C-570-936
Investigation
POI: 01/01/07 - 12/31/07
Public Document
Operations/Office 3

DATE: November 17, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
Import Administration

SUBJECT: Issues and Decision Memorandum for Final Determination in the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Line Pipe (Line Pipe) from the People's Republic of China

---

I. Summary

On September 9, 2008, the Department of Commerce (the Department) published the preliminary determination in this countervailing duty (CVD) investigation. See Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 73 FR 52297 (September 9, 2008) (Preliminary Determination). The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate benefits from these programs. Additionally, we have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which contains the Department's response to the issues raised in the briefs. Based on the comments received and our verification findings,[1] we have made certain modifications to the Preliminary Determination. We recommend that you approve the positions described in this memorandum.

[1] From October 7 through October 14, 2008, we conducted verification of the questionnaire responses submitted by the Government of the Republic of China (GOC), Huludao Seven-Star Steel Pipe Group Co., Ltd. (Huludao Seven Star Group), Huludao Steel Pipe Industrial Co. Ltd. (Huludao Steel Pipe), and Huludao Bohai Oil Pipe Industrial Co. Ltd. (Huludao Bohai Oil Pipe) (collectively, the Huludao Companies), and Liaoning Northern Steel Pipe Co., Ltd. (Northern Steel) (collectively, respondents). We issued the verification reports on October 23, 24, 27, and 28, 2008. Copies of the verification reports are on file on the public record located in the Department's Central Records Unit (CRU), room 1117.

Below is a complete list of the issues in this investigation for which we received case brief and rebuttal comments from interested parties:

Comment 1:	Whether the Department Should Reject the Ownership Data Supplied by the GOC for Use in the Provision of Hot-Rolled Steel (HRS) for Less Than Adequate Remuneration (LTAR) Program and Resort to the Use of Adverse Facts Available (AFA)
Comment 2:	Whether the Huludao Companies Submitted Sufficient Information to Establish the Identity and Ownership of Producers that Sold HRS to the Huludao Companies through Trading Companies
Comment 3:	Whether the Five Factor Test Should Be Used To Asses Which Producers of HRS Are State-Owned
Comment 4:	Whether the Sale of HRS from Privately-Held Trading Companies Constitutes a Financial Contribution Under the Act
Comment 5:	Whether the Use of an In-Country Benchmark is Permissible When Calculating Benefits Under the Provision of HRS for LTAR Program
Comment 6:	Whether the Department's De Facto Specificity Analysis Under the Provision of HRS for LTAR Program was Flawed
Comment 7:	Whether to Adjust the Benchmark Used in the Provision of HRS for LTAR Program for International Freight
Comment 8:	Whether the Department Erred When Adding Import Duties and VAT to the Benchmark Price Used in the Provision of HRS for LTAR Program
Comment 9:	Whether the Department Should Add VAT of 17 Percent to the Purchase Price of HRS the Huludao Companies Acquired During the POI When Examining the Provision of HRS for LTAR
Comment 10:	Whether the Department Erred in Using an Inflation-Adjusted Interest Rate to Calculate the Short-Term Benchmark
Comment 11:	Whether the Department Should Revise Its Short-Term Benchmark Methodology by Either Basing the Short-Term Benchmark On a Simple Average of Applicable Short-Term Rates or Adding an Additional "Governance Factor" to the Regression Analysis
Comment 12:	Whether the IMF Rates Used in the Department's Short-Term Regression-Based Benchmark Methodology are, In Fact, Long-Term Rates and Therefore Flawed
Comment 13:	Whether the Regression-Based Analysis Used to Derive the Short-Term Benchmark Interest Rate is Invalid
Comment 14:	Whether the Department Should Revise the Manner in Which It Incorporated a Risk Premium to the RMB Denominated Long-Term Benchmark
Comment 15:	Whether the Department's Regulations Authorize the Use of Out-Of-Country Interest Rate Benchmarks
Comment 16:	Whether the Department Has the Legal Authority to Apply the CVD Law to the PRC While Simultaneously Treating the PRC as an NME in Parallel Antidumping Investigations
Comment 17:	Whether the Application of the CVD Law to the PRC Results in Double Counting of Duties

Comment 18:	Whether the Department Should Use a "Cut-Off" Date That Is More Recent Than December 11, 2001
Comment 19:	Whether Certain Interest-Free Loans the Huludao Companies Received Constituted Financial Contributions Received After December 11, 2001, the Date of the PRC's Accession to the World Trade Organization (WTO)
Comment 20:	Whether the Department Erred in Refusing to Investigate the Creditworthiness of the Huludao Companies for Years 2004 Through 2007
Comment 21:	Whether the GOC Established an Industrial Policy to Encourage Preferential Lending to the Producers of Subject Merchandise
Comment 22:	Whether the Department Should Countervail the Provision of Land at LTAR
Comment 23:	Whether the Department Should Add an Additional Land-Use Right Acquisition by the Huludao Companies to its Subsidy Analysis Under the Provision of Land for LTAR Program
Comment 24:	Whether Northern Steel Acquired Land-Use Rights from a Government Authority
Comment 25:	Whether Certain Loans Issued to the Huludao Companies from State-Owned Banks Were Contingent Upon Exports
Comment 26:	Whether There Is Sufficient Information to Determine that a Program-Wide Change Occurred With Respect to the Domestic Income Tax Credit for Domestically-Produced Equipment Program

II. Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2007, through December 31, 2007, which corresponds to the People's Republic of China's (PRC) most recently completed fiscal year. See 19 CFR 351.204(b)(2).

III. Application of Facts Available and Use of Adverse Inferences

Adverse Facts Available

The GOC

As discussed below, the Department has investigated whether GOC authorities provided hot-rolled steel (HRS), a major input in the production of line pipe to respondents for less than adequate remuneration (LTAR). In the May 19, 2008 initial questionnaire, the Department requested that the GOC respond to the Standard Questions and Provision of Goods/Services Appendices as they pertained to the GOC's alleged provision of HRS for LTAR. Specifically, we asked the GOC to:

> Please provide a list by industry and by region of the number of companies, which have received benefits under this program in the year the provision of benefits was approved, and each of the preceding three years. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved

> and in each of the preceding three years.

Concerning the GOC's alleged provision of HRS for LTAR, the GOC stated that:

> No such list exists, nor does any data exist from which to derive such a list absent inquiring with every hot-rolled steel producer in China. Such records would only reflect amounts sold and prices charged, as opposed to any "benefit" conferred by the transaction.

See GOC's July 10, 2008 questionnaire response at 110.

On August 5, 2008, the Department issued a supplemental questionnaire to the GOC in which it requested that the GOC respond to Department's de facto specificity questions to the best of the GOC's ability. In its response the GOC stated that its initial response reflected its best effort. It added that:

> The sale of hot-rolled steel in the Chinese market neither constitutes a "program" nor does it confer any "benefit" within the meaning of the U.S. CVD Law or the WTO SCM Agreement. The GOC reiterates that the data sought by the Department simply do not exist, nor would it be feasible to even assemble given the multitude of companies that produce and consume hot-rolled steel in the Chinese market.

As discussed below, the Department has also investigated whether the GOC sold land for LTAR. In its May 19, 2008 initial questionnaire the Department requested that the GOC respond to the Standard Questions and Provision of Goods/Services Appendices as they pertained to the GOC's alleged provision of land for LTAR. In its July 10, 2008 response, the GOC stated:

> Based on the information presently available to the GOC, it does not consider that land use rights provided to the producer respondents and their reporting cross-owned affiliates was provided at "no cost or nominal cost." For this reason, the GOC does not respond to the Standard Questions of Appendix 1 or the Provision of Goods/Services questions at Appendix 5.

See GOC's July 10, 2008 questionnaire response at 101.

In its August 5, 2008 questionnaire, the Department once again requested that the GOC provide to the information requested in the Standard Questions and Provision of Goods/Services appendices. In its August 21, 2008 supplemental questionnaire response, the GOC responded to sections of the appendices. However, the GOC did not provide the requested information pertaining to the Department's de facto specificity analysis. For example, in its August 5, 2008 supplemental questionnaire, the Department asked the GOC to provide the following as it pertained to the GOC's alleged provision of land for LTAR:

> Please provide a list by industry and by region of the number of companies, which have received benefits under this program in the year the provision of benefits was approved and each of the preceding three years. Provide the total amounts of benefits received by

> each type of industry in each region in the year the provision of benefits was approved and each of the preceding three years.

In its August 21, 2008 response, the GOC stated that:

> No such list exists regarding the receipt of "benefits" through the administration of land use rights. At page 6 of Exhibit 54 of the GOC's initial questionnaire response, data is reported on land use rights – including allocated, granted, and secondary market transfers – that moved over the 2000 – 2005 period. Additional data are publically available and will be provided if requested.

<u>See</u> GOC's August 21, 2008 supplemental questionnaire response at 69.

We note that the data provided in Exhibit 54 of the GOC's initial questionnaire response does not provide the information the Department requested for purposes of its <u>de</u> <u>facto</u> specificity analysis.

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

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Because the GOC failed to provide the requested information by the established deadlines, the Department does not have the necessary information on the record to determine whether the GOC provided HRS and/or land to producers of line pipe in a manner that was <u>de</u> <u>facto</u> specific within the meaning of section 771(5A)(D)(iii) of the Act. Therefore, the Department must base its determination on the facts otherwise available in accordance with sections 776(a)(2)(A) and (B) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

With regard to the GOC's alleged provision of HRS and land for LTAR, because the GOC did not provide the information the Department requested relating to its de facto specificity analysis, we determine that, in accordance with sections 776(a)(2)(A) and (B) and 776(b) of the Act and for the reasons discussed below, the use of AFA is appropriate for the final determination with respect to the GOC's alleged provision of HRS and land to producers of line pipe for LTAR. The Department issued supplemental questionnaires in which it instructed the GOC to provide the information relating to the Department's de facto specificity analysis. However, in its response, the GOC continued to provide insufficient information regarding the Department's questions pertaining to de facto specificity. Therefore, consistent with sections 776(a)(2)(A) and (B) of the Act, we find that the GOC has withheld requested information and as a result we must apply facts otherwise available for the de facto specificity analysis. Furthermore, we find that the GOC did not act to the best of its ability because of its refusal to provide information on its provision of HRS and land. Therefore, we have employed adverse inferences in selecting from among the facts otherwise available. Accordingly, pursuant to section 776(b) of the Act, we find that the provision of HRS and land to producers of line pipe by GOC authorities is de facto specific within the meaning of section 771(5A)(D)(iii) of the Act.[2] Thus, we determine that the provision of HRS and land by GOC authorities to producers of line pipe is countervailable to the extent that the provision of the goods constituted a financial contribution in accordance with 771 section (5)(D)(iii) of the Act and conferred a benefit upon producers of line pipe within the meaning of section 771(E)(iv) of the Act. The Department's decision to rely on adverse inferences when lacking a response from a foreign government is in accordance with its practice. See, e.g., Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 11397, 11399 (March 7, 2006) (unchanged in the Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 38861 (July 10, 2006) (relying on adverse inferences in determining that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of the sections 771(5)(D)(i) and 771(5A)(D)(iii) of the Act, respectively).

We received comments from interested parties regarding the Department's de facto specificity analysis for HRS and land. See Comment 6.

In addition, in regard to the provision of HRS for LTAR, at verification the GOC refused to provide information pertaining to the ownership of HRS suppliers identified in the Department's verification outline. As discussed in further detail in Comment 1, the GOC refused to provide ownership information related to certain HRS suppliers, information that was in the GOC's possession at either the federal or provincial level. We find that the GOC has withheld requested information and impeded the Department's verification process within the meaning of section 776(a)(2)(A) and (D) of the Act. As a result, we are applying facts available (FA). The GOC's refusal to provide the requested information prevented the Department from confirming the contemporaneity of the ownership information submitted by the GOC and prevented the Department crosschecking the ownership information. Therefore, we further find that the GOC has failed to act to the best of its ability and, thus when applying FA, we are relying upon adverse inferences under section 776(b) of the Act. Accordingly, pursuant to section 776(b) of

[2] We note that it is not necessary to rely on this AFA finding in instances in where a respondent's land purchase is found to be de jure specific.

the Act, we are assuming that all of respondents' HRS suppliers were government-owned. As discussed in Comment 1, we also find, pursuant to section 776(b) of the Act, that government-owned producers manufactured the HRS sold to respondents via trading companies during the POI.

IV. Subsidies Valuation Information

The Department has investigated loans received by the respondents from Chinese banks, including state-owned commercial banks (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."

However, we determine that the interest rates in China are not reliable as benchmarks for these loans because of the pervasiveness of the GOC's intervention in the banking sector. Loans provided by Chinese banks reflect significant government intervention and do not reflect the rates that would be found in a functioning market. See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) (CFS Final), and accompanying decision memorandum (CFS Decision Memorandum) at Comment 10 "Benchmark for Policy Lending."

In our analysis of the PRC as a non-market economy in the antidumping (AD) investigation of certain lined paper products from the PRC, 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. See "The People's Republic of China Status as a Non-Market Economy," (May 15, 2006) (May 15 Memorandum); and "China's Status as a Non-Market Economy," (August 30, 2006) (August 30 Memorandum), both of which are referenced in the 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) (AD CFS Final). This finding was further elaborated in the CFS Final. See CFS Decision Memorandum at Comment 10. In that case, the Department found that the GOC still dominates the domestic Chinese banking sector and prevents banks from operating on a fully commercial basis. See also Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 72 FR, 71365 (December 17, 2007) (Tires Prelim) and upheld in 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, 73 FR 40480 (July 15, 2008) (Tires Final), and accompanying decision memorandum (Tires Decision Memorandum) at "Subsidies Valuation" section; and Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008) (Thermal Paper Final) and accompanying Issues and Decision Memorandum (Thermal Paper Decision Memorandum) at "Benchmarks and Discount Rates." We continue to find that these distortions are present in the PRC banking sector and, therefore, determine 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.[3]

3 We find there is no evidence on the record of the instant investigation to demonstrate that the distortions found in

Moreover, while foreign-owned banks do operate in China, they are subject to the same restrictions as the SOCBs in China. Further, their share of assets and lending is negligible compared with the SOCBs. Therefore, as discussed in greater detail in CFS Final, because of the market-distorting effects of the GOC in the PRC banking sector, foreign bank lending does not provide a suitable benchmark. See CFS Decision Memorandum at Comment 10.

