those terms need to be defined.

Department Position

The Department preliminarily determined that: 1) tubes and flaps that are physically attached/incorporated to the subject tire for sale as a set to the United States constitute a component of the finished tire and are subject to the scope of the proceedings; and 2) because the scope does not cover "parts thereof" or "unassembled" merchandise, tubes and flaps that are sold separately are not subject to the scope of these proceedings. Upon reviewing the record of these proceedings and the parties' comments regarding this issue, the Department now affirms its preliminary finding that tubes and flaps sold separately are not subject to the scope of these proceedings, and further concludes that the record does not support a finding that tubes and flaps are physically attached/incorporated components of finished tires. Thus, we find that tubes and flaps are not subject to the scope of these investigations, regardless of the manner in which they are sold. Specifically, there is no evidence on the record that: 1) tubes and flaps are considered to be inputs to OTR tires; 2) the industry that produces tubes and flaps is part of the OTR tire industry; or 3) the industry that produces tubes and flaps was included in the definition of the domestic industry in the ITC investigation. Tubes and flaps were not covered by the petition and all parties agree that when sold individually, they are not within the scope of these investigations.

In its Preliminary Scope Determination, the Department discussed tubes and flaps sold as "physically attached" or "incorporated to the subject merchandise." This language, as noted by the parties, is vague and unintentionally misleading. Therefore, the Department's language should not be taken to suggest any specific connotation with respect to these terms other than to mean that the tires, tubes, and flaps were basically sold together. We have reviewed the record and have determined that the record with respect to the attachment or incorporation of the tubes and flaps is unclear. While the record in this case clearly demonstrates that tube-type tires can be sold independently of the tubes and flaps, which can also be purchased separately for later incorporation in the tire, the record is not clear with respect to the meaning of "physically attached" or "incorporated to," as the parties have not specifically addressed this issue.

The courts have repeatedly held that the Department "has inherent authority to define the scope of an investigation."[84] The Department "generally exercises this broad discretion to define and clarify the scope of an investigation in a manner which reflects the intent of the petition."[85] However, the Department's discretion permits interpreting the petition in such a way as to best effectuate not only the intent of the petition, but the overall purpose of the antidumping law as well. (Emphasis added). As stated by the CIT in NTN Bearing 1, if the Department "determine{s} the petition to be overly broad, or insufficiently specific to allow proper investigation, or in any other way defective, it possesse{s} the inherent authority to redefine and clarify the parameters of its investigation."[86] Moreover, the Department may fashion the scope of an order so as to prevent circumvention by parties in the future "employing inventive import strategies." See NTN Bearing 1 at 731.

In the present case, the petition describes the merchandise subject to the investigation as "new pneumatic tires designed for off-the-road and off-highway use."[87] The petition further clarifies that the "tires may be either tube-type or tubeless" as part of the scope description but does not go on to include the accessories or components of these tires in the scope description.[88] Rather, the petition is silent with respect to the issue of tubes and flaps. Petitioners could have drafted the scope to include accessories, components, parts thereof, or sets (i.e., comprising the tube, flap and tire), but did not do so here. Because the OTR tire and tube/flap producers do not constitute a single industry, the fact that accessories, components, parts thereof, and sets that might reflect tubes and flaps are not included in the language signals to the Department that the industry seeking protection under the AD and CVD law is the OTR tires industry, not the tubes and flaps industry, and that tubes and flaps (whether accessories or components) when sold: 1) on the same invoice as the tire, or 2) as a set that includes the tire, are not covered. In fact, Petitioners acknowledge in their case brief that "{they} never intended such articles to be included in this investigation."[89] However, they now contend that there is no basis to exclude them when sold on the same invoice as the subject tires. This argument is without merit as it is not possible to exclude items that had never been included in the first place.

For this reason, the issue here is distinguishable from that in Crawfish from the PRC – AD, where the issue was whether both forms of a specific product were covered by the scope of the proceeding. In Crawfish from the PRC – AD, the Department clarified that, although the petitioner inconsistently referred to the covered merchandise as crawfish tail meat and "peeled" crawfish tail meat, the proceeding in fact covered all fresh crawfish tail meat whether peeled or unpeeled. In that case, the "unpeeled" items at issue were clearly a type of fresh crawfish tail meat. In the instant proceeding, the parallel situation would be whether tubeless and tube-type tires are covered. However, in the instant proceeding, the record is clear that both types, i.e.,

[84] NTN Bearing 1; Koyo at 1403. While this case discusses scope in an AD context, the same principles apply to CVD cases.
[85] Kern-Liebers (quoting Minebea).
[86] NTN Bearing 1 at 731; accord Torrington at 721-22.
[87] Petition at 5.
[88] Id.
[89] See Petitioners' and Bridgestone's May 22, 2008 Joint Case Brief at 2.

tubeless and tube-type tires are covered as both are clearly addressed in the petition, but the record is silent with respect to the issue of tubes and flaps. Therefore, while the petition language here is similar to Crawfish from the PRC – AD in that it does not specifically reference tubes and flaps, the clarification of what types of fresh crawfish meat were covered is very different from whether a separate accessory to or component of covered merchandise is also covered, as is the case here. In Crawfish from the PRC – AD, there was no discussion of whether "unpeeled" crawfish represented a completely different industry from that producing "peeled" crawfish. In this case, there is no argument by any of the parties that tubes and flaps are OTR tires or that the producers of tubes and flaps constitute a single industry with OTR tire producers. Thus, the inclusion of tubes and flaps within the scope of this proceeding would constitute an expansion of the scope to include products other than OTR tires.

With respect to the other court cases that Petitioners cite, as an initial matter, the Department does not rely on Customs' classification criteria in defining the scope of merchandise subject to AD and CVD proceedings. As discussed above, in defining the scope of an AD/CVD proceeding, the Department looks to the intent of the petition and the overall purpose of the dumping law. In this case, the clear intent of the petition, as stated by Petitioners, was not to include tubes and flaps. Moreover, both Toy Biz and Better Homes focused on which section of the General Rules of Interpretation CBP should apply in classifying the respective products under the HTS for customs purposes. Because the Department does not rely on Customs' General Rules of Interpretation for determining the scope of AD/CVD proceedings, in that respect, these cases are not informative here.