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, yet, we determine that there is not a functioning market for loans within the PRC. Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting a market-based external benchmark rate. We note that the use of an external benchmark is consistent with the Department's practice. For example, in Softwood Lumber First Review, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. See Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products From Canada, 69 FR 75917 (December 20, 2004) (Softwood Lumber First Review), and accompanying decision memorandum at "U.S. Log Prices are a More Appropriate Benchmark" section. In the current proceeding, the Department finds 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. Therefore, as in Softwood Lumber First Review, because domestic prices are not reliable, we have resorted to prices outside the PRC.

Selecting an appropriate external interest rate benchmark is particularly important in this case because, unlike prices for certain commodities and traded goods, lending rates vary significantly across the world. Nevertheless, as discussed in CFS Final, there is a broad inverse relationship between income levels and lending rates. In other words, countries with lower per capita gross national income (GNI) tend to have higher interest rates than countries with higher per capita GNI, a fact demonstrated by the lending rates across countries reported in International Financial Statistics (IFS). See Tires Prelim at "Subsidies Valuation" (upheld in Tires Final). The Department, therefore, determines that it is appropriate to compute a benchmark interest rate based on the inflation-adjusted interest rates of countries with similar per capita GNI to the PRC, using the same regression-based methodology that we employed in CFS Final and Tires Final. See e.g., CFS Decision Memorandum at Comment 10; Tires Decision Memorandum at Comment E.3 "Role of the GOC in the PRC Banking System and Whether to Use an Internal or External Benchmark;" and Thermal Paper Decision Memorandum at "Benchmarks and Discount Rates."

As explained in the CFS Decision Memorandum at Comment 10, this pool of countries captures the broad inverse relationship between income and interest rates. We have determined which countries are similar to the PRC in terms of per capita GNI based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category.

Many of these countries reported short-term lending and inflation rates to IFS. Certain of the interest rates used in our regression analysis may reflect maturities of longer than one year. Therefore, we are not treating the regression-based interest rate derived from these rates as a short-term rate. Instead, we are applying our benchmark to loans with terms of two years or less. This approach is consistent with the Department's approach in Thermal Paper Final. See

---

the CVD proceedings cited above have been eliminated.

Thermal Paper Decision Memorandum at "Benchmarks and Discount Rates" section.[4]

We used this data set to develop an inflation-adjusted market benchmark lending rate for short-term renminbi (RMB) loans. We did not include those economies that the Department considered to be non-market economies for AD purposes. The benchmark necessarily also excludes any economy that did not report lending and inflation rates to IFS.

Because these are inflation-adjusted benchmarks, it is necessary to adjust the interest paid by respondents on its RMB loans for inflation. This was done using the PRC inflation figure as reported to IFS. See Memorandum to the File regarding Loan Benchmark Information (dated September 2, 2008), which have remained unchanged from the Preliminary Determination. The Department then compared its benchmarks with respondents' inflation-adjusted interest rate to determine whether a benefit existed for the loans received by respondents on which principal was outstanding or interest was paid during the POI.

The lending rates reported in IFS represent short- and medium-term lending. There is no sufficient publicly-available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB rated bond rates. Because the short-term benchmark covers loans up to two years, we have calculated the long-term adjustment based on the difference between (1) the two-year BB bond rate and (2) the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. This approach is consistent with the Department's approach in the Thermal Paper Final. See Thermal Paper Decision Memorandum at "Benchmarks and Discount Rates" section.

To calculate long-term loan benchmarks, the Department first developed a ratio of the BB bond rates discussed above. The Department then applied this ratio to the benchmark short-term lending figure (discussed above) to impute a long-term lending rate. In calculating long-term benchmarks and discount rates, the Department has adjusted the long-term U.S. corporate BB-rated bond rates to approximate as closely as possible the terms of the long-term loans at issue. Thus, to calculate the long-term loan benchmarks, we adjusted the short-term benchmark lending rate for the year in question to reflect inflation in the PRC and then applied the appropriate mark-up ratio.

In our derivation of long-term benchmark interest rates, we have not made any inflation adjustment to interest paid by respondents on their long-term RMB-denominated loans. This methodology is consistent with the Department's practice. See Tires Decision Memorandum at "Loan Benchmarks and Discount Rates" section and at Comment E.3 "Role of the GOC in the PRC Banking System and Whether to Use an Internal or External Benchmark." For supporting documentation and data on the derivation of the short-term and long-term interest rates and discount rates used in this investigation, see Memorandum to the File regarding Loan Benchmark Information (dated November 17, 2008) (Loan Benchmark Memorandum).

In addition, the Department requires a U.S. dollar denominated short-term interest rate. Consistent with past practice, for U.S. dollar denominated loans, the Department used as the benchmark the one-year dollar interest rates for the London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating, as provided by Bloomberg. See Tires Prelim, 72 FR 71365 (upheld in Tires Final). For this final determination, we find that BB-rated bonds, which are the highest non-

---

[4] Our regression-based benchmark interest rates follow the approach employed in the Thermal Paper Final. See Thermal Paper Decision Memorandum at "Benchmark and Discount Rates" section.

investment-grade and near the middle of the overall range, are the most appropriate basis for calculating the spread over LIBOR. Furthermore, consistent with past practice, the Department relied on corporate bond rates for the industrial sector in the United States and the Eurozone, because the market for dollars and euros is international in scope. Id. For supporting documentation and data on the derivation of the U.S. dollar denominated short-term interest rate used in this investigation, see Loan Benchmark Memorandum.

The Department also requires an RMB-denominated long-term interest rate to use as a discount rate for purposes of allocating benefits received through the provision of certain land-use rights for LTAR over the relevant length of each land-use agreement. The Department also requires an RMB-denominated interest rate to use as a discount rate for certain countervailable long-term loans. In calculating the appropriate long-term mark-up for the provision of land-use rights for LTAR, we have used the 30-year Bloomberg U.S. corporate BB-rated bond rate because this time period most closely matches the 50-year terms of the leases at issue in this investigation. We used the same approach when deriving our long-term interest rate except that in calculating the long-term mark-up, we used the Bloomberg U.S. corporate BB-rated bond rate that corresponded to the duration of the countervailable loan. Our approach regarding the derivation of discount rates is consistent with the Department's practice. See Tires Decision Memorandum at "Loan Benchmarks and Discount Rates" section. For supporting documentation and data on the derivation of the RMB long-term benchmark interest rate used in this investigation, see Loan Benchmark Memorandum.

We received comments from interested parties regarding the Department's benchmark interest and discount rates. See Comments 5 and 7 through 15.

Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 15 years. No interested party has claimed that the AUL of 15 years is unreasonable.

Further, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

Additionally, we have determined that we will identify and measure subsidies in China beginning on the date of the country's accession to the World Trade Organization (WTO), December 11, 2001. See Comment 18.

Company History

Northern Steel is a foreign invested enterprise that produces electronic resistance welded pipes for the petroleum and natural gas industry, including line pipe, casing pipe and tubing. The company is located at the Economic Development Zone in Haicheng, Liaoning. Northern Steel reported that it was formed on November 7, 2005, and that in 2006, it purchased the assets of a defunct Chinese pipe company. Northern Steel stated that the sale of the assets took place in an open auction held by the government-owned Great Wall Asset Management Company.

In the Preliminary Determination, we stated that the Department would seek additional information concerning Northern Steel's acquisition of certain fixed assets from the government-owned asset management company. See Preliminary Determination, 73 FR 52301. However, subsequent to the preliminary decision, we decided to not conduct a further investigation of the facts concerning the asset purchase because the petitioners' allegation of the asset purchase was untimely under 19 CFR 351.301(d)(4)(i)(A), and there was insufficient time prior to the deadline of this final determination to gather and analyze the necessary information to conduct an investigation of such a complex and novel allegation. See Memorandum to Melissa G. Skinner, Director, Operations Office 3, from Eric B. Greynolds, Program Manager, Operations Office 3, regarding "Status of New Subsidy and Uncreditworthy Allegations Filed by Petitioners," dated September 23, 2008 (New Allegation Memorandum).

As stated above, the Huludao Companies consist of the Huludao Seven Star Group, Huludao Steel Pipe, and Huludao Bohai Oil Pipe. The Huludao Star Group was established in June 1999 and is headquartered in the Longgang District of Huludao City in Liaoning Province. The Huludao Seven Star Group is owned by a group of individual shareholders and is a domestically owned enterprise. The Group produces standard welded pipes, but does not produce subject merchandise. The manufacturing facilities and headquarters of Huludao Steel Pipe are also located in the Longgang District of Huludao City in Liaoning Province. Huludao Steel Pipe was established in 1993. During the POI, the shareholders of the Huludao Seven Star Group along with the Huludao Seven Star Group itself owned a majority share of Huludao Steel Pipe. Huludao Steel Pipe is a domestically-owned enterprise that produces standard welded pipe, line pipe (a.k.a., subject merchandise), casing, and rectangular pipe.

The manufacturing facilities and headquarters of Huludao Bohai Oil Pipe are located in the Beigang Industrial Zone and Huludao Development Zone of Huludao City in Liaoning Province. Huludao Bohai Oil Pipe was established in 2006. During the POI, Huludao Steel Pipe wholly owned Huludao Bohai Oil Pipe. Huludao Bohai Oil Pipe is a domestically owned enterprise that produces hot-rolled steel strips, welded standard pipe, and line pipe.

Cross-Ownership

Under 19 CFR 351.525(b)(6)(vi) 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. Based on the information supplied by the Huludao Companies indicating that common ownership exists between the three companies, we determine that the Huludao Seven Star Group, Huludao Steel Pipe, and Huludao Bohai Oil Pipe are cross-owned under19 CFR 351.525(b)(6)(vi).

As discussed in further detail below, the Huludao Seven Star Group acquired two parcels of land from the Bureau of Land Resources of Longgang District, Huludao City in Liaoning Province in 2004 and 2006. The 2004 purchase was on behalf of Huludao Steel Pipe. The 2006 purchase was on behalf of Huludao Bohai Oil Pipe. Under 19 CFR 351.525(b)(6)(v), if a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership, the Department will attribute the subsidy to products sold by the recipient of the transferred subsidy. Thus, we determine that the land purchased by the Huludao Seven Star Group on behalf of Huludao Steel Pipe and Huludao Bohai Oil Pipe constitutes a transfer of subsidies by a corporation producing non-subject merchandise to cross-owned corporations that produce subject merchandise. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed such subsidies received by Huludao Steel Pipe and Huludao Bohai Oil Pipe under the Provision of Land For LTAR program to the combined total sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe (net of their respective sales to affiliates).

We determine that the Huludao Seven Star Group did not transfer any other subsidies to Huludao Steel Pipe and Huludao Bohai Oil Pipe during the POI. Therefore, given this finding and based evidence provided by the Huludao Seven Star Group that it does not produce subject merchandise or provide any inputs to Huludao Steel Pipe and Huludao Bohai Oil Pipe that are primarily dedicated to the production of line pipe, we are not including any other programs used by the Huludao Seven Star Group in our subsidy analysis.

We did not receive comments from interested parties on the approach utilized in the Preliminary Determination. Therefore, we our approach concerning the cross-ownership issues described above remain unchanged.

V. Analysis of Programs

A. Programs Determined To Be Countervailable

1. The "Two Free, Three Half" Program

The "Foreign Invested Enterprise and Foreign Enterprise Income Tax Law" (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for foreign invested enterprises (FIEs) in the PRC. The intent of this law is to attract foreign businesses to the PRC.

According to Article 8 of the FIE Tax Law, FIEs that are "productive" and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed "productive" if they qualify under Article 72 of the "Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises." This provision specifies a list of industries in which FIEs must operate in order to qualify for benefits under this program. The activities listed in the law are: (1) machine manufacturing and electronics industries; (2) energy resource industries (not including exploitation of oil and natural gas); (3) metallurgical, chemical and building material industries; (4) light industries, and textiles and packaging industries; (5) medical equipment and pharmaceutical industries; (6) agriculture, forestry, animal husbandry, fisheries and water conservation; (7) construction industries; (8) communications and transportation industries (not including passenger transport); (9) development of science and technology, geological survey and industrial information consultancy directly for services in respect of production and services in respect of repair and maintenance of production equipment and precision instruments; and (10) other industries as specified by the tax authorities under the State Council. If an FIE meets the above conditions, eligibility is automatic and the amount exempted appears on the enterprise's tax return.

Northern Steel reported, and we verified,[5] that the company is a "productive" FIE that filed a tax return for a "free" tax year under this program during the POI.

Consistent with the Preliminary Determination and prior China CVD cases, we determine that the exemption or reduction in the income tax paid by "productive" FIEs under this program confers a countervailable subsidy. See Preliminary Determination, 73 FR 52303-04; Thermal Paper Decision Memorandum at "Income Tax Exemptions/Reductions under the 'Two Free/Three Half'" program; and CFS Decision Memorandum at "Two Free/Three Half" program. The exemption/reduction 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 the tax savings. See Section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, i.e., "productive" FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program, we treated the income tax savings enjoyed by Northern Steel as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the company's total sales for the POI.[6] To determine the amount of tax savings, we calculated the tax that Northern Steel would have paid in the absence of the program. On this basis, we determine that Northern Steel received a net countervailable subsidy of 4.11 percent ad valorem under this program.

2. Provision of Land for Less Than Adequate Remuneration

The Department has investigated whether Chinese government authorities provided land use-rights to the respondents for LTAR. Huludao Seven Star Group reported making several land purchases. However, as discussed in the "Cross-Ownership" section, we have limited our subsidy analysis to those land purchases that we determine constitute a transfer of subsidies by the Huludao Seven Star Group, a corporation producing non-subject merchandise, to Huludao Steel Pipe and Huludao Bohai Oil Pipe, cross-owned corporations that produce subject merchandise, as described under 19 CFR 351.525(b)(6)(v). Therefore, for purposes of the determination, we have limited our subsidy analysis to the two parcels of land the Huludao Seven Star Group purchased from the Bureau of Land Resources of Longgang District, Huludao City in Liaoning Province in 2004 and 2006 on behalf of Huludao Steel Pipe and Huludao Bohai Oil Pipe. Regarding the 2004 purchase, the Huludao Seven Star Group acquired land-use rights from the local government for land that Huludao Steel Pipe had been using since 1993. Regarding the 2006 purchase, the Huludao Seven Star Group acquired land-use rights from the local government and subsequently leased the land to Huludao Bohai Oil Pipe. This parcel of

---

[5] See Memorandum to Melissa Skinner, Director, Operations Office 3, from Kristen Johnson, Trade Analyst, Operations Office 3, regarding "Verification of Liaoning Northern Steel Line Pipe Co., Ltd.," dated October 23, 2008 (Northern Steel Verification Report) at 7.

[6] At verification, we learned that the 2007 total sales revenue, which Northern Steel reported to the Department in its questionnaire response, was adjusted to exclude sales of secondary grade pipe, sales of defective grade pipe, and tolling revenue. See Northern Steel Verification Report at 5. For this final determination, we have included the revenue from those sales in Northern Steel's total sales for the POI.

land was located in the Beigang Industrial Zone. In addition, in 2004, Huludao Steel Pipe acquired land-use rights from the local government.[7]

With regard to the provision of land to the Huludao Companies, for the reasons described below, the Department determines that the provision of land-use rights to the Huludao Companies constitutes a countervailable subsidy in the form of land-use rights provided for LTAR. According to the company, local governments set the prices and were a party to the land-use rights agreements. Thus, the sale of the land-use rights constitutes a financial contribution from a government authority in the form of providing goods or services pursuant to section 771(5)(D)(iii) of the Act. In addition, with regard to the land that the Huludao Seven Star Group purchased in 2006, the Department determines that the sales of the land-use rights are specific because they are limited to enterprises or an industry located within a designated geographical region pursuant to section 771(5A)(D)(iv) of the Act. As discussed above, the land purchased in 2006 by the Huludao Seven Star Group is located within an economic development zone that is within the jurisdiction of the authorities that provided to the company its land-use rights and set the terms of those rights.[8] Regarding the Huludao Companies' 2004 land purchases, as discussed above in the "Adverse Facts Available" section, the GOC did not provide the information the Department requested relating to its de facto specificity analysis. Therefore, in accordance with section 776 of the Act, as AFA, we determine that the provision of land to the Huludao Companies in 2004 by the Bureau of Land Resources of Longgang District is de facto specific pursuant to section 771(5A)(D)(iii) of the Act.

We further determine that the sale of land-use rights provides a benefit pursuant to 19 CFR 351.511(a). Pursuant to section 771(5)(E)(iv) of the Act, a benefit is conferred when the government provides a good or service for LTAR. Section 771(5)(E) of the Act further states that the

> . . . adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of sale.

Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (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. This hierarchy reflects a logical preference for achieving the objectives of the statute.

---

[7] In its August 18, 2008 supplemental questionnaire response, Huludao Steel Pipe indicates that the Seven Star Group made an additional land purchase in 2006. However, at this time, information on the record does not indicate that the land was purchased on behalf of Huludao Steel Pipe or Huludao Bohai Oil Pipe. Therefore, we have not conducted a benefit analysis with respect to this transaction. In addition, information from the August 18, 2008 supplemental questionnaire response indicates that an additional affiliate of the Huludao Companies (whose identity is business proprietary) acquired land in 2004. However, information in the questionnaire responses of the Huludao Companies indicates that the affiliate does not produce subject merchandise or provide any member of the Huludao Companies with inputs that are primarily dedicated to the production of subject merchandise. Therefore, we have not performed a benefit analysis regarding this affiliate's 2004 land purchase.

[8] The land that the Huludao Seven Star Group purchased in 2006 is located in the Beigang Industrial Zone that is under the authority of the Bureau of Land Resources of Longgang District, Huludao City in Liaoning Province.

Consistent with the Sacks Final, Tires Final, and Thermal Paper Final, we determine that a first tier benchmark cannot be applied. See Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008) (Sacks Final), and accompanying decision memorandum (Sacks Decision Memorandum) at "Government Provision of Land for Less Than Adequate Remuneration" and Comment 10 "Whether the Department Should Select Either a First-Tier or Third-Tier Benchmark for the Provision of Land-Use Rights for Less Than Adequate Remuneration;" Tires Decision Memorandum at Comment H.7 "Land Benchmark;" and Thermal Paper Decision Memorandum at "Provision of Land to GG in the ZETDZ for Less than Adequate Remuneration," and Comment 12 "Provision of Land for Less Than Adequate Remuneration."

As an initial matter, we note that private land ownership is prohibited in the PRC and that all land is owned by some level of government, the distinction being between land owned by the local government or "collective" at the township or village level and land owned by the national government (also referred to as state-owned or "owned by the whole people").[9] Noting that the GOC, either at the national or local level, is the ultimate owner of all land in the PRC, the Department has examined whether the GOC exercises control over the supply side of the land market in the PRC as a whole so as to distort prices in the primary and secondary markets.

Consistent with the Department's determinations in the Sacks Final, Tires Final, and Thermal Paper Final, we determine that a first tier benchmark is not appropriate to measure the benefit from the sale of land-use rights during the POI because Chinese land prices are distorted by the significant government role in the market. The Preamble states that, "where it is reasonable to conclude the 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 Countervailing Duties; Final Rule, 63 FR 65348, 65377 (November 25, 1998) (Preamble)).

The second tier benchmark relies on world market prices that would be available to the purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving that particular producer. See 19 CFR 351.511(a)(2)(ii). In selecting a world market price under this second approach, the Department examines the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in-country purchaser. As discussed in the Preamble (63 FR at 65377), the Department will consider whether the market conditions in the country are such that it is reasonable to conclude that a purchaser in the country could obtain the good or service on the world market. We determine that land-use rights cannot be evaluated using a second tier benchmark because they cannot be simultaneously "available to an in-country purchaser" while located and sold out-of-country on the world market.

Since we are not able to conduct our analysis using a benchmark identified under the second tier of the regulations, consistent with the hierarchy, we next considered whether the GOC's pricing of land-use rights is consistent with market principles. This approach is also set forth under 19 CFR 351.511(a)(2)(iii) and is explained further in the Preamble (63 FR at 65378):

> (W)here the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return

[9] See GOC's July 9, 2008 questionnaire response at 100.

> sufficient to ensure future operations), or possible price discrimination . . . In our experience, these types of analysis may be necessary for such goods or services as electricity, land leases or water, and the circumstances of each may vary widely.

The regulations do not specify how the Department is to conduct such a market principles analysis. By its very nature, this analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case-by-case basis. In the instant case, we determine that due to the overwhelming presence of government involvement in the land-use rights market, as well as the widespread and documented deviation from the authorized methods of pricing and allocating land, the purchase of land-use rights in the PRC is not conducted in accordance with market principles.

Consistent with the Department's decision in the Sacks Final, Tires Final, and Thermal Paper Final, we find that there is a wide divergence between the de jure reforms of the market for land-use rights and the de facto implementation of such reforms. See Memorandum to the File regarding Land Benchmark Information (Land Benchmark Memorandum) (dated September 2, 2008) at Attachment 2 (stating that the PRC's land laws, regulations, and statements, although often vague and contradictory, seem to support the provision of secure land-use rights to farmers and an open, transparent system for transferring commercial land-use rights).[10] In practice, however, farmers' land-use rights are still not secure and fair compensation for farmers is an ongoing, market-distorting issue in PRC. In addition, individual and local governments routinely violate laws and regulations. Id. While the private market for land-use rights has grown, state-owned enterprises (SOEs) received a significant portion of their land-use rights free of charge. Also, commercial land sales are often conducted illegally. Id. In short, property rights remain poorly defined and weakly enforced. See Id. and Sacks Decision Memorandum at "Government Provision of Land for Less Than Adequate Remuneration."

Also, consistent with the Department's determination in the Sacks Final and Tires Final, we find that another de facto problem with land supply in the PRC that causes market distortions is that of local government corruption. Local governments most often transfer land through non-transparent negotiations with investors despite guidance that land should be transferred through a transparent bidding or auction process. This has led to widespread corruption, where much of the compensation is retained by the local government officials. See Land Benchmark Memorandum at Attachment 4 for article on "Law to Expose Illegal Land Deal," China Daily (dated August 1, 2006).

Given this finding, we have looked for an appropriate basis to determine the extent to which land-use rights are provided for LTAR. We find that a comparison of prices for land-use rights in the PRC with comparable market-based prices for land purchases in a country at a comparable level of economic development that is reasonably proximate to, but outside of China, is appropriate. Consistent with the Sacks Final and Tires Final, we determine that the most appropriate analysis in this case would be to compare the respondents' purchase of land-use rights to the sales of certain industrial land in industrial estates, parks, and zones in Thailand.

As a general matter, we note that the PRC and Thailand have similar levels of per capita GNI, and that producers consider a number of markets, including Thailand, as an option for diversifying production bases in Asia beyond the PRC. Therefore, we determine that the "indicative land values" for land in Thai industrial zones, estates, and parks provided in the

[10] This public document is on file in the CRU.

Asian Industrial Property Reports present a reasonable and comparable benchmark to the land-use rights in the economic zones at issue in this investigation.

Based on the methodology set out in the Sacks Final, Tires Final, and Thermal Paper Final, we determine that the land-use rights acquired by the Huludao Companies are granted land-use rights and, thus, have employed the benefit calculation methodology described below.

In order to calculate the benefit, we first multiplied the Thai benchmark land rate (deflated from 2007 to the year the transaction was officially approved by the government) by the total area of the parcels purchased by the Huludao Companies. We then subtracted the price actually paid for these tracts by the Huludao Companies to derive the total unallocated benefit. We next conducted the "0.5 percent test" pursuant to 19 CFR 351.524(b)(2) for the years in which the transaction was approved by dividing the total unallocated benefit by the appropriate sales denominator.[11] As a result, we found that the benefits were greater than 0.5 percent of relevant sales and that allocation was appropriate. 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 Information" section to determine the amount attributable to the POI.

For the Huludao Companies, as discussed in the "Cross-Ownership" section, we determine that the land purchased by the Huludao Seven Star Group on behalf of Huludao Steel Pipe and Huludao Bohai Oil Pipe constitutes a transfer of subsidies by a corporation producing non-subject merchandise to cross-owned corporations that produce subject merchandise as described under 19 CFR 351.525(b)(6)(v). Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed such subsidies received by Huludao Steel Pipe and Huludao Bohai Oil Pipe under the Provision of Land For Less Than Adequate Remuneration program to the combined total sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe (net of their respective sales to affiliates). On this basis, we calculated a net subsidy rate of 0.78 percent ad valorem for the Huludao Companies.

Concerning Northern Steel, in the Preliminary Determination, we discussed that the company purchased land-use rights for land in the Economic Development Zone, Haicheng from the Haicheng State-owned Land and Resources Bureau, a government agency, in September 2006. See Preliminary Determination, 73 FR 52304-06. However, at verification, we learned that Northern Steel's purchase of the land-use rights was part of the asset package that the company purchased from the Great Wall Asset Management Company (Great Wall) via an auction in June 2006, and were not a direct purchase from the Haicheng State-owned Land and Resources Bureau. Specifically, we learned that Northern Steel purchased the land-use rights for two tracts of land from Great Wall that were previously owned by Haian Coating Steel Pipe Co., Ltd. (Haian Coating). We also learned that Haian Coating converted its allocated land-use rights to granted land-use rights, but could not fully pay the transfer land-use rights fees due to financial difficulties. Therefore, Northern Steel had to pay to the Haicheng State-owned Land and Resources Bureau the outstanding balance owed in order to obtain the land-use certificates after it purchased the land-use rights via the auction. See Northern Steel Verification Report at 2-4 and 10-13; and Memorandum to Melissa Skinner, Director, Operations Office 3, from Kristen Johnson, Trade Analyst, Operations Office 3, regarding "Verification of the Government of the People's Republic of China in Haicheng, China," dated October 23, 2008 (Haicheng Verification Report) at 3-4.

---

[11] Where the approval date and approved amount of the unallocated benefit was not available, we used the date in which the transaction was conducted for purposes of the 0.5 percent test.

As discussed in the "Company History" section above, the Department determined that there was insufficient time to examine the facts concerning the assets purchased from Great Wall in this investigation. However, if a countervailing duty order is issued in this investigation and a subsequent administrative review is requested for Northern Steel, we intend to examine Northern Steel's purchase of assets, inclusive of land, from Great Wall.

3. Provision of Hot-Rolled Steel for Less Than Adequate Remuneration

The Department has investigated whether GOC authorities provided HRS to producers of line pipe for LTAR. As discussed above and in Comment 1 of this decision memorandum, we find that the GOC has failed to act to the best of its ability in terms of providing the Department with the information it requested concerning the ownership of respondents' HRS suppliers. Therefore, pursuant to section 776 of the Act, we are assuming that all of respondents' HRS suppliers were government-owned and government authorities that provided financial contributions to respondents under section 771(D)(iii) of the Act. Also discussed in Comment 1, we find, pursuant to section 776 of the Act, that government-owned producers manufactured the HRS sold to respondents via trading companies during the POI. Furthermore, as discussed above and in Comment 6 of this issues and decision memorandum, we find that the GOC has failed to act to the best of its ability in terms of providing the Department with de facto specificity information it requested concerning the provision of HRS. Therefore, pursuant to section 776 of the Act, we find that the provision of HRS to producers of line pipe by GOC authorities is de facto specific within the meaning of section 771(5A)(D)(iii) of the Act.

The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.[12] This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on the hierarchy established above, we must first determine whether there are market prices from actual sales transactions involving Chinese buyers and sellers that can be used to determine whether the GOC authorities sold HRS to the respondents for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.[13]

---

[12] See also 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) (Softwood Lumber Investigation), and accompanying decision memorandum at 36 (Softwood Lumber Investigation Memorandum).

[13] See Preamble, 63 FR at 65377.