Rollerblade, which discusses whether certain items constituted accessories to another product, is similarly uninformative here, as again the issue was the proper HTS classification, which was dependent upon whether the items in question constituted accessories to the other product. In the OTR tires proceeding, however, we are not addressing HTS classifications. Rather we are addressing the product coverage as originally intended by the Petitioners and whether tubes and flaps constitute OTR tire components such that they are considered inputs into the production of finished tires. We have determined that they are not. In this case, tubes and flaps are analogous to the wheels and rims discussed above. A tubeless tire requires a wheel and a rim to function on a vehicle, but that does not make the wheels and rims components of the tire. Similarly, a tube-type tire requires the tube and flap as well as the wheel and rim to function on a vehicle. However, as with the wheel and rim, this does not make the tubes and flaps components of the tire.

Accordingly, the Department determines that tubes and flaps are not subject to the scope of these proceedings regardless of how they are sold.

Comment J.4: Earthmoving, Mining, and Construction Tires

CMA notes that the Department has the ultimate authority to define the scope of AD/CVD proceedings and that the Department will examine whether the proposed scope language reflects the market, citing Mitsubishi 1 and CFS from the PRC – AD at 60632. CMA contends that the 39-inch rim diameter for earthmoving, mining, and construction tires is an arbitrary line that is not connected to the OTR tire's ability to function on a mining, earthmoving, or construction vehicle, and that the weight of the tire is a more meaningful and relevant characteristic to use in defining the exclusion for such OTR tires. CMA argues that there is no fundamental difference between a 35-inch and a greater than 39-inch mining, earthmoving or construction tire.

CMA also contends that ply ratings are inapplicable to radial tires; therefore, the exclusionary language does not provide a basis for CBP to distinguish such radial tires from all other radial tires above 39 inches in diameter. The Department should either remove the "ply-rating" element from the exclusionary language or add strength (star)-ratings that would address radial tires. It notes that star-ratings are not perfectly convertible to ply-ratings, but proposes that a two-star rating would be the applicable rating for the proposed exclusion of these radial tires.

Petitioners and Bridgestone note that the Department generally exercises broad discretion to define and clarify the scope in a way that encompasses the intention of the petition and in a way that upholds the purpose of the law. They cite Kern-Liebers, Minebea, AFBs from Germany, and Crawfish from the PRC – AD. They also argue that construction, mining, and earthmoving tires with a 39-inch rim diameter are excluded because they differ from the subject merchandise in terms of production lines, production processes, and physical characteristics (e.g., weight, number of plies, and number of beads). They further argue that the fact that the rim diameter does not determine the tires' ability to function on a mining, earthmoving or construction vehicle is irrelevant, and contend that such tires are not interchangeable with other OTR tires and do not compete with the smaller OTR tires that are within the scope. They also argue that the greater than 39-inch cut-off point was provided because tires greater than 39 inches are not causing, or threatening to cause, material injury to a domestic industry.

They further assert that: 1) the use of the two-star rating would significantly narrow the scope of the proceeding as the two-star rating by itself can apply to tires with a rim diameter as small as 24 inches; 2) the number of plies does not equate directly to a specific ply rating; and 3) as there is no ply-rating (which relates solely to bias tires) in the exclusionary language, there is no need to add a star rating that would relate to radial tires.

Department Position

As noted above, the courts have repeatedly held that the Department "has inherent authority to define the scope of an investigation."[90] The Department "generally exercises this broad discretion to define and clarify the scope of an investigation in a manner which reflects the intent of the petition."[91]

However, CMA is correct in its argument that while the scope language is intended to exclude certain radial tires, it does not do so clearly.[92] With respect to the issue of ply ratings, in its

[90] NTN Bearing 1; Mitsubishi 1.

[91] Kern-Liebers (quoting Minebea).

[92] Petitioners have not contested CMA's arguments that the exclusion for mining, earthmoving and construction tires relates to both bias and radial tires. Moreover, at the scope hearing, Petitioners specifically acknowledged that the exclusion applies to both bias and radial tires otherwise meeting the description of the exclusion.

arguments, CMA appears to equate the number of plies with a specific ply rating. However, as Petitioners point out, information CMA put on the record indicates that this is not the case. For example, the information submitted by CMA indicates that a tire with an 18-ply rating can have either: 14, 16, or 18 plies.[93] Thus, the Department has concluded from this evidence on the record that there is not a direct correlation between the number of plies in a tire and a specific ply rating. Further, additional record evidence demonstrates the two-star rating proposed by CMA for the exclusion, as it relates to radial mining, earthmoving and construction tires, is not appropriate. The exclusion as proffered by Petitioners specifically relates to tires that are greater than 39 inches in rim diameter. However, the two-star rating can apply to tires that are significantly smaller than 39 inches.[94] Thus, replacing the rim diameter with the two-star rating definition would significantly expand the exclusion from the scope. Further, Petitioners provided an extensive explanation regarding their selection of "greater than 39 inches" as the starting point for the exclusion in their June 27, 2007, response to the Department's second supplemental questionnaire at 4. Based on all of the above, we are not altering the language with respect to the number of plies or the rim diameter of the excluded tires and we are not adding language regarding a star rating. However, the Department has added language to clarify that the exclusion relates to both radial and bias tires as follows: "Also excluded from the scope are <u>radial and bias</u> tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches."

As discussed above, it is the Department's responsibility to define the scope of these investigations. However, it is also the Department's practice, and in keeping with its regulations, to defer to the intent of Petitioners in defining the products under investigation.[95] With respect to the rim dimensions and weight, the Department finds that the domestic producers have provided sufficient information to substantiate the reasoning behind the proposed exclusion cut-off,[96] and notes that CMA has not substantiated its claim that Petitioners' proposed exclusion represents an abuse of the process. Therefore, the Department continues to find that construction, mining, and earthmoving tires with a 39-inch rim diameter, meeting the other exclusionary criteria, are excluded from the scope of these proceedings. The fact that the rim diameter does not determine the tires' ability to function on a mining, earthmoving or construction vehicle does not negate its relevance for purposes of defining the scope exclusion. Rather, rim diameter is a physical characteristic that provides the Department with a basis to identify the excluded tires. Thus, with the exception of the additional language to address radial tires, the Department has not amended the exclusion for mining, earthmoving or construction tires.

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[93] <u>See</u> CMA's March 18, 2008 Submission, at Exhibit 1, page titled "Tire Technology Ply Rating."

[94] <u>See</u> CMA's March 18, 2008 Submission, at Exhibit 1, page titled "Comparative Size Chart, Star Rating/Ply Rating Equivalents" (which demonstrates that the two-star rating applies to tires as small as 13 inches).

[95] <u>Kern-Liebers</u> (quoting <u>Minebea</u>).

[96] Petitioners' Response to the Second Supplemental Questionnaire at 4.

VII. Recommendation

Based on the results of verification and our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final determination in the Federal Register.

Agree__________ Disagree___________

____
David M. Spooner
Assistant Secretary
for Import Administration

____
Date

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Full Name or Term
The Act	Tariff Act of 1930, as amended
ABC	Agricultural Bank of China
AD	Antidumping Duty
AFA	Adverse Facts Available
AIL	Advance Import License
APA	Asset Purchase Agreement
APA	The Administrative Procedure Act
AUL	Average useful life
BOC	Bank of China
BPI	Business proprietary information
Bridgestone	Bridgestone Americas Holding, Inc. and Bridgestone Firestone North American Tire, LLC.
CAFC	Court of Appeals for the Federal Circuit
CBC	Construction Bank of China
CBP	U.S. Customs and Border Protection
CFR	Code of Federal Regulations
CIO	Change in ownership
CIT	Court of International Trade
CMA	China Manufacturers Alliance LLC
CPI	Consumer Price Index
CRU	The Department's Central Records Unit (Room 1117 in the HCHB Building)
CVD	Countervailing Duty
DCB	Tianjin Dolphin Carbon Black Co., Ltd.
Department	Department of Commerce
Dolphin Group	Tianjin Dolphin Rubber Group Co., Ltd.
FA	Facts Available
FAA	Federal Aviation Administration
FIE	Foreign-Invested Enterprise
FOB	Free On Board
GAAP	Generally Accepted Accounting Principles
Guizhou Rubber	Guizhou Advance Rubber Co., Ltd
GDP	Gross Domestic Product
GAMC	Guiyang State Assets Investment Management Company
GNI	Gross National Income
GOC	Government of The People's Republic of China
GOT	Government of Tianjin
GPX	GPX International Tire Corporation
GTC	Guizhou Tire Co., Ltd.
GTCIE	Guizhou Tire I&E Corp.

Guizhou DRC	Guizhou Development and Reform Commission
HTS	Harmonized Tariff Schedule
Hebei Tire	Hebei Tire Co., Ltd.
ICBC	Industrial and Commercial Bank of China
IDM	Issues and Decision Memorandum
IRSG	International Rubber Study Group
ITC	International Trade Commission
LMI	Lower-Middle Income
LTAR	Less Than Adequate Remuneration
MOF	Ministry of Finance
MOU	Memorandum of Understanding
NDRC	National Development and Reform Commission
NME	Non-market economy
NTS	Non-Tradable Shares
NTSR	Non-Tradable Share Reform
OTR Tires	New pneumatic off-the-road tires
Petitioners	Titan Tire Corporation, a subsidiary of Titan International, Inc. ("Titan"), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC ("USW")
PBOC	People's Bank of China
PNTR	Permanent Normal Trade Relations
POI	Period of Investigation
PRC	People's Republic of China
REITs	Real Estate Investment Trusts
RMB	Renminbi
SAT	GOC's Ministry of Finance's State Administration for Taxation
SETC	State Economic and Trade Commission
SOCB	State-Owned Commercial Bank
SOE	State-Owned Enterprise
SPC	State Planning Commission
Starbright	Hebei Starbright Tire Co., Ltd.
THAB	Tianjin Housing Administration Bureau
TRA 2007 Yearbook	Tire and Rim Association Yearbook (2007)
TSASAC	Tianjin State-Owned Assets Supervision and Administration Commission
TUTRIC	Tianjin United Tire & Rubber Co., Ltd
VAT	Value Added Tax
WPI	Wholesale Price Index
WTO	World Trade Organization
XSASAC	Xingtai State-Owned Assets Supervision Administration Commission