As explained in the "Adverse Facts Available" section and in below in Comment 1, due to the GOC's refusal to provide the Department with the ownership information it requested concerning HRS suppliers, we are unable to rely on the aggregate production data supplied by the GOC. As a result, pursuant to section 776 of the Act, we are applying AFA and assuming that government-owned producers manufactured all HRS produced in the PRC during the POI. Consequently, we find that because of the government's overwhelming involvement in the HRS market, the use of private producer prices in the PRC would be akin to comparing the benchmark to itself (i.e., such a benchmark would reflect the distortions of the government presence).[14] As we explained in Softwood Lumber Investigation:

> Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion, which the comparison is designed to detect.[15]

For these reasons, prices stemming from private transactions within the PRC 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.

The GOC also placed on the record aggregate import price data for HRS from various countries for the POI. Information from the GOC indicates that imports of HRS accounted for a small volume HRS available in the Chinese market during the POI. Because the volume of imports of HRS into the PRC is small relative to Chinese domestic production of HRS, we are not using the aggregate import price data in our benchmark calculations. We note that this approach is similar to the Department's approach in the LWP Final, in which the Department declined to use aggregate import price data supplied by the GOC for benchmark purposes because of the small size of the import quantities relative to Chinese domestic production. See LWP Decision Memorandum at Comment 7.

Given that we determine that no tier one benchmark prices are available, we next evaluated information on the record to determine whether there is a tier two world market price available to producers of subject merchandise in the PRC. We note that petitioners provided data from the Steel Benchmarker Report which contains monthly world prices for hot-rolled band. We determine that data in the Steel Benchmarker Report may serve as a world market benchmark price for HRS that would be available to purchasers of HRS in the PRC. We note that the Department has relied on pricing data from the Steel Benchmarker Report in recent CVD proceedings involving the PRC. See CWP Final and LWP Final.

The prices for HRS in the Steel Benchmarker Report are expressed in U.S. dollars (USD) per metric ton (MT). Therefore, to calculate the benefit, we first converted the benchmark prices from U.S. dollars to RMB using USD to RMB exchange rates, as reported by the Federal Reserve Statistical Release.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under

---

[14] See Softwood Lumber Investigation Memorandum at "There are no market-based internal Canadian benchmarks" section.

[15] Id. 38-39.

tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Therefore, when deriving the benchmark prices, we adjusted the data from the Steel Benchmarker Report to include the value added tax (VAT) and import duties that would have been levied on imports of HRS during the POI. The GOC provided the applicable tax rates in its questionnaire response. As explained in Comments 8 and 9, we have revised the calculation used to add VAT and import duties to the benchmark. At the time of the Preliminary Determination, we lacked information concerning international freight rates and, therefore, we did not include such costs in our benchmark. In response to our solicitation for comments, petitioners submitted international freight rates from Maersk Lines. As explained in Comment 7, we have used the data from Maersk Lines to add a freight cost component to the HRS benchmark. We note, however, that we have not included an inland freight component to either the HRS benchmark or the domestic HRS prices because no such data are available.

We then compared the benchmark unit prices to the unit prices the respondents paid to domestic suppliers of HRS during the POI that the Department determines constitute government authorities. As explained above, we are applying AFA under section 776 of the Act and assuming that all of respondents' HRS suppliers were government-owned and government authorities during the POI. However, as explained in Comment 2, we are making an exception with regard to one of the Huludao Companies' HRS suppliers because the Huludao Companies provided information at verification that allowed the Department to corroborate the ownership of the HRS supplier in question.

In instances in which the benchmark unit price was greater than the price paid to GOC authorities, we multiplied the difference by the quantity of HRS purchased from the GOC authorities to arrive at the benefit.

To calculate the net subsidy rate, we divided the total benefit by each respondent's total sales during the POI. In the case of the Huludao Companies, the total sales denominator consisted solely of sales by Huludao Steel Pipe and Huludao Bohai Oil Pipe. On this basis, we calculate a net countervailable subsidy rate of 33.70 percent ad valorem for Northern Steel and 33.48 percent ad valorem for the Huludao Companies.

4. Foreign Trade Development Fund Program[16]

a. Grants

Northern Steel and Huludao Steel Pipe received Foreign Trade Development Fund assistance during the POI. Northern Steel applied for and received funds under the Foreign Trade Development Special Fund Aid Project Plan of 2007, which was announced on February 14, 2007. Northern Steel applied for the grant to support the construction of a new production line. See Northern Steel Verification Report at 15.

According to the GOC, the Foreign Trade Development Fund supports projects undertaken by exporting enterprises to improve the competitiveness of their exported products, to develop an export processing base, to support the registration of trademarks in foreign countries, to support the training of foreign trade professionals, and to explore international markets.[17] Monies distributed by the fund are to be used only for the approved project and the

[16] This program was referred to as the Northeast Revitalization Program in the Initiation Notice.
[17] See GOC's August 21, 2008 supplemental questionnaire response at Exhibit 22, Chapter III "Major Directions of

funding proportion of the applied project shall not exceed 50 percent of the total expense of the project.[18] The Liaoning Provincial Bureau of Foreign Trade and Economic Cooperation and Liaoning Department of Finance administer the fund. Companies eligible for assistance are export enterprises in Liaoning Province.[19] Companies are required to submit a separate application to the authorities each time they request assistance.

We determine that the grants that Northern Steel and Huludao Steel Pipe received from the Liaoning provincial government constitute a financial contribution in the form of a direct transfer of funds from the government bestowing a benefit in the amount of the grants within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also find that, because the receipt of the export interest subsidies is contingent upon export performance, the program is specific within the meaning of section 771(5A)(A) of the Act.

Huludao Steel Pipe received grants under the program in 2005, 2006, and 2007. Northern Steel received a grant in 2007. The "0.5 percent expense test" calculations for Northern Steel and Huludao Steel Pipe, respectively, demonstrate that the amounts of the subsidies were less than 0.5 percent of the relevant export sales denominator. Because the amounts of the subsidies are less than 0.5 percent of the relevant sales, we are expensing the benefit from the grant in the year of receipt. In conducting the "0.5 percent expense test" for grants received by Huludao Steel Pipe in 2005 and 2006, we used the exports sales of Huludao Steel Pipe because Huludao Bohai Oil Pipe had no export sales in those years. For grants received by Huludao Steel Pipe in 2007, we used the combined exports sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe.

On this basis, we determine that Northern Steel received a net countervailable subsidy of 0.05 percent ad valorem under this program and that the Huludao Companies received a net countervailable subsidy of 0.08 percent ad valorem under the program.

b. VAT Refunds

Huludao Steel Pipe also reported that during the POI it received VAT refunds on its purchases of fixed assets under the Foreign Trade Development Fund program. According to the GOC, the VAT program was established on September 14, 2004 by the "Circular of the Ministry of Finance and State Tax Administration on Printing and Distributing the Regulations on Relevant Issues with Respect to Expansion of VAT Deduction Scope in the Northeast Areas." The Huludao State Tax Administration administers the program. Under the program, VAT tax payers that are members of the equipment manufacturing, petrochemical, metallurgical, ship building, automobile, and agricultural products industries may deduct VAT for purchases of fixed assets from the VAT for sales of finished goods. The cap for such VAT deductions is the incremental increase in VAT liability from the previous year. According to Article 2 of the "Circular of the Ministry of Finance and State Tax Administration on Printing and Distributing the Regulations on Relevant Issues with Respect to Expansion of VAT Deduction Scope in the Northeast Areas," the VAT exemption is limited to firms located in the northeast region of the PRC. See GOC's July 9, 2008 questionnaire response at Exhibit 67. We did not find any information at verification that indicates that this VAT program is contingent upon exports.

We determine that this program constitutes a financial contribution in the form of

---

Support," Article 6.

[18] Id. at Chapter VI "Supervision and Administration," Article 11 and 12.

[19] Id. at Chapter IV "Application Criteria," Article 7.

revenue forgone and a benefit in the amount equal to the VAT refunds under sections 771(5)(D)(ii) and 771(5)(E) of the Act. We also determine that this program is specific under section 771(5A)(D)(iv) of the Act because the VAT refunds provided under the program are limited to companies located in a certain geographical region. Huludao Bohai Oil Pipe and the Huludao Seven Star group did not use this program. Northern Pipe did not benefit from this program during the POI.

In accordance with 19 CFR 351.524(c), we find that VAT refunds provided under the program constitute recurring benefits. Therefore, to calculate the benefit, we divided the total amount of VAT refunds Huludao Steel Pipe received under the program by the combined total sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe. On this basis, we determine that the Huludao Companies received a net countervailable subsidy of 0.10 percent ad valorem.

5. Export Interest Subsidies

Huludao Steel Pipe and Northern Steel received export interest subsidies from the Liaoning provincial government during the POI. The export interest subsidies are provided for under the "Provisional Administrative Measures on High-Tech Products and Equipment Manufacturing Products Export Financial Interest Assistance of Liaoning Province" (No. 671), established on December 16, 2004. This provisional measure provides assistance to companies to expand the exportation of high-tech products and equipment manufacturing products, and supports the development of enterprises located in Liaoning Province.[20] The Liaoning Provincial Bureau of Foreign Trade and Economic Cooperation, Liaoning Department of Finance, and the Economic Commission of Liaoning Province administer this program. During the POI, Northern Steel received the program announcement entitled "Export Loan Finance Subsidy of Liaoning High Tech Products and Manufacture Industry of 2007" and applied for interest assistance. See Northern Steel Verification Report at 16.

The interest assistance provided to exporting enterprises is to be used to pay interest on bank loans.[21] The provisional measure states that the Liaoning Department of Finance determines the interest assistance amount in accordance with the short-term loan benchmark interest rate of commercial banks, the term of the enterprise's short-term loans, and the short-term loan amounts.[22] Specifically, Article 5 of the provisional measure refers to "export loans," which means "short-term loans obtained by enterprises that produc{e} high-tech products and equipment manufacturing products in {the} province from banks and non-bank financial institutions due to the shortage of necessary funds for production and operation between products export declaration and receipt of payment."[23]

To be eligible for interest assistance a legally registered enterprise must have an annual exportation value above $1,000,000, have exported products that fall in the scope of the "China High-Tech Product Export Catalog" or the scope of equipment manufacturing products, and have short-term loans provided during the period from the products' export declaration to receipt of payment.[24] To receive interest assistance, eligible companies must submit a separate application

[20] Id. at 48 and Exhibit D-25.
[21] Id. at Exhibit D-25, Article 20.
[22] Id. at Exhibit D-25, Article 18.
[23] Id. at Exhibit D-25, Article 5.
[24] Id. at 51 and Exhibit D-25, Article 12.

each year accompanied with export contracts, export declaration forms, a description of the exported product, and bank loan contracts.[25]

We determine that the export interest subsidies that Huludao Steel Pipe and Northern Steel received from the Liaoning provincial government constitute a financial contribution in the form of a direct transfer of funds from the government bestowing a benefit in the amount of the grants within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also find that, because the receipt of the export interest subsidies is contingent upon export performance, the program is specific within the meaning of section 771(5A)(A) of the Act.

Because Huludao Steel Pipe and Northern Steel do not receive export interest subsidies on an on-going basis and must submit a separate application for consideration of the assistance yearly, we are treating the export interest subsidies as a non-recurring grant. In accordance with 19 CFR 351.524(b)(2), we applied the "0.5 percent expense test." The calculation demonstrates that the total amount of export interest subsidies approved during the POI is less than 0.5 percent of Northern Steel's 2007 total export sales. In the case of Huludao Steel Pipe, the calculation demonstrates that the total amount of export interest subsidies approved in 2006, the year of approval/receipt, was less than 0.5 percent. Because the amount of subsidies to both companies is less than 0.5 percent of the relevant sales, we are expensing the benefit from the export interest subsidies in the year of receipt rather than allocating the benefits over the AUL period.

On this basis, we determine that Northern Steel, which received its export interest subsidies assistance in 2007, received a net countervailable subsidy of 0.43 percent ad valorem under this program. Regarding the Huludao Companies, we determine that the grant received under the program was fully expensed prior to the POI.

6. Export Loans

During the POI, both Northern Steel and the Huludao Companies had export loans against which they paid interest. At the verification of Northern Steel, we examined the company's credit agreement with its lender, which discusses the financing for the company and reviewed loan contracts. See Northern Steel Verification Report at 17. On the basis of the credit agreement, we find that all of Northern Steel's outstanding loans during the POI were export loans. For more discussion of Northern Steel's line of credit, see Memorandum to the File from Kristen Johnson, Trade Analyst, Operations Office 3, regarding Final Calculations for Liaoning Northern Steel Pipe Co., Ltd., dated November 17, 2008 (Northern Steel Final Calculations Memo).

In the case of the Huludao Companies, prior to verification the companies identified the loans that it claimed were contingent upon export activity. At verification, we reviewed the loan contracts of export and non-export loans, as identified by the Huludao Companies in their response. Therefore, we have limited our subsidy analysis under this program to those loans that we verified were export loans.

As discussed in prior China CVD cases, under the Department's practice, loans provided by government policy banks are considered government loans and, thus, constitute direct financial contributions under the Act. See e.g., CFS Decision Memorandum at Comment 8, and Thermal Paper Decision Memorandum at Comment 6. Loans by SOCBs, however, are not necessarily treated as government loans because these types of banks may operate on a commercial basis in some countries. See Preamble, 63 FR 65363. However, as discussed in

[25] Id. at 50-51 and Exhibit D-25, Article 13.

prior cases, the Department has found that the PRC's banking system remains under state control and continues to suffer from the legacies associated with the longstanding pursuit of government objectives. See "Subsidies Valuation Information" section above and CFS Decision Memorandum at Comment 8. These factors undermine the SOCBs' ability to act on a commercial basis and allow for continued government control resulting in the allocation of credit in accordance with government objectives. Therefore, treatment of SOCBs in China as commercial banks is not warranted in this case. As such, the Department determines that loans provided by SOCBs in China constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act.

We further determine that the export loans received by the respondents are specific under section 771(5A)(A) of the Act because receipt of the financing is contingent upon exporting and that these export loans confer a benefit within the meaning of section 771(5)(E)(ii) of the Act.

To calculate the benefit under this program, we compared the amount of interest paid against the export loans to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the "Subsidies Valuation Information" section. To calculate the net countervailable subsidy rate, we divided the benefit received by each company's respective export sales value for 2007. On this basis, we determine the net countervailable subsidy rate for the Huludao Companies to be 0.35 percent ad valorem and for Northern Steel to be 1.76 percent ad valorem.