II. LITIGATION TABLE

Short Cite	**Cases**
Al Tech	Al Tech Specialty Steel Corp. v. United States, 661 F. Supp. 1206 (CIT 1987)
Alaska Hunters	Alaska Professional Hunters Ass’n v. FAA, 177 F.3d 1030 (D.C. Cir. 1999)
Allegheny Bradford	Allegheny Bradford Corp. v. United States, 342 F. Supp 2d 1172 (CIT 2004)
Allegheny Ludlum	Allegheny Ludlum Corp. v. United States, 24 CIT 452, 122 F. Supp. 2d 1141 (CIT 2000)
Allegheny Ludlum 2	Allegheny Ludlum Corp. v. United States, 367 F.3d 1339 (Fed. Cir. 2004)
American Alloys	American Alloys, Inc. v. United States, 30 F.3d 1469 (Fed. Cir. 1994)
American Spring	American Spring Wire Corp. v. United States, 569 F. Supp. 73 (CIT 1983)
Barnhart	Barnhart v. United States Treasury Department, 7 CIT 295 (CIT 1984)
Bell Atlantic	Bell Atlantic Telephone Companies v. FCC, 131 F.3d 1044 (D.C. Cir. 1997)
Better Homes	Better Homes and Plastic Corp. v. United States, 119 F.3d 969 (Fed. Cir. 1997)
Budd Co.	Budd Co., Wheel & Brake Div. v. United States, 746 F. Supp. 1093 (CIT 1990)
Butterbaugh	Butterbaugh v. Dept. of Justice, 336 F.3d 1332 (Fed. Cir. 2003)
Carlisle Tire	Carlisle Tire & Rubber Co. v. United States, 10 CIT 301 (CIT 1986)
Ceramica Regiomontana	Ceramica Regiomontana, S.A. v. United States, 10 CIT 399, aff’d, 810 F.2d 1137 (Fed. Cir. 1987)
Chenery Corp.	SEC v. Chenery Corp., 332 U.S. 194 (1947)
Chevron	Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)
Delverde	Delverde, SrL v. United States, 202 F.3d 1360 (Fed. Cir. 2000)
Fabrique	Fabrique de Fer de Charleroi, S.A. v. United States, 166 F. Supp. 2d. 593 (CIT 2001)
Fujian Machinery	Fujian Machinery and Equipment Import & Export Corp. v. United States, 178 F. Supp. 2d 1305 (CIT 2001)
Georgetown Steel	Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986)
Gibson v. Berryhill	Gibson v. Berryhill, 411 U.S. 564 (1973)
GOC v. U.S.	Gov’t of the People’s Republic of China v. United States, 483 F. Supp. 2d 1274 (CIT 2007)
GSA	GSA, S.r.l. v. United States, 77 F. Supp.2d 1349 (CIT 1999)
Hynix 1	Hynix Semiconductor Inc. v. United States, 391 F. Supp. 2d 1337 (CIT 2005)
Hynix 2	Hynix Semiconductor Inc. v. United States, 425 F. Supp. 2d 1287 (CIT 2006)
Kern-Liebers	Kerns-Liebers USA Inc. v. United States, 881 F.Supp.618 (CIT 1995)
Koyo	Koyo Seiko Co., Ltd. v. United States, 834 F.Supp. 1401(CIT 1993)
Merrill Lynch	Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran, 456 U.S. 353 (1982)
Midatlantic Nat’l Bank	Midatlantic Nat’l Bank v. New Jersey Dep’t of Envtl. Prot., 474 U.S. 494 (1986).
Minebea	Minebea Co. v. United States, 782 F. Supp. 117 (CIT 1992) (aff’d on other grounds, 984 f.2d 1178 (Fed. Cir 1993)

Mitsubishi 1	Mitsubishi Electric Corp. v. United States, 898 F. 2d 1577 (Fed. Cir. 1990)
Mitsubishi 2	Mitsubishi Electric Corp. v. United States, 16 CIT 730, 802 F. Supp. 455 (CIT 1992)
Nippon Steel	Nippon Steel Corporation v. United States, 337 F.3d 1373 (Fed. Cir. 2003)
NTN Bearing 1	NTN Bearing Corp. of America v. United States, 747 F. Supp. 726 (CIT 1990)
NTN Bearing 2	NTN Bearing Corp. of America v. United States, 757 F.Supp. 1425 (CIT 1991)
PPG Industries 1	PPG Industries, Inc., v. United States, 708 F. Supp. 1327 (CIT 1989)
PPG Industries 2	PPG Industries, Inc. v. United States, 978 F.2d 1232 (Fed. Cir. 1992)
Rollerblade	Rollerblade Inc. v. United States, 116 F. Supp. 2d 1247 (CIT 2000)
Rosenberg v. XM Ventures	Rosenberg v. XM Ventures, 274 F.3d 137 (3d Cir. 2001)
Rust v. Sullivan	Rust v. Sullivan, 500 U.S. 173 (1991)
Saarstahl	Saarstahl AG v. United States, 78 F.3d 1539 (Fed. Cir. 1996)
Sichuan Changhong Electric	Sichuan Changhong Electric Co. Ltd. v. United States, 466 F. Supp. 2d 1323 (CIT 2006)
Sonco Steel	Sonco Steel Tube Div. v. United States, 694 F. Supp. 959 (CIT 1988)
Steel Co.	Steel Co. v. Citizens for a Better Environment, 523 U.S. 83 (1998)
Tcherepnin	Tcherepnin v. Knight, 389 U.S. 332 (1967)
Tianjin Magnesium	Tianjin Magnesium International Co., Ltd. v. United States, 533 F. Supp.2d 1327 (CIT 2008)
Torrington	Torrington Co. v. United States, 745 F. Supp. 718 (CIT 1990)
Toy Biz	Toy Biz, Inc. v. United States, 219 F. Supp. 2d 1289 (CIT 2002)
Tung Mung	Tung Mung Development Co., Ltd. v. United States, 25 CIT 752 (CIT 2001)
U.S. v. Perry	United States v. S.S. Perry, 25 CCPA 282 (1938)
Zandford	SEC v. Zandford, 535 U.S. 813 (2002)

III. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

Note: if "certain" is in the title of the case, it has been excluded from the title listing.

Short Cite	Administrative Case Determinations
	Antifriction Bearings (Other than Tapered Roller Bearings) – Germany
AFBs from Germany	Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992 (May 3, 1989)
	Bottle-Grade Polyethylene Terephthalate (PET) Resin – Thailand
PET Resin From Thailand	Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand, 70 FR 13462 (March 21, 2005) and accompanying Issues and Decision Memorandum
	Brake Rotors – PRC
Brake Rotors from the PRC 03/04 AR	Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review, 70 FR 69937 (November 18, 2005) and accompanying Issues and Decision Memorandum
	Carbon and Alloy Steel Wire Rod – Brazil
Carbon and Alloy Steel Wire Rod from Brazil	Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55805 (August 30, 2002) and accompanying Issues and Decision Memorandum
	Carbon and Alloy Steel Wire Rod – Germany
Carbon and Alloy Steel Wire Rod from Germany	Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany, 67 FR 55808 (August 30, 2002) and accompanying Issues and Decision Memorandum
	Carbon and Alloy Steel Wire Rod – Trinidad and Tobago
Carbon and Alloy Steel Wire Rod from Trinidad and Tobago	Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, 67 FR 55810 (August 30, 2002) and accompanying Issues and Decision Memorandum
	Carbon and Alloy Steel Wire Rod – Turkey
Carbon and Alloy Wire Rod from Turkey	Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Wire Rod from Turkey, 67 FR 55815 (August 30, 2002)
	Carbon Steel Wire Rod – Czechoslovakia
Carbon Steel Wire Rod from Czechoslovakia	Carbon Steel Wire Rod from Czechoslovakia: Final Negative Countervailing Duty Determination, 49 FR 19370 (May 7, 1984)
	Carbon Steel Wire Rod – Poland
Carbon Steel Wire Rod from Poland	Carbon Steel Wire Rod from Poland: Final Negative Countervailing Duty Determination, 49 FR 19374 (May 7, 1984)