7. Liaoning Province Grants - Five Points One Line Program

The Huludao Companies report that Huludao Steel Pipe and Huludao Bohai Oil Pipe received grants in the form of loan interest subsidies in 2006 and 2007 under the Five Points One Line Program. The Huludao Companies also report that Huludao Bohai Oil Pipe received certain fee exemptions during the POI under the program. The Liaoning Provincial Government introduced the program on January 21, 2006 pursuant to the "Opinion of Liaoning Province Encouraging the Expansion of Opening-Up in Coastal Key Developing Areas." The Liaoning Development and Reform Commission and the Liaoning Finance Bureau administer the interest subsidies provided under the program. The Huludao Beigang Industrial Park, Industry, and Commerce Authority administer fee exemptions provided under the program.

The GOC states that the goal of the Five Points One Line Program is to accelerate the development of the coastal economic belt of Liaoning Province. Eligibility under the program is limited to enterprises located within designated industrial zones and other areas within Liaoning Province, as specified under the program.

We determine that the grants and fees received by Huludao Steel Pipe and Huludao Bohai Oil Pipe under the program constitute a financial contribution in the form of a direct transfer of funds from the government, which bestow a benefit equal to the amount of the grants within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also find that, because the receipt of grants under the program are limited to enterprises located in certain geographical regions within the Liaoning Province, the program is specific within the meaning of section 771(5A)(D)(iv) of the Act.

Because Huludao Steel Pipe and Huludao Bohai Oil Pipe did not receive grants on an ongoing basis and must submit a separate application to receive additional assistance under this program, we are treating the assistance received under the program as a non-recurring grant. In accordance with 19 CFR 351.524(b)(2), we applied the "0.5 percent expense test." The calculation demonstrates that the grant amounts received by Huludao Steel Pipe and Huludao Bohai Oil Pipe in 2006 and 2007 are less than 0.5 percent of the total sales denominator.[26] Because the amount of the subsidies is less than 0.5 percent of the relevant sales (total sales), we are expensing the benefit from the grants in 2006 and 2007, the years of receipt, rather than allocating the benefits over the AUL period. On this basis, we determine that the grants Huludao Steel Pipe and Huludao Bohai Oil Pipe received in 2006 were expensed prior to the POI. Regarding the grant amount received by Huludao Steel Pipe in 2007, we determine the countervailable net subsidy rate to be 0.30 percent ad valorem.

In addition, we determine that the fee exemptions that Huludao Bohai Oil Pipe received during the POI constitute a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act and a benefit under section 771(5)(E) of the Act in an amount equal to the fee exemption. We further determine that the fee exemptions are specific under section 771(5A)(D)(iv) of the Act because they are limited to enterprises located in certain geographical regions. In accordance with 19 CFR 351.524(c), we find that the fee exemptions are recurring subsidies and, thus, have expensed them to the POI. Specifically, we divided the fee exemptions received during the POI by the combined total sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe. On this basis, we determine that the net subsidy rate from the fee exemptions is less than 0.005 percent ad valorem.

8. Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies

Huludao Steel Pipe reported receiving an income tax deduction on the tax return it filed during the POI under the Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies program. According to the GOC, this program was established on July 1, 1999 pursuant to "Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation Projects." The GOC states that under the program a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. Specifically, a tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous year. The GOC further states that pursuant to the "Circular on Relevant Issues with Respect to Ceasing Implementing of Income Tax Credit to Purchase of Domestically Produced Equipment by Enterprises," the program was terminated effective January 1, 2008.

We determine that the income tax deductions provided under the program constitute a financial contribution, in the form of revenue forgone, and a benefit, in an amount equal to the tax savings, under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We further find that this program is specific under section 771(5A)(A) of the Act because the receipt of the tax savings is contingent upon the use of domestic over imported goods.

To calculate the benefit, we summed the amount of tax savings Huludao Steel Pipe received on the tax return it filed during the POI in accordance with 19 CFR 351.509(a)(2)(b). In accordance with 19 CFR 351.509(c), we have allocated benefits received under the program to the POI.

To calculate the net subsidy rate, we divided the benefit by the combined 2007 sales of

[26] We note that Huludao Bohai Oil Pipe did not have any sales in 2006. Therefore, in performing the "0.5 percent expense test," we used the 2006 total sales of Huludao Steel Pipe.

Huludao Steel Pipe and Huludao Bohai Oil Pipe. On this basis, we calculated a net countervailable subsidy rate of 0.38 percent ad valorem for the Huludao Companies.

9. Preferential Lending of Policy Loans to State-Owned Enterprises and the Steel Industry by State-Owned and Controlled Banks

In CWP Final, the Department discussed its findings regarding the GOC's policy lending. See CWP Decision Memorandum at Comment 8. The Department described the various industrial plans that the GOC had established in recent years in which policy goals pertaining to the steel industry are discussed. Regarding the National and Economic and Social Development 11th Five-Year Plan (11th Five-Year Plan), the Department found that while the plan lists specific policy goals relating to the steel industry, it did not provide for financing and credit. Therefore, the Department found that the plan did not provide a basis for finding that policy lending exists for the CWP industry. Id.

In the CWP Final, the Department also examined the "Interim Provisions on Promoting Industrial Structure Adjustment" (ISA). Id. Regarding this provision, the Department noted that Article 17 of the ISA stated that, with regard to "encouraged projects," all financial institutions shall provide credit in compliance with credit principals. Id. The Department explained that such "encouraged projects" covered under the ISA are listed in the "Directory Catalogue on Readjustment of Industrial Structure" (Directory Catalogue). Id. The Department further explained that though pipe products were listed under the Directory Catalogue, the ISA did not identify any specific financing tools that are provided to "encouraged industries" and, thus, the Department determined that no preferential lending was received pursuant to the ISA or the Directory Catalogue. Id.

Because the information on the record of the CWP investigation is similar to the information on the record of the instant investigation, we have, for purposes of the determination, reached the same conclusion as those made by the Department in CWP Final as it pertains to the industrial plans discussed above.

In addition, the Department examined the "Council Circular on Printing Circulating Certain Supporting Policies for Implementation of the Outline of Medium and Long-Term Plan for National Scientific and Technological Development" (Technology Development Plan). In CWP Final, the Department found that the Technology Development Plan explicitly provides for policy lending to high technology enterprises. Id. In particular, the Department found that Article 15 of the Technology Development Plan states that the China Development Bank and the Export-Import Bank of China may provide soft loans to high and new technology enterprises for taking part in project investment as well as financial support to export and import key technologies. Id. Also, the Department found that Article 16: (1) instructs commercial banks to lend to high-tech projects "in accordance with national investment policy and credit policy;" and (2) further encourages the nominally "commercial banks" to "prioritize" loans to support the exportation of the products of high technology enterprises.

For purposes of this determination, we find that there is no information indicating that Northern Steel and the Huludao Companies received any loans outstanding during the POI that were issued pursuant to the Technology Development Plan. We will continue to examine whether respondents received any such loans under this GOC plan if this investigation results in a countervailing duty order.

As explained in the Preliminary Determination, the Department also examined the

"Development Policies for the Iron and Steel Industry Plan" (Iron and Steel Policy). Id. In the Preliminary Determination, we found that the Iron and Steel Policy provides for assistance and support to members of the steel industry (including line pipe producers) for the use of domestically produced equipment. We found that the assistance includes the provision of loans. As such we found that the Iron and Steel Policy constituted a financial contribution within the meaning of section 771(5)(D)(i) of the Act and conferred a benefit under section 771(5)(E)(ii) of the Act to the extent that the interest payments made on the government loans during the POI are less than what would have been paid on a comparable commercial loan. In the Preliminary Determination, we further determined that loans received under the Iron and Steel Policy were specific under the statute because financing provided under Article 16 of the Iron and Steel Policy is limited to major iron and steel products, which for purposes of this determination we find includes line pipe.

We continue to find that the Iron and Steel Policy constitutes a financial contribution, confers a benefit, and is specific in the manner described above. However, as explained in Comment 21 below, the basis for our findings has changed.

We asked Northern Steel and the Huludao Companies to indicate whether any of their loans outstanding during the POI were issued for the purpose of acquiring or paying for domestically produced equipment. None of Northern Steel's loans outstanding during the POI were received for the purpose of acquiring or purchasing domestic equipment. Concerning the Huludao Companies, they indicated that none of the loans issued to the Huludao Seven Star Group and Huludao Steel Pipe that were outstanding during the POI were for the purpose of acquiring domestically produced equipment. However, in the case of Huludao Bohai Oil Pipe, information submitted by the Huludao Companies indicates that the nature of all of the loans the company had outstanding during the POI from GOC-owned banks could have involved the acquisition of domestically equipment. See the Huludao Companies' August 28, 2008 questionnaire response.[27]

Based on the information supplied by respondents, which was verified by the Department, we determine that Northern Steel, the Huludao Seven Star Group, and Huludao Steel Pipe did not have any loans received for the purpose of acquiring domestically produced equipment that were outstanding during the POI. However, we determine that there is a sufficient basis to determine that Huludao Bohai Oil Pipe had loans outstanding during the POI that would be covered under Article 16 of the Iron and Steel Policy.

To calculate the benefit under this program, we compared the amount of interest paid against the loans provided under the program to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark we used the short-term and long-term benchmark interest rates discussed above in the "Subsidies Valuation Information" section.

To calculate the net countervailable subsidy rate, we divided the benefit received by Huludao Bohai Oil Pipe by the total sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe during the POI. On this basis, we determine the net countervailable subsidy rate for the Huludao Companies to be 0.16 percent ad valorem.

[27] The exact nature of the loans Huludao Bohai Oil Pipe had outstanding during the POI are business proprietary.

B. Programs Determined Not To Have Provided Benefits During the POI[28]

1. Additional Grants Received by the Huludao Companies

In the Department's May 19, 2008 initial questionnaire response, the Department instructed respondents to indicate whether the GOC or any other local or provincial government provided them with any other form of assistance. In its July 9, 2008 initial questionnaire response, Huludao Steel Pipe reported that it received no other forms of assistance apart from the assistance indicated in its initial response. However, in response to the Department's request in its July 30, 2008 supplemental questionnaire for Huludao Steel Pipe to break out its capital account, the company indicated that it received three additional grants from certain provincial and municipal institutions.[29] Specifically, Huludao Steel Pipe reported that it received grants in 2005 and 2006. The GOC did not provide any information concerning these three grants in its August 21, 2008 supplemental questionnaire response.

Because the assistance reported by Huludao Steel Pipe was provided in the form of grants, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period. However, Huludao Steel Pipe did not provide any information regarding the amount of subsidies approved or the dates on which the relevant government authority approved the subsidies. Lacking this information, we have performed the "0.5 percent expense test" using the amount of grants actually received and their corresponding dates of receipt. Further, because we lack information from the GOC concerning the eligibility requirements of the government programs under which the grants were provided, we are not able to discern the corresponding sales denominator that should be used in the denominator of the "0.5 percent expense test." Therefore, in accordance with section 776(a)(1) of the Act, because the necessary information is not available on the record, we have used the facts otherwise available in conducting the "0.5 percent expense test." Specifically, we have used the smallest available sales denominators for the Huludao Companies for the years in which the grants were received. Specifically, we used the total export sales of Huludao Steel Pipe as the denominator of the "0.5 percent expense test" for years 2005 and 2006.[30] The calculation demonstrates that the grant amounts were less than 0.5 percent of their relevant sales denominators. Because the amount of the grants is less than 0.5 percent of the relevant sales, we have expensed the benefits from the grants to the year of receipt. On this basis, we determine that, regardless of whether the grants were received under a countervailable subsidy program, any such benefits were expensed prior to the POI.

---

[28] Regarding the provision of grants under the Liaoning Enterprise Technology Renovation Project Interest Assistance program, due to the time constraints of this particular investigation we do not have sufficient information to make a specificity determination. We will examine this program in any future administrative if this investigation results in a countervailing duty order.

[29] The identity of the government institutions and the details concerning the grant amounts are business proprietary. See Huludao's August 18, 2008 supplemental questionnaire response.

[30] Huludao Bohai Oil Pipe did not report any sales in 2005 or 2006.

2. No-Payment Loans

In 1996, Huludao Steel Pipe received two loans from government institutions located in Liaoning Province.[31] We verified that Huludao Steel Pipe has not paid any interest on either of the two the loans since their receipt in 1996. Furthermore, no principal payments were ever made on one of the loans and only sporadic principal payments were made on the other loan. No loan agreements or contracts were signed between the company and the government institutions at the time of receipt of the loans.

As explained in Comment 18, we are using the date of December 11, 2001, the date on which the PRC became a member of the WTO, as the date from which the Department will identify and measure subsidies in the PRC for purposes of this determination. Because these loans were received prior to the December 11, 2001 "cut-off" date, we determine that the loans did not confer benefits upon Huludao Steel Pipe during the POI.

We received comments on our treatment of this program in the Preliminary Determination. However, upon review of the comments submitted by interested parties, we have not changed our approach from the Preliminary Determination. See Comment 19 below.

3. Provision of Electricity for Less Than Adequate Remuneration

In the Preliminary Determination, we preliminarily determined that the provision of electricity to large-scale industries in Liaoning Province, where the Huludao Companies and Northern Steel are located, is neither de jure nor de facto specific because all such industries pay the same rate for their electricity. See 73 FR 52313. At verification, we reviewed the electricity rate schedule for Liaoning Province. See GOC's October 14, 2008 submission of Verification Exhibits at Tab C.3 for the electricity rate schedule. We verified that the Huludao Companies and Northern Steel paid the electricity rates set forth in the rate schedule for their level of kilowatt consumption. We also verified that all industrial users with the same level of consumption paid the same electricity tariff and that these users were both numerous and were from a wide and diverse number of industries. See Haicheng Verification Report at 5-7; and Huludao Government Verification Report at page 4.

However, at verification, we learned that the National Development Reform Commission (NRDC) in Beijing, and not the provincial or local electricity bureau, sets the electricity prices for Liaoning Province and all other provinces in China. See Haicheng Verification Report at 5. Because this key aspect of our understanding of the level of government setting electricity rates came to light only at verification, we did not have the opportunity to seek additional information on the NDRC's price-setting methodology or its costs for electricity. Further, there is no information on the record of this investigation indicating that the respondents in this case received a benefit under the program during the POI. In any future administrative review of this proceeding as well as in other China CVD proceedings (where relevant and practicable), we intend to investigate and analyze further the electricity rate-setting authority in China and the considerations that go into setting those rates to determine whether a countervailable benefit is provide by the administering authority.

[31] The names of the government institutions are business proprietary.

4. Provision of Water for Less Than Adequate Remuneration

The Huludao Companies and Northern Steel obtain water directly from their groundwater wells. At verification, we obtained the Liaoning Province water resources fee schedule from the Haicheng Water Resources Bureau and learned that all water users pay an annual water fee to the government. See Haicheng Verification Report at 4-5; and GOC's October 14, 2008 submission of Verification Exhibits at Tab B.2 for the water fee schedule. Because Northern Steel has its own groundwater well, the company pays the "underground water fee," which is the fee paid by all industrial users with a groundwater well. We confirmed that the water fee was paid during the POI. See Northern Steel Verification Report at 14-15; and Haicheng Verification Report at 5.

During verification, the Huludao Companies reported that it did not pay any annual water fee on the water obtained from its ground well. Therefore, the statements of the Huludao Companies appear to contradict the statements of Northern Steel and the Municipal Government of Haicheng as it applies to payment of "underground water fees" by firms that access water from their own ground wells. Therefore we find that we lack the necessary information for the Huludao Companies as it applies to the "underground water payments" in Liaoning Province. For example, it is unclear whether the Municipal Government of Huludao, where the Huludao Companies are located, has a program in place to exempt companies from paying the relevant water fee. In any future administrative review of this proceeding, we intend to investigate and analyze further this issue.

5. VAT Export Rebates

We determine that the VAT export rebates received upon the export of line pipe did not confer a countervailable benefit because the amount of VAT levied on sales of line pipe in the domestic market (at a rate of 17 percent) exceeded the amount of VAT exempted upon the export of line pipe (at a rate of 13 percent). See 19 CFR 351.517(a). The Department's verification of the Huludao Companies and Northern Steel confirmed that the VAT refund amount was not excessive; therefore, we find this program did not confer benefits during the POI.

C. Programs Determined Not To Have Been Used

1. Preferential Loans

i. Preferential Loans for Key Projects and Technologies

2. Debt-to-Equity Swaps for State-Owned Enterprises

3. Tax Benefit Programs

i. Income Tax Reduction for Export-Oriented FIEs
ii. Income Tax Reductions for FIEs Based on Location
iii. Preferential Tax Programs for FIEs that Quality as Technology-Intensive or Knowledge Intensive
iv. Preferential Tax Programs for FIEs Recognized as High or New

Technology Enterprises

v. Preferential Tax Programs for FIEs that are Engaged in Research and Development

vi. Income Tax Reduction for FIEs that Reinvest Profits into Export-Oriented Enterprises

vii. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs

viii. Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs

4. VAT Programs

i. VAT Exemptions for Use of Imported Equipment

5. Grant Programs

i. Interest Subsidies for Key Projects and Technologies

ii. State Key Technologies Renovation Project Fund

iii. Central Government’s Famous Brands Program

iv. Government of Guandong Province Provision of Grants to Companies for Outward Expansion and Export Performance

v. Grants to SOEs Operating at a Loss

6. Provincial Programs

i. Liaoning Province Framework

ii. Sub-Central Government Programs to Promote Famous Brands

7. New Subsidies Programs

i. Preferential Income Tax Policy for Enterprises in the Northeast Region (Northeast Tax Preference Policy)

ii. Provisions on Expanding the Qualifications of Fixed Asset Input VAT Deductions in the Northeast Region (Northeast Region VAT Deduction Program)

iii. Haicheng City Government VAT and Business Tax Incentives

iv. Debt Forgiveness Provided to Huludao Companies

VI. Analysis of Comments

Comment 1: Whether the Department Should Reject the Ownership Data Supplied by the GOC for Use in the Provision of HRS for LTAR Program and Resort to the Use of AFA

The GOC provided data from the State Statistics Bureau (SBB) and the General

Administration for Customs (GAC) regarding domestic output and imports of HRS during the POI. The GOC used this data to divide HRS producers into four groups: SOEs, collectives, private enterprises, and FIEs. Based on these data, the GOC reported that SOEs and collectives accounted for 60.77 percent of domestic output during the POI.

Petitioners argue that the Department should reject the data supplied by the GOC that the Department used to calculate the percentage of HRS produced by SOEs in China during the POI. Petitioners explain that the GOC derived the percentage of HRS produced by SOEs by relying on business registration forms filed with the State Administration of Industry and Commerce (SAIC) to determine into which ownership category various HRS producers fell during the POI. Petitioners contend that record evidence indicates that the information in the business registration forms is flawed and unreliable. Petitioners provide examples of business registration forms that they claim contain errors or reflect ownership information that reflect post-POI information. Petitioners explain that the Department has previously expressed concern regarding ownership information from business registration forms that were approved after the POI.

Petitioners further argue that the GOC relied on imprecise ownership categorizations that incorrectly excluded HRS suppliers as SOEs, thereby understating the GOC's ownership of the HRS industry. Petitioners assert that the methodology used by the GOC to derive the percentage of HRS produced by SOEs ignores government ownership if investment was diverted through Hong Kong or if there was any level of foreign investment. They further contend that the GOC's methodology also fails to account for government ownership past the immediate level and for government ownership shared between different government entities. In addition, petitioners claim that the GOC's methodology for identifying government-owned HRS suppliers overlooks instances in which the government maintains a controlling stake in an HRS producer through several government ministries or agencies. Petitioners provide examples of HRS suppliers that they assert demonstrate the alleged shortcomings in the methodology the GOC used to identify government-owned SOEs.

Petitioners explain that the GOC, citing confidentiality restrictions, did not disclose the production data of the individual HRS producers that make up the aggregate totals for each of the four ownership categories reported to the Department. Petitioners maintain that the GOC's refusal to reveal the production data for individual producers that make up the four ownership categories of HRS producers makes it impossible for the Department revise any flaws in the GOC's data and, therefore, serves as an additional basis on which the Department should reject the data.

Petitioners explain that verifiers from the Department attempted to cross-check ownership information contained in the business registration forms of individual HRS suppliers by reviewing the suppliers' capital verification reports and articles of association. Petitioners note that at verification the Department explained that its request for HRS supplier information was limited and that the HRS suppliers identified in the GOC verification outline had been chosen on the basis of the quantity of HRS sold to the mandatory respondents so as to enable the Department to verify suppliers accounting for a significant proportion of HRS sold to respondents. Petitioners point out that the GOC officials refused the verifiers' requests.

Petitioners argue that the GOC's refusal to provide the ownership information that the Department requested in its verification outline hindered the Department's verification efforts and constitutes a basis for the Department to reject the GOC's ownership data. Petitioners point out that the rejection of the GOC's data should apply not only to data supplied by the GOC that the Department used to calculate the percentage of HRS produced by SOEs in China during the

POI but also to the ownership information that the GOC submitted with regard to HRS suppliers that sold HRS to respondents during the POI.

In light of the flawed production data supplied by the GOC and the GOC's refusal to cooperate during verification, petitioners urge the Department to resort to the use of AFA, within the meaning of section 776(b) of the Act, when determining the amount of HRS the respondent firms purchased from SOEs during the POI. Specifically, petitioners urge the Department to assume under AFA that 96.1 percent of the volume of HRS purchased by the respondent firms was produced by government-owned producers. Petitioners explain that this ratio is equal to the ratio the Department utilized under AFA in CWP Final.[32]

The GOC contests petitioners' argument that government ownership is dispositive for establishing that majority-owned HRS producers are government authorities and therefore capable of conferring a financial contribution. The GOC contends that legal reforms in the PRC have severed any public function from the commercial operations of SOEs such that SOEs do not act as government authorities.

The GOC further argues that the Department deviated from its past practice when it requested to review capital verification reports and articles of association for the HRS suppliers identified in the verification outlines issued to the GOC. The GOC maintains that that the Department has previously deemed business registrations as sufficient for purposes of establishing ownership of the entities concerned. The GOC cites to page 5 of the GOC verification report issued in CWP Final to support its contention. The GOC adds that the capital verification reports and articles of association provide either redundant or irrelevant information concerning ownership. The GOC states that it provided the verifiers with sample copies of a capital verification report and article of association to prove its point but that the verifiers did not include the documents as part of the verification exhibits.

The GOC argues that requiring it to provide capital verification reports and articles of association for suppliers covered under a provision of inputs for LTAR allegation would represent an unreasonable burden on the GOC. They further argue that the articles of association for privately-held firms are not available to the GOC.

The GOC points out that the Department did not previously request the documents at issue in any of its questionnaires. It also notes that the Department did not issue its verification outline until a week before verification, a week, which fell during the PRC's national holiday. Thus, the GOC contends that the Department's request to review capital verification reports and articles of association constitute a surprise at verification for which the GOC was not allowed the opportunity to prepare.

The GOC asserts that the facts of the proceeding do not support the use of AFA in the context of the provision of HRS for LTAR program. The GOC argues that the facts of the case do not conform to the fact pattern addressed in Nippon Steel v. United States, 337 F.3d 1373 (Fed. Cir. 2003) (Nippon Steel). The Department never requested the capital verification reports or articles of association in its questionnaires and, therefore, it cannot be said that the GOC refused to provide information specifically requested in a questionnaire. See Nippon Steel at 1377. Second, the GOC contends that the time between the receipt of the GOC verification outline and the start of verification never afforded the GOC any real opportunity to provide the documents at issue. Third, the GOC argues that the Department requested articles of association that were not within the possession of the GOC and could not be readily obtained by the GOC.

[32] The United States Steel Corporation, a co-petitioner, argues that under AFA the Department should assume that 100 percent of the HRS purchased by the respondent firms was purchased from state-owned producers.

The GOC also contests petitioners' claims that the business registration forms contain errors that render them unreliable. The GOC addresses five HRS suppliers for whom petitioners argue the GOC submitted faulty or unreliable business registration forms. They argue that in each instance, record evidence demonstrates that the firms are not, in fact, government authorities and, thus, should not be subjected to the Department's subsidy calculations.[33]

The Huludao Companies argue that HRS producers are not subject to this investigation, but are unaffiliated companies with no stake in the outcome. Further, Chinese law prohibits the disclosure of a company's business proprietary information to a third party without that party's permission. The Huludao Companies argue that the Department has attempted to impose an unreasonable task on the GOC in demanding that it obtain and disclose individual companies' private business information such as capital verification reports. According to Huludao, either the GOC controls every steel maker or the GOC does not control the steelmakers but the result is the same: they will be punished for nondisclosure of their business proprietary information.

The Department's Position: We agree with petitioners that the Department cannot rely on the ownership information the GOC submitted regarding HRS suppliers.

In the instant investigation, the Department provided the GOC with the names of respondents' HRS suppliers. The Department requested that the GOC indicate the extent to which each of the suppliers was owned by the government. In its response, the GOC provided a chart in which it indicated the HRS suppliers' ownership status. The ownership information in the chart was based on business registration forms that the GOC had obtained for each of the HRS suppliers.

In the verification outline the Department issued to the GOC in advance of verification, the Department identified certain of respondents' HRS suppliers and requested that the GOC make available the capital verification reports and articles of association for each of the HRS suppliers listed in the outline. See GOC Verification Report at page 2. We note that the HRS suppliers listed in the outline were limited in number and represented respondents' largest HRS suppliers in each ownership category. Id. at page 3. The outline did not request that the GOC provide the capital verification reports and articles of association for all of the HRS suppliers identified in the GOC's response. In addition, at the GOC's request, the Department agreed to conduct the portion of verification dealing with the ownership of respondents' HRS suppliers with GOC officials in Beijing rather than with Provincial government officials in Liaoning province.

When asked at verification to provide the information for the HRS suppliers identified in the verification outline, the GOC refused. Id. GOC officials explained that the information was scattered across the PRC and, thus, difficult to obtain, that the requested information was not necessary, and that the GOC did not have a means of obtaining articles of association for privately held firms. GOC officials further explained that they did not want to provide the information requested in the verification outline because it would set a precedent in which the GOC would have to provide similar information in future CVD proceedings. Id. Thus, the GOC did not provide any of the requested ownership information for the HRS suppliers listed in the verification outline. Id.

Business registrations forms are subject to revision as firms' capital structures and shareholders change. Moreover, during verifications it is standard practice for the Department to

[33] The GOC's arguments on this matter reference business proprietary information and cannot be summarized on the public record.

crosscheck factual information placed on the record by respondents with additional information obtained during verification. Specifically, at verification the Department sought to review the capital verification reports of the HRS suppliers identified in the verification outline. The capital verification reports are documents that firms must submit to the GOC whenever there is a change in their shareholdings. Thus, they are documents that are in the GOC's possession. The Department also sought, where possible, articles of association for the HRS suppliers identified in the verification outline. The articles of association also contain information on the firms' shareholders. In addition, the articles of association contain information concerning the firms' operational activities, which can be used to crosscheck whether HRS suppliers are, in fact, trading companies or producers.

We find that the GOC has withheld requested information and impeded the Department's verification process within the meaning of section 776(a)(2)(A) and (D) of the Act. As a result, we are applying facts available (FA). The GOC's refusal during verification to provide the requested information prevented the Department from confirming the contemporaneity of the information in the business registration forms and from crosschecking the ownership and operational information in the business registration forms. Therefore, we further find that the GOC has failed to act to the best of its ability and, when applying FA, we are relying upon adverse inferences under sections 776(b) of the Act. Accordingly, pursuant to section 776(b) of the Act, we are assuming that all of respondents' HRS suppliers were government-owned. We also find pursuant to section 776(b) of the Act that government-owned producers manufactured the HRS sold to respondents via trading companies during the POI.

We note that our decision to apply AFA under section 776 of the Act is based on the GOC's failure to provide information at verification that was in its possession (e.g., capital verification reports for HRS suppliers and articles of association for state-owned and publically-held HRS suppliers). We are not basing our decision to apply AFA under section 776 of the Act on the GOC's inability to provide information that was not in its possession (e.g., articles of association for privately-held firms).