	Chrome-Plated Lug Nuts and Wheel Locks – PRC
Lug Nuts from the PRC – Initiation	Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks from the People's Republic of China, 57 FR 877 (January 9, 1992)
Lug Nuts from the PRC – Rescission	Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition: Chrome-Plated Lug Nuts and Wheel Locks From the People's Republic of China, 57 FR 10459 (March 26, 1992)
	Circular Welded Carbon Quality Steel Pipe – PRC
CWP from the PRC – Preliminary	Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 72 FR 63875 (November 13, 2007)
CWP from the PRC	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) and accompanying Issues and Decision Memorandum
	Coated Free Sheet Paper – Indonesia
CFS from Indonesia	Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination, 72 FR 60642 (October 25, 2007) and accompanying Issues and Decision Memorandum
	Coated Free Sheet Paper – Korea
CFS from Korea	Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination 72 FR 60639 (October 25, 2007) and accompanying Issues and Decision Memorandum
	Coated Free Sheet Paper – PRC
CFS from the PRC – Amended Preliminary	Coated Free Sheet Paper from the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination, 72 FR 17484 (April 9, 2007) (unchanged in CFS from the PRC final determination)
CFS from the PRC	Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) and accompanying Issues and Decision Memorandum.
CFS from the PRC – AD	Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007) and accompanying Issues and Decision Memorandum
	Cold-Rolled Carbon Steel Flat Products – Brazil
Cold-Rolled Steel from Brazil	Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From Brazil, 67 FR 62128 (October 3, 2002) and accompanying Issues and Decision Memorandum

	Cold-Rolled Carbon Steel Flat Products – Korea
Cold-Rolled Steel from Korea	Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea, 67 FR 62102 (October 3, 2002) and accompanying Issues and Decision Memorandum
	Cut-to-Length Carbon-Quality Steel Plate – Belgium
CTL Plate from Belgium 2nd SR	Cut-to-Length Carbon Steel Plate from Belgium: Final Results of Full Sunset Review, 71 FR 58585 (October 4, 2006)
	Cut-to-Length Carbon-Quality Steel Plate – Italy
CTL Plate from Italy	Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon Quality Steel Plate from Italy, 64 FR 73244 (December 29, 1999)
	Cut-to-Length Carbon-Quality Steel Plate – Korea
CTL Plate from Korea	Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea, 64 FR 73176 (December 29, 1999)
	Dynamic Random Access Memory Semiconductors – Korea
DRAMS from Korea	Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003), and accompanying Issues and Decision Memorandum
DRAMS from Korea 04 AR	Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 72 FR 7015 (February 14, 2007) and accompanying Issues and Decision Memorandum
	Freshwater Crawfish Tailmeat – PRC
Crawfish from the PRC – AD	Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tailmeat from the People's Republic of China, 62 FR 41347 (August 1, 1997)
	Frozen Fish Fillets – Vietnam
Frozen Fish Fillets from Vietnam 3rd AR	Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission, 73 FR 15479 (March 24, 2008) and accompanying Issues and Decision Memorandum
	Heavy Forged Hand Tools – PRC
Heavy Forged Hand Tools from the PRC 04/05 AR – AD	Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews, 71 FR 54269 (September 14, 2006) and accompanying Issues and Decision Memorandum

	Hot-Rolled Carbon Steel Flat Products – India
Hot-Rolled Steel from India 04 AR – Preliminary	Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Hot Rolled Carbon Steel Flat Products from India, 71 FR 1512 (January 10, 2006) (unchanged in final)
Hot-Rolled Steel from India 04 AR	Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 71 FR 28665 (May 17, 2006) and accompanying Issues and Decision Memorandum
	Hot-Rolled Carbon Steel Flat Products – South Africa
Hot-Rolled Steel from South Africa	Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from South Africa, 66 FR 50412 (October 3, 2001) and accompanying Issues and Decision Memorandum
	Hot-Rolled Carbon Steel Flat Products – Thailand
Hot-Rolled Steel from Thailand	Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (October 3, 2001)
	Laminated Woven Sacks – PRC
LWS from the PRC – Preliminary	Laminated Woven Sacks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 72 FR 67893 (December 3, 2007)
LWS from the PRC	Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008)
	Light-walled Rectangular Pipe and Tube – PRC
LWRP from the PRC	Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008)
	Lightweight Thermal Paper – PRC
Thermal Paper from the PRC – Preliminary	Lightweight Thermal Paper form the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 73 FR 13850 (March 14, 2008)
	Lined Paper – PRC
Lined Paper from the PRC – AD	Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum
	Live Cattle – Canada
Live Cattle from Canada	Final Negative Countervailing Duty Determination: Live Cattle from Canada, 64 FR 57040 (October 22, 1999)