In response to our questionnaires, the GOC provided aggregate production data for HRS producers that purportedly showed the percentage of HRS produced by state-owned and private held producers. The GOC created ownership classifications that it used to divide the aggregate HRS production data into state-owned and privately owned categories. The ownership classification data were based on information in the business registration forms. As explained above, at verification the GOC refused to provide the Department with the information that would enable it to confirm the contemporaneity of the ownership in the business registration forms and prevented the Department from crosschecking the information in the business registration forms with other documents containing ownership information. Thus, for the same reasons discussed above, we are applying AFA under section 776(b) of the Act with regard to the GOC's ownership information and assuming that all HRS producers in the PRC are government-owned.

Comment 2: Whether the Huludao Companies Submitted Sufficient Information to Establish the Identity and Ownership of Producers that Sold HRS to the Huludao Companies through Trading Companies

Petitioners maintain that the Department's questionnaire instructed the Huludao Companies to report all of its suppliers of HRS. In supplemental questionnaires, the Department sought additional information from the Huludao Companies and the GOC concerning the identity of the HRS producers that supplied the Huludao Companies. In particular, the Department instructed the GOC to "identify the steel producers from whom the trading companies acquired the hot-rolled steel during the POI" and to provide details concerning the level of government ownership in such hot-rolled steel producers. Petitioner notes that both Huludao and the GOC failed to provide the requested information.

Petitioners explain that after the Department had issued its Preliminary Determination, the Huludao Companies submitted a spreadsheet that it had prepared which purportedly contained information regarding the producers of HRS that supplied the Huludao Companies through trading companies. The spreadsheet purported to provide the names of the HRS producers and the quantity and value of HRS supplied by each producer. Petitioners argue that the submission contained no supporting documentation and no indication of the sources of the information. Petitioners contend that the Huludao Companies knew the identity of the producers, which alleged supplied it with HRS through trading companies, as evidenced by the chart it supplied. However, argue petitioners, the Huludao Companies only disclosed this information three weeks after the Preliminary Determination.

According to petitioners, at verification, the Department nevertheless provided the Huludao Companies with an opportunity to submit documentation to substantiate the company's claims that all of the producers that supplied it with HRS through trading companies were private. Petitioners explain that at verification, the Huludao Companies purportedly substantiated the identities of the producers that supplied HRS to the Huludao Companies through trading companies with mill certificates that, according to petitioners, do not conform to industry standards. Petitioners argue that the mill certificates supplied by the Huludao Companies lack basic tracking, production, and specification information that is commonly required in the steel industry that would make it impossible to identify the actual producer. Therefore, petitioners question the reliability of such mill certificates urge the Department not to utilize them in its analysis of the program.

Concerning the ownership levels of the producers that supplied HRS to the Huludao Companies through trading companies, petitioners argue that the Huludao Companies provided print-outs from company websites, "self certifications" business licenses, and in the case of one of the companies, a "capital verification report" to substantiate their claims concerning the ownership of the HRS suppliers. Petitioners argue these documents do not substantiate the Huludao Companies' claims that the producers, which supplied them with HRS through trading companies, are private. As the Department has recently determined, "self-assessments" of a company's ownership, such as statements on company websites and in certifications from company employees, cannot be relied upon as evidence that the company is private. Petitioner notes that the Department reached this determination with respect to Chinese hot-rolled steel suppliers in its recent determination in the CWP Final. Thus, asserts petitioners, the company website information and "self certifications" submitted by the Huludao Companies cannot serve as support for their claims.

Petitioners argue that the lone "capital verification report" submitted by the Huludao Companies does nothing to show that the company in question was private during the POI. In short, the information submitted by Huludao at verification provides no support for its claims that the HRS producers in question were private.

Petitioners note that section 776(b) of the Act provides that, in selecting facts available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. Petitioners contend that, as established above, the Huludao Companies failed to act to the best of their abilities to provide the information requested by the Department regarding the ownership of the suppliers of HRS to the Huludao Companies through trading companies. Accordingly, petitioners argue that the Department should find, as AFA, that all of the Huludao Companies' suppliers of HRS through trading companies were produced by state-owned firms and, thus, be subjected to a subsidy analysis.

If, however, the Department does not apply AFA in regard to the producers that sold the Huludao Companies HRS through trading companies, then petitioners argue that business proprietary information on the record of the investigation indicates that the Department should, as FA, assume that the volume of HRS attributable to state-owned producers is equal to the amount of HRS produced by SOEs in the PRC, as reported by the GOC.

The Huludao Companies argue that the Department's questionnaire requested that they provide information concerning their "suppliers." According to the Huludao Companies, they indicated in their responses that the "suppliers" of HRS included some producers and some trading companies. They argue that the Department did not request that the Huludao Companies provide the identity of the actual producers to the trading companies in any of the questionnaires. The Huludao Companies explain that the need to provide information concerning the actual producers to the trading companies became apparent after the Department employed AFA against the GOC in the Preliminary Determination.

The Huludao Companies disagree with petitioners' contention that they provided information concerning their HRS producers in "bad faith" as part of its submission of new factual information. First, the Huludao Companies note that the Department specifically stated in its Preliminary Determination that it would continue to seek information concerning the identity of HRS suppliers that sold through trading companies. The Huludao Companies contend that petitioners had ample opportunity to comment on and rebut Huludao's submission and, in fact, did take advantage of the opportunity in the form of pre-verification comments. The Huludao Companies note that they raised petitioners' concerns with the Department officials at verification and sought to obtain as much information as possible from their HRS suppliers, none of whom are affiliated with the Huludao Companies. The Huludao Companies explain that at verification they provided a list of the trading company suppliers and their contact information. Furthermore, the Huludao Companies explain that at verification they obtained non-public business licenses from the HRS producers supplying the trading companies, as well as any other public or non-public information they could obtain.

The Huludao Companies contend that at verification they demonstrated the legitimacy of their trading companies and the private control of their HRS producers. The Huludao Companies explain that at verification they provided the Department a complete listing of the contact information of all the trading companies named in petitioners' pre-verification comments. They explain that at verification, the Department selected the largest trading company and randomly selected another as well. The Huludao Companies explain that at verification, the Department verifiers called several of the trading companies to confirm that they operate companies trading in HRS and that they sold HRS to the Huludao Companies during the POI. The Huludao Companies point out that the verifiers took the additional step of traveling to one such company on site where they matched the business card and fax numbers to the operating fax machines in the trading company office. Additionally, the Huludao Companies point out that, in an effort to confirm their HRS suppliers' identity and ownership levels, they contacted HRS producers, provided business licenses (along with company attestations in some cases), and website information. The Huludao Companies explain that they also obtained the capital verification report of one of their HRS producers.

The Huludao Companies argue that they obtained information confirming the identity and ownership levels of their HRS suppliers from a variety of public and nonpublic sources and argue that the Department should find that the information provided by them at verification constitutes substantial evidence on the record that none of the suppliers Huludao reported as private are SOEs.

The Huludao Companies claim that petitioners show their cultural bias in their claim that the companies' attestations are not valid. The Huludao Companies note that the company attestations are stamped with a unique company seal. They argue that such seals are legally binding in the PRC. The Huludao Companies also challenge petitioners' claims that the informal nature of the mill certificates call their authenticity into question. The Huludao Companies argue that contracts for domestic sales are sometimes not required. The Huludao Companies state that they perform their own internal inspection, which allow them to provide all necessary information in the final mill certificate provided to the U.S. customer. Thus, according to the Huludao Companies, the mill certificate provided to their companies coupled with their internal inspection analysis reports provided sufficient information for the Huludao Companies to identify the producer and confirm that their finished goods meet the parameters stated in the HRS mill certificate.

The Huludao Companies also disagree with petitioners' contention that because mill certificates may be handwritten they are not reliable. Huludao argues that whether typed or handwritten, these mill certificates provide necessary information as per quality and specification. They argue that the validity of the information is not dependent on whether it was filled in with a typewriter or by hand. Thus, the Huludao Companies argue that though the HRS producer provides the mill certificate, the trading company is the only company that knows the quantity it will sell to each downstream user. The Huludao Companies also argue that, contrary to petitioners claims, there is sufficient and reliable production and specification information (e.g., heat numbers and coil numbers) contained in the mill certificates to enable them to track the identities of the HRS producers.

The Huludao Companies argue that petitioners' other miscellaneous comments regarding their HRS producers are also without merit. They note that with respect to one of the companies, petitioner pointed to a discrepancy between the website date of establishment and the date listed on the business license. The Huludao Companies contend that this supposed discrepancy does not change the fact that the website printouts, business license, and company certificate all pointed to the same "private company".

Lastly, the Huludao Companies argue that it is impractical for the Department to conduct what is effectively a subsidiary "Separate Rate" investigation of each HRS supplier and the Department has not suggested or attempted such an endeavor. The Huludao Companies contend that the Department must take note of the fact that the HRS suppliers are not respondents in this case.

In sum, the Huludao Companies argue that irrespective of whether the Department continues to draw an adverse inference against the GOC in the final determination, the Huludao Companies have done nothing to justify an adverse inference with respect to the specific HRS producers supplying HRS to them. The Huludao Companies argue that they have provided sufficient evidence with respect to their own suppliers to justify a conclusion in the final determination that the only state-owned HRS suppliers to the Huludao Companies were those noted in their questionnaire responses.

Department's Position: As explained above in the "Adverse Facts Available" section and Comment 1, the Department has determined that the application of AFA is warranted under section 776 of the Act. Specifically, we find that the GOC has failed to act to best of its ability in terms of providing requested ownership information pertaining to respondents' HRS producers. As a result, the Department is assuming that all HRS supplied to respondents, including HRS sold via trading, companies was manufactured by state-owned enterprises.

We add that the Department has previously rejected the notion that it may rely on ownership information that is based on self-assessments or company websites. See CWP Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration" section. Therefore, we find that in the instant investigation we cannot rely on ownership information that was supplied by the Huludao Companies during verification that is based on company websites and brochures or self-certifications of their HRS suppliers.

However, during verification, the Huludao Companies presented a capital verification report for one of its HRS suppliers. The Huludao Companies argue that this supplier was privately held during the POI. This HRS supplier was not among the HRS suppliers identified in the verification outline issued to the GOC. With regard to this particular HRS supplier, we find that the information in the capital verification corroborates the ownership information contained in the supplier's business registration form that was placed on the record by the GOC. Therefore, in the final determination, we have treated this supplier as a private producer and have not included the volume of HRS it sold to the Huludao Companies in our subsidy calculations.

Comment 3: Whether the Five Factor Test Should Be Used To Asses Which Producers of HRS Are State-Owned

The GOC discusses that in the Preliminarily Determination the Department equated government control in the form of an ownership interest with the existence of a government authority within the meaning of the statute. See 73 FR 52306. The GOC argues that this analysis is overly-simplistic. Ownership, alone, does not confer the status of government authority. The GOC further argues that the preliminary analysis is inconsistent with the Department's prior practice where it has assessed whether an entity should be considered an "authority" by evaluating five relevant factors: 1) government ownership; 2) the government's presence on 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.[34] The GOC states that, to the extent that ownership reflects "control," the Department has in the past concluded that entities with even majority government ownership should not be considered government authorities.[35] The GOC argues that the real issue is not

[34] See, e.g., Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003) (DRAMS from Korea), and accompanying decision memorandum at 16-17 (DRAMS Decision Memorandum); Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada, 57 FR 30946, 30954 (July 13, 1992); Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from the Netherlands, 52 FR 3301, 3302, 3310 (February 3, 1987); and Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30636, 30642-43 (June 8, 1999).

[35] See DRAMS Decision Memorandum at 17.

government ownership or control, but whether an entity exercises elements of government authority. The Department's five factor test attempts to get at this issue and, therefore, the GOC argues should be applied consistently in this case.

In support of its position that the SOE producers of HRS are not government authorities, the GOC first discusses that reforms over the past 20 years have severed any public function from the commercial operations of SOEs such that SOEs do not exercise elements of government authority and, therefore, do not confer financial contributions within the meaning of the statute. In its arguments, the GOC refers to certain laws including the 1988 State-Owned Enterprises Law, which gave SOEs separate legal status from that of the government and gave management of the operations of the enterprise to the enterprise's managers.[36] The GOC also discusses the establishment in 2003, of the State-Owned Assets Supervision and Administration Commission (SASAC), which assumed the role of investor in SOEs on behalf of the State. The GOC states that the SASAC is a shareholder in the enterprises in which it invests and, just like any shareholder, the performance is evaluated based on the return on assets it generates from its investments. The GOC asserts that the Interim Measures,[37] which established the SASAC, reinforce the independence of SOEs and the separation of State ownership from SOE operations. For example, the GOC notes that Article 10 of the Interim Measures establishes that SOEs "are entitled to the right of autonomy in business operations." The GOC contends that this autonomy in operations is reflected in the board resolutions and annual reports of major HRS producers, and that none of which indicate any consideration of government mandates related to production, pricing, or other operational aspects of the companies concerned.[38]

The GOC further discusses the 1998 Price Law, which under Article 18, states that government-guided and government-set prices were confined to a narrow band of vital or rare commodities, natural monopolies, public utilities, and essential non-profit services as set forth in government pricing catalogs.[39] The GOC states that the most recent catalog, issued in 2001,[40] lists 13 broad types of commodities under price control and notes that steel is not among the listed commodities. The GOC discusses that the Price Law establishes enterprise operators as autonomous decision-makers, citing Article 6 that states that market regulated prices "shall be practiced and determined autonomously by the operators." The GOC contends that Chinese producers of HRS price their steel in competition with others in the market. The GOC further argues that price competition differs by region and producer.