	Live Swine – Canada
Live Swine from Canada	Final Negative Countervailing Duty Determination: Live Swine from Canada, 70 FR 12186 (March 11, 2005)
	Low Enriched Uranium – France
Uranium from France 01/03 AR – AD	Notice of Final Results of Antidumping Administrative Review: Low Enriched Uranium From France, 69 FR 46501 (August 3, 2004) and accompanying Issues and Decision Memorandum
	Low Enriched Uranium – Germany, the Netherlands, and the United Kingdom
Uranium From Germany, the Netherlands, and the United Kingdom	Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom, 69 FR 40869 (July 7, 2004) and accompanying Issues and Decision Memorandum
	New Pneumatic Off-the-Road Tires – PRC
Initiation Notice	New Pneumatic Off-the-Road Tires From the People's Republic of China: Initiation of Countervailing Duty Investigation, 72 FR 44122 (August 7, 2007)
Preliminary Determination	New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 72 FR 71360 (December 17, 2007)
Preliminary Determination – AD	New Pneumatic Off-The-Road Tires From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 9278 (February 20, 2008)
Alignment Notice	New Pneumatic Off-the-Road Tires from the People's Republic of China: Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 73 FR 3238 (January 17, 2008)
	Oil Country Tubular Goods from Canada – Canada
OCTG from Canada – AD	Final Determination of Sales at Less Fair Value: Oil Country Tubular Goods from Canada, 55 FR 50739 (December 10, 1990)
	Orange Juice from Brazil – Brazil
OJ from Brazil – AD	Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil, 71 FR 2183 (January 13, 2006), and accompanying Issues and Decision Memorandum
	Oscillating Fans and Ceiling Fans – PRC
Oscillating Fans from the PRC – Initiation	Initiation of Countervailing Duty Investigations: Oscillating Fans and Ceiling Fans from the People's Republic of China, 56 FR 57616 (November 13, 1991)
Oscillating Fans from the PRC – Rescission	Final Negative Countervailing Duty Determinations: Oscillating Fans and Ceiling Fans from the People's Republic of China, 57 FR 24018 (June 5, 1992) and accompanying Issues and Decision Memorandum

	Polyethylene Terephthalate Film, Sheet and Strip – India
PET Film from India 1st AR	Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review, 70 FR 8072 (February 17, 2005)
PET Film from India 3rd AR	Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet and Strip from India, 71 FR 7534 (February 13, 2006) and accompanying Issues and Decision Memorandum
PET Film from India 4th AR	Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 73 FR 7708 (February 11, 2008)
	Potassium Chloride – Soviet Union
Potassium Chloride from the Soviet Union – Rescission	Potassium Chloride from the Soviet Union: Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition, 49 FR 23438 (June 6, 1984)
	Pure Magnesium and Alloy Magnesium – Canada
Magnesium from Canada	Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada, 57 FR 30946 (July 13, 1992)
	Fresh and Chilled Atlantic Salmon – Norway
Salmon from Norway	Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7678 (February 25, 1991)
	Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe – Germany
C&A Pipe from Germany	Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany, 60 FR 31974 (June 19, 1995)
	Sodium Hexametaphosphate – PRC
Sodium Hex from the PRC – AD	Final Determination of Sale at Less Than Fair Value: Sodium Hexametaphosphate from the People's Republic of China, 73 FR 6479 (February 4, 2008) and accompanying Issues and Decision Memorandum
	Softwood Lumber Products – Canada
Softwood Lumber from Canada	Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002), and accompanying Issues and Decision Memorandum
Softwood Lumber from Canada – Amended	Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada, 67 FR 36070 (May 22, 2002)
Softwood Lumber from Canada 2nd AR	Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber from Canada, 70 FR 73448 (December 12, 2005) and accompanying Issues and Decision Memorandum

Softwood Lumber from Canada 4th AR	Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber from Canada, 71 FR 33931 (June 12, 2006) and accompanying Issues and Decision Memorandum
	Stainless Steel Sheet Plate in Coils – Italy
SSPC from Italy	Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy, 64 FR 15508 (March 31, 1999) and accompanying Issues and Decision Memorandum
	Stainless Steel Sheet and Strip in Coils – France
SSSC from France 01 AR	Stainless Steel Sheet and Strip in Coils from France: Final Results of Countervailing Duty Administrative Review, 67 FR 62097 (October 3, 2002) and accompanying Issues and Decision Memorandum
	Stainless Steel Sheet and Strip in Coils – Italy
SSSC from Italy	Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy, 64 FR 30624 (June 8, 1999)
	Stainless Steel Sheet and Strip in Coils – Korea
SSSC from Korea	Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30636 (June 8, 1999)
SSSC from Korea 1st AR	Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 69 FR 2113 (January 14, 2004)
	Stainless Steel Wire Rod – Italy
SSWR from Italy or Steel Wire Rod From Italy	Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy, 63 FR 40474 (July 29, 1998)
SSWR from Italy – Section 129 IDM	IDM for the Determination under Section 129 of the URAA: Final Affirmative Countervailing Duty Determination: Stainless Steel Wire Rod from Italy, (Oct. 24, 2003)
	Steel Concrete Reinforcing Bars – Turkey
Steel Reinforcing Bars from Turkey	Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part, 69 FR 64731 (November 8, 2004) and accompanying Issues and Decision Memorandum
Steel Reinforcing Bars from Turkey 04/05 AD	Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part, 71 FR 65082 (November 7, 2006) and accompanying Issues and Decision Memorandum

	Steel Products – Austria
Steel Products from Austria or General Issues Appendix	Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217 (July 9, 1993)
	Steel Wire Rod – Belgium
Steel Products from Belgium	Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium, 47 FR 39304 (September 7, 1982)
	Steel Wire Rod – Germany
Steel Wire Rod from Germany	Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany, 62 FR 54990 (October 22, 1997)
	Sulfanilic Acid – Hungary
Sulfanilic Acid from Hungary	Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary, 67 FR 60223 (September 25, 2002) and accompanying Issues and Decision Memorandum
	Tapered Roller Bearings – China
TRBs from the PRC 94/95 AR – AD	Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China, Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order, 62 FR 6189 (February 11, 1997)
	Welded Carbon Steel Standard Pipe – Turkey
CSSP from Turkey	Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey, 71 FR 43111 (July 31, 2006)
	Other
Practice Modification Notice	Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125 (June 23, 2003)
Application of CVD to PRC – Comment Request	Application of the Countervailing Duty Law to Imports from the People's Republic of China: Request for Comment, 71 FR 75507 (December 15, 2006)
Compliance Notice to Alaskan Hunt and Fish Guides	Compliance With Parts 119, 121, and 135 by Alaskan Hunt and Fish Guides Who Transport Persons by Air for Compensation or Hire, 63 FR 4 (January 2, 1998)

IV. *MISCELLANEOUS TABLE (REGULATORY, STATUTORY, ARTICLES, ETC.)*

Short Cite	**Full Name**
the Act	the Tariff Act of 1930, as amended
CVD Preamble	Countervailing Duties; Final Rule, 63 FR 65348 (November 25, 1998)
Accession Protocol	Protocol on the Accession of the People's Republic of China to the World Trade Organization, WT/L/432, art. 15(b) (November 23, 2001) (found at www.wto.org)
SCM Agreement	Agreement on Subsidies and Countervailing Measures, April, 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS: THE LEGAL TEXTS 264 (1994)
Communication from China to the Working Party – July 11, 1988	Communication from China to the Working Party on China's Status as a Contracting Party, GATT Doc. No. Spec(88)37 (July 11, 1988)
WTO Working Party Report – 10/1/2001	Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001), available at http://www.wto.org
WTO Working Party Report – 11/21/2001	Report of the Working Party on the Accession of China, WT/MIN(01)/3 (November 21, 2001)
WTO China Trade Policy Review – Revision	Trade Policy Review: Report by the Secretariat on the People's Republic of China (Revision), WT/TPR/S/161/Rev. 1 (June 26, 2006), at Petition Exhibit CVD 3
IMF Working Paper – China's Banking Sector Reform	International Monetary Fund Working Paper, Progress in China's Banking Sector Reform at 13 (March 2006), in Petition Exhibit CVD 9
United States – Measures Treating Export Restraints as Subsidies	Panel Report, United States – Measures Treating Export Restraints as Subsidies, WT/DS194/R (June 29, 2001)
WTO Import Licensing Procedures	Responses to Questionnaire on Import Licensing Procedures, WTO Committee on Import Licensing (06-4726)G/LIC/N/3/CHN/5 (October 3, 3006), available at http://www.export.gov/china/exporting_to_china/China_WTO_Import_Licensing.pdf
OTCA	Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988)
OTCA – House Report	Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 100-40, part 1 (1987)
URAA	Uruguay Round Agreements Act, Pub L. No. 103-465, 108 Stat. 4809 (1994)
URAA – Senate Report	Uruguay Round Agreements Act, S. Rep. No. 103-412, at 90 (1994)
SAA	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994)
APA	Administrative Procedures Act, 5 USC section 500 et seq.
TAA of 1979	Trade Agreements Act of 1979, Pub. L. No. 96-39, 93 Stat. 144 (1979)
TAA of 1979 – Senate Report	Trade Agreements Act of 1979, 96th Cong., S. Rep. 96-249 (1979)

<u>DRAMS from Korea – Panel Report</u>	Panel Report, <u>United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) From Korea</u>, WT/DS296/R (February 21, 2005)
<u>DRAMS from Korea – AB Report</u>	Appellate Body Report, <u>United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) From Korea</u>, WT/DS296/AB/R (June 27, 2005)
<u>WTO – Softwood Lumber from Canada</u>	Panel Report, United States – Final Dumping Determination on Softwood Lumber from Canada (Art. 21.5), WT/DS264/AB/RW (adopted August 31, 2004)
<u>NAFTA Binational Panel – Softwood Lumber from Canada</u>	<u>Softwood Lumber from Canada</u>, NAFTA USA-CDA-2002-1904-03 (NAFTA Binational Panel, August 13, 2003

V. NON-IDM MEMORANDA AND OTHER SHORT-CITED EXHIBITS/DOCUMENTS

Short Cite	**Full Name**
Petition	Petition for the Imposition of Antidumping and Countervailing Duties on Certain New Pneumatic Off-The-Road Tires from the People's Republic of China, filed on June 18, 2007
Initiation Checklist	Countervailing Duty Investigation Initiation Checklist: Certain New Pneumatic Off-The-Road Tires from the People's Republic of China (July 30, 2007)
Respondent Selection Memorandum	Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, Respondent Selection (August 17, 2007)
Land Analysis Memorandum	Memorandum from Mark Hoadley to Thomas Gilgunn, Program Manager, Analysis of Land-Use Rights for OTR Tires Respondents (December 7, 2007)
Land Benchmark Memorandum	Memorandum to the File, Countervailing Duty Investigation on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Land Benchmark Information (December 7, 2007)
Loan Benchmark Memorandum	Memorandum to the File, Loan Benchmark Information (December 7, 2007)
GTC Preliminary Calculation Memorandum	Memorandum from Nicholas Czajkowski to Thomas Gilgunn, Program Manager, Calculation Memorandum for Guizhou Tire (December 7, 2007)
TUTRIC Cross-Ownership Memorandum	Memorandum to Thomas Gilgunn, Program Manager, AD/CVD Operations, Office 6, from Mark Hoadley, Case Analyst, TUTRIC's Cross-Ownership (December 7, 2007)
Post-Preliminary Analysis	Memorandum to David M. Spooner, Assistant Secretary for Import Administration, through Stephen J. Claeys, Deputy Assistant Secretary, for Import Administration, from Barbara E. Tillman, Director, AD/CVD Operations, Office 6, Countervailing Duty Investigation of New Pneumatic Off-The-Road Tires from the People's Republic of China; Post-Preliminary Analysis of Non-Tradable Share Reform; Provision of Water to FIEs for Less than Adequate Remuneration; Grants to the Tire Industry for Electricity; and Various Provincial/Municipal Programs (May 2, 2008)
GOC Verification Report	Memorandum to Thomas Gilgunn, Program Manager, Countervailing Duty Investigation: New Pneumatic Off-The-Road Tires from the People's Republic of China: Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China (GOC)
GTC Verification Report	Memorandum to Thomas Gilgunn, Program Manager, Countervailing Duty Investigation: New Pneumatic Off-The-Road Tires from the People's Republic of China: Verification of the Questionnaire Responses Submitted by GTC Co., Ltd.

Guizhou Province Verification Report	Memorandum to Thomas Gilgunn, Program Manager, Countervailing Duty Investigation: New Pneumatic Off-The-Road Tires from the People's Republic of China: Meetings with the Government of the Guizhou Province Regarding GTC Co., Ltd. and Affiliates;
Hebei Province Verification Report	Memorandum to Thomas Gilgunn, Program Manager, Countervailing Duty Investigation: New Pneumatic Off-The-Road Tires from the People's Republic of China: Meetings with the Government of Hebei Province and Xingtai Municipality Regarding Hebei Starbright Tire Co., Ltd. (Starbright) and Hebei Tire Co., Ltd. (Hebei Tire)
Starbright Verification Report	Memorandum to Thomas Gilgunn, Program Manager, Countervailing Duty Investigation: New Pneumatic Off-The-Road Tires from the People's Republic of China: Verification of the Questionnaire Responses Submitted by Hebei Starbright Tire Co., Ltd. (Starbright)
TUTRIC Verification Report	Memorandum to Thomas Gilgunn, Program Manager, Countervailing Duty Investigation: New Pneumatic Off-The-Road Tires from the People's Republic of China: Verification of the Questionnaire Responses Submitted by Tianjin United Tire & Rubber International Co., Ltd.
Tianjin Government Verification Report	Memorandum to Thomas Gilgunn, Program Manager, Countervailing Duty Investigation: New Pneumatic Off-The-Road Tires from the People's Republic of China: Meetings with the Government of Tianjin Municipality Regarding Tianjin United Tire & Rubber International Co., Ltd. and Affiliates (April 15, 2008)
Preliminary Scope Determination	Memorandum regarding The AD and CVD Investigations on New Pneumatic Off-The-Road Tires ("OTR Tires") from the People's Republic of China ("PRC"), Preliminary Determination: Comments on the Scope of the Investigations (May 14, 2008)
CIO Memorandum	Memorandum to David M. Spooner, Assistant Secretary for Import Administration, through Stephen J. Claeys, Deputy Assistant Secretary, for Import Administration, from Barbara E. Tillman, Director, AD/CVD Operations, Office 6, Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires (OTR Tires) from the People's Republic of China; Analysis of Change in Ownership (May 27, 2008)
Final CIO Memorandum	Memorandum to the File, Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires (OTR Tires) from the People's Republic of China; Analysis of Change in Ownership, Final Determination (July 7, 2008)
Final Loan Benchmark and Discount Rate Memorandum	Memorandum to the File, Final Loan Benchmark and Discount Rate Memorandum (July 7, 2008)
GTC Final Calculation Memorandum	Memorandum to the File, Final Calculation Memorandum for Guizhou Tire Company Limited (GTC) (July 7, 2008)
Starbright Final Calculation Memorandum	Memorandum to the File, Final Calculation Memorandum for Hebei Starbright Tire Co., Ltd. (Starbright) (July 7, 2008)
TUTRIC Final Calculation Memorandum	Memorandum to the File, Final Calculation Memorandum for Tianjin United Tire & Rubber International Co., Ltd. (TUTRIC) (July 7, 2008)

May NME Status Memorandum	Memorandum regarding The People's Republic of China (PRC) Status as a Non-Market Economy (NME) (May 15, 2006)
August NME Status Memorandum	Memorandum regarding Antidumping Duty Investigation of Certain Line Paper Products from the People's Republic of China ('China') – China's Status as a Non-Market Economy ("NME") (August 30, 2006)
Georgetown Steel Memorandum	Memorandum from Shana Lee-Alaia and Lawrence Norton to David M. Spooner, Assistant Secretary of Commerce, Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China – Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy (March 29, 2007)
LWRP from the PRC – Post-Preliminary Analysis	Post-Preliminary Analysis for the Provision of Land For Less Than Adequate Remuneration (April 21, 2008)
CWP Scope Memorandum	Memorandum from Abdelali Elouaradia, Office Director, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, Scope of the Antidumping and Countervailing Duty Investigations of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China (November 5, 2007), cited in Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances , 73 FR 31970 (June 05, 2008), at 4.
Hebei Province 11th Five-Year Plan for Technology	Hebei Province Science and Technology 11th Five-Year Plan & 2020 Long-Term Target
Hebei Province Implementation Guidelines for 11th Five-Year Plan	Guidelines for the Implementation of Hebei Province Science and Technology 11th Five-Year Plan
GOC 11th Five-Year Plan	11th Five-Year Plan of National Economic and Social Development of China
SETC Circular 716	Promulgation of the Guidance of Recent Development in the Industrial Sector (SETC, Circular No. 716)
Tianjin Tech Industries Catalogue	2002 Tianjin Municipal Directory Catalogue for the Priority Development of High-and-New Tech Industries
GOC Catalogue	Directory Catalogue on Readjustment of Industrial Structure (NDRC, Decree No. 40) Ex. Supp. 2, Category I, section IX (26))
Directory Catalogue on Readjustment of Industrial Structure	Directory Catalogue on Readjustment of Industrial Structure (Version 2005), published by the NDRC
Village Committee Law	Organic Law of the Villagers Committees of the People's Republic of China
NTSR Circular or NTS Selling Circular	Circular of China Securities Regulatory Commission on Issuing the Measures for the Administration of the Share-trading Reform of Listed Companies (September 4, 2005), in Petitioners' New Subsidy Allegation at Exhibit 2 (Oct. 23, 2007)
Xingtai Reform Implementing Circular	Xingtai Municipal Commission of Enterprise Reform and Development Promotion Implementing Opinions on Further Reorganization of Enterprise, Xing Qi Gai (2004) No. 9