The Huludao Companies contend that the fact that the GOC held minority interests in enterprises that supplied it with HRS does not render these suppliers government authorities capable of providing a financial contribution. The Huludao Companies explain that in the Preliminary Determination, the Department designated one of its HRS producers as a government authority in spite of the fact that the GOC held a minority interest. The Huludao Companies dispute the Department's characterization of this supplier in the Preliminary Determination. They claim that at verification, in its review of the HRS supplier mentioned above, the Department accepted evidence that the supplier is a public company with minority state ownership and that the Chinese Company Law prohibits members of government from

[36] See GOC's September 29, 2008 Factual Information Submission on SOEs (SOE FIS) at 3.
[37] Interim Measures for the Supervision and Administration of State-Owned Assets of Enterprises (No. 378).
[38] See GOC's August 22, 2008 supplemental questionnaire response at Exhibits B-1 through B-7 (for board resolutions); and GOC's July 10, 2008 questionnaire response at Exhibits A-1 through A-17 (for annual reports).
[39] See SOE FIS at 4 and Exhibit 4.
[40] Id. at 4-5.

sitting on the board of such public companies. Thus, the Huludao Companies argue that the Department must not characterize this HRS supplier as a government authority in the final determination.

Petitioners assert that the GOC has failed to meet its burden to demonstrate that state-owned HRS producers are not government authorities. Concerning the five factor test, petitioners argue that, as the Department has stated in prior cases,[41] the burden is on the GOC to provide the information necessary to enable the Department to perform the test. Petitioners state that the GOC repeatedly refused the Department's requests for information relevant to the five factor test in questionnaires and at verification. For example, the GOC submitted a spreadsheet reporting the GOC's classification of each company for purposes of the investigation as state-owned, private, or foreign-invested and provided business registration certificates for the firms but gave no explanation concerning how these documents supported the GOC's classifications in the spreadsheet.[42] Petitioners add that at verification the GOC refused to provide to the Department corporate verification reports and articles of association of selected HRS producers to verify the level of government ownership and make determinations concerning the other four factors of the five factor test.[43]

Petitioners further argue that certain information submitted on the record by the GOC demonstrates, contrary to the GOC's assertions, that the Chinese government controls HRS producers' activities and that the producers pursue governmental policies and interests. They discuss that, despite the GOC's statements, the Interim Measures do not limit the GOC's power over the operations of SOEs. On the contrary, petitioners contend that the Interim Measures give the SASAC's the power to, inter alia, appoint, remove, reward, and punish the directors and senior management of SOEs.[44]

Petitioners also counter the GOC's statement that the autonomy of state-owned HRS producers is reflected in the companies' annual reports, citing the example of Baosteel.[45] Petitioners discuss that the Department in a prior case rejected the same argument presented by the GOC. In the LWP Final, the Department examined the annual reports of Baosteel and concluded that not only was there no evidence of autonomy with respect to the company's operations, but Baosteel's annual reports actually "suggest that the GOC may pursue government policies and interests through its ownership of Baosteel."[46]

Accordingly, the Department should reject the GOC's arguments and continue to find that the HRS producers are government authorities for the final determination.

The Department's Position: The Department agrees that the five-factor test has been used in prior cases. See, e.g., Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination, 72 FR 60639 (October 25, 2007) (CFS from Korea) and accompanying Issues and Decision Memorandum (CFS from Korea Decision Memorandum) at Comment 11; see also Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada, 57 FR 30946, 30954 (July 13, 1992) (Magnesium from Canada). However, there are other cases, particularly cases where a

[41] See CWP Decision Memorandum at Comment 7, see also LWP Decision Memorandum at Comment 6.
[42] See GOC's August 21, 2008 supplemental questionnaire response at 2-5.
[43] See GOC Verification Report at 3.
[44] See GOC's September 29, 2008 New Factual Information at Exhibit 8, page 4-6.
[45] See GOC's Case Brief at 13-14.
[46] See LWP Decision Memorandum at Comment 6.

government producer provides an input, where the Department has not conducted such an analysis. See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008) (HRC from India) and accompanying Issues and Decision Memorandum (HRC from India Decision Memorandum) at “Sale of High-Grade Iron Ore for Less Than Adequate Remuneration” section, 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. We note that our decision on this issue is consistent with the Department’s practice in recent CVD proceedings involving the PRC. See Tires Decision Memorandum at Comment D.2.

As explained above in the “Adverse Facts Available” section and Comment 1, we have determined that the GOC has withheld requested information and impeded the Department’s verification process within the meaning of section 776(a)(2)(A) and (D) of the Act and, thus, the application of FA is necessary. Also, as explained above, we find that the GOC has failed to act to the best of its ability and, therefore, we find that the application of adverse inferences, as described under section 776(b) of the Act, is warranted. Specifically, pursuant to section 776(b) of the Act, we are assuming all HRS sold to respondents via trading companies was manufactured by government-owned producers.

Therefore, based on the Department’s practice concerning government authorities and our application of adverse inferences under section 776 of the Act that all of respondents’ suppliers of HRS are government-owned, we find that the sale of HRS by respondents’ suppliers constitutes a financial contribution under 771(D)(iii) of the Act.

We also disagree with the Huludao Companies’ argument that information collected at verification demonstrates that one of its suppliers, which the Department treated as government authority in spite of the GOC’s minority stake, is in fact a private entity. The Huludao Companies base their argument regarding this particular HRS supplier on information that the Department has deemed is not adequate for purposes of establishing the level of government-ownership. As explained above in Comment 2, the Department has previously rejected the notion that it may rely on ownership information that is based on self-assessments or company websites.[47]

Comment 4: Whether the Sale of HRS from Privately-Held Trading Companies Constitutes a Financial Contribution Under the Act

The GOC argues that Department’s preliminary decision[48] to countervail purchases of HRS from private trading companies based on the percentage of HRS produced by SOE producers in the Chinese market is inconsistent with the statute and court precedent, which dictate that the Department must find a financial contribution and benefit to the respondent end user.[49] According to the GOC, it is insufficient to find a financial contribution only to an

[47] We note that the HRS supplier discussed in this comment is distinct from the HRS supplier discussed in Comment 2 for which the Huludao Companies managed to provide a capital verification report.
[48] See Line Pipe Preliminary Determination, 73 FR 52306.
[49] See 19 USC 1677(5); Delverde, SRL v. United States, 202 F.3d 1360, 1365 (Fed. Cir. 2000) (“The language of the statute is clear. In order to conclude that a ‘person’ received a subsidy, Commerce must determine that a

unrelated trading company and then a benefit to the end user, particularly with respect to subsidy benefits expensed as the time of receipt as in the case of the provision of goods such as HRS.

The GOC asserts that the Department preliminarily ruled on the existence of an upstream subsidy, for which no allegation was ever made by the petitioners, no investigation undertaken, and no findings made by the Department. The GOC discusses that the Department has made no findings that trading companies received both a financial contribution and benefit by means of their purchase of HRS from SOEs. To the GOC, absent such findings, an upstream subsidy analysis cannot take place. It is incumbent on the Department to demonstrate how the trading company itself provided a financial contribution and benefit to the end user through the sale of HRS. The GOC asserts that this analysis requires a finding that the trading companies are "authorities" within the meaning of the statute or were otherwise "entrusted or directed" by the government to provide a financial contribution; an analysis that the Department has failed to do. The GOC argues that it makes no difference whether the price paid by the end user is below the Department's benchmark, as the legal element of financial contribution has not been established and, therefore, there is no basis for the Department to countervail any purchases of HRS from trading companies.

According to the Huludao Companies, the Department has verified that none of the suppliers of HRS to trading companies that sourced HRS to the Huludao Companies in the POI were SOE's. They further argue that only a very small volume of HRS was sold to the Huludao Companies by government-owned entities and, thus, the Department should ignore these purchases in its analysis.

As a subsidiary matter, the Department verified that such trading companies are actual trading companies that supplied HRS to the Huludao Companies in the POI. Accordingly Huludao argues no benefit should be calculated for HRS provided by these suppliers.

Additionally, the Huludao Companies contend that HRS purchases should not be countervailed in any event because the countervailing duty laws provide overlapping remedies with the antidumping duty laws. They argue that imposing a double remedy is a contravention of the principles set forth in the WTO subsidies and countervailing measures code.

Petitioners state that the GOC's arguments that the Department must first conduct an upstream subsidy analysis or determine that the GOC has "entrusted or directed" trading companies to provide the respondents with a financial contribution have been repeatedly rejected by the Department. They discuss that in the LWP Final the Department rejected the claim that an upstream subsidy analysis was required before the provision of goods through a private trading company can be countervailed.[50] Similarly in the Tires Final, petitioners note that the Department determined that:

> {t}he 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 {because} {t}hese transactions do not constitute "private price. . ."[51]

Petitioners assert that nowhere does the definition of financial contribution state that a

government provided that person with both a 'financial contribution' (or equivalent as described in 1677(5)(B)(ii) and (iii) and a 'benefit.'")

[50] See LWP Decision Memorandum at Comment 5.

[51] See Tires Decision Memorandum at Comment D.4.

financial contribution may not pass through an intermediary or that the financial contribution must be received directly by the end use. Thus, they state, as long as an authority provides a financial contribution and a benefit is conferred on the recipient, a countervailable subsidy may be found to exist. Therefore, the GOC's claims that the DOC must demonstrate how the trading companies provided a financial contribution to the end user is not grounded in the statute and must be rejected for the final determination, the petitioners argue.

The Department's Position: The Department is treating as a financial contribution all purchases of HRS produced by government-owned producers. 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 Decision Memorandum at Comment 10; see also Tires Decision Memorandum at Comment D.4.

As explained above in the "Adverse Facts Available" section and Comment 1, the Department has determined that the application of AFA under section 776 of the Act. Specifically, we find that the GOC has failed to act to best of its ability in terms of providing requested ownership information pertaining to respondents' HRS producers. As a result, the Department is assuming that all HRS supplied to respondents, including HRS sold via trading companies, was manufactured by state-owned enterprises and, thus, constitutes a financial contribution under section 771(D)(iii) of the Act.

For transactions in this case, the GOC's financial contribution (the provision of HRS produced by government-owned producers) is made to the trading company suppliers that purchase the HRS, while all or some portion of the benefit is conferred on the respondents who purchase the HRS from the trading company. Where the price paid by the line pipe producers is less than the benchmark price, the line pipe producers receive a benefit when they purchase these government-provided goods and, accordingly, receive these inputs for LTAR. Therefore, for purposes of this investigation, the Department will continue to include purchases of all HRS produced by government-owned producers in its subsidy calculations.

Comment 5: Whether the Use of an In-Country Benchmark is Permissible When Calculating Benefits Under the Provision of HRS for LTAR Program

The GOC argues that the Department's preliminary decision to discard in-country benchmarks based on the "overwhelming" presence of the GOC in the market is not supported by substantial evidence or mainstream economic theory. See Preliminary Determination, 73 FR 52307. Specifically, in the Preliminary Determination, the Department found that 60.77 percent of HRS production was accounted for by SOE producers. Id. Therefore, nearly 40 percent of HRS production in China is accounted by producers that, the GOC contends under the Department's analysis, are not "authorities" within the meaning of the statute. However, the GOC discusses that the Department concluded that the Chinese government maintained an overwhelming involvement in the market and, therefore, in-country benchmarks for HRS could not be used to measure the benefit because such benchmarks would reflect the distortions of the government presence in that industry.

The GOC asserts that, contrary to the Department's preliminary analysis, the Preamble does not create an irrefutable presumption that a majority or substantial presence in a market by the government must result in the disqualification of in-country benchmarks. The GOC discusses that the Preamble states that such a disqualification will occur when it is "reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market." See Preamble, 63 FR 65377. Therefore, for the final determination, the GOC argues that, before rejecting in-country benchmark prices from private HRS producers, the Department must determine that these non-affiliated private firms' prices are distorted by the alleged GOC control of SOE firms and that the impact results in a downward distortion of private firm prices. The GOC adds that the record does not support either conclusion in this case.

The GOC further argues the finding that the Chinese government controls 60 percent of the domestic HRS production does not imply a price effect on private firms and to assume that there is a spillover effect violates economic theory. The GOC discusses that economic theory states that when there are a large number of non-affiliated firms there is little to no scope for strategic interaction among the firms. The competitive nature of the non-affiliated firms means that their pricing decisions are driven by their costs and not by the strategic influence of the GOC's alleged control over other firms. The GOC asserts that the Department must recognize that there are independent Chinese producers representing 40 percent of the market and these firms are most appropriately viewed as nearly perfectly competitive.

The GOC concludes that even if the Departments finds that the GOC controls a large share of the Chinese HRS production and even if the Department finds the control distorts non-affiliated firms' prices, the Department can only reject those prices if the distortion results in lower prices. However, based on the characteristics of the steel industry (i.e., large fixed costs), the GOC argues the Department would have to conclude that any price distortion is the increase in prices and, therefore, there would be no concern utilizing in-country private prices as benchmarks.

In their rebuttal brief, petitioners first argue that the GOC's reported figure that SOEs account for 60 percent of the Chinese HRS industry is wrong and the actual percentage is much higher.[52] Petitioners state that even assuming, arguendo, that the GOC's 60 percent figure is correct the GOC's arguments about the availability of in-country benchmarks (i.e., the remaining 40 percent) are baseless. They argue that the GOC's extensive influence over the HRS industry allows it to act as a virtual monopolist in the market, controlling production volume and pricing and, therefore, the remaining private prices are not independent of the government price. Petitioners add that in earlier cases the Department rejected the same arguments made by the GOC. See LWP Decision Memorandum at Comment 7; and CWP Decision Memorandum at Comment 7. Petitioners discuss that the Department has emphasized that the GOC's dominance of the market distorts the prices charged by all other producers and such prices cannot, therefore, serve as valid benchmarks. Specifically, in the LWP Final, the Department found:

> Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion, which the comparison is designed to detect.[53]

---

[52] See U.S. Steel Case Brief at 18-22, for a further discussion.

[53] See LWP Decision Memorandum at Comment 7 (citing and quoting Decision Memorandum in Certain Softwood Lumber Products from Canada, 67 FR 15545 (April 2, 2002) at 38-39); CWP Decision Memorandum at Comment 7.

As such, petitioners assert for the final determination the Department should continue to use as its HRS benchmark prices the world market prices obtained from the Steel Benchmarker Report.

The Department's Position: We disagree with the GOC's argument that the Department's preliminary decision to discard in-country benchmarks based on the "overwhelming" presence of the GOC in the market is not supported by substantial evidence or mainstream economic theory. In the CWP Final, the Department explained that its long-standing practice is to utilize a benchmark outside of the country of provision when the government has an overwhelming involvement in the sale of the good in question. We explained that out-of-country benchmarks were required in such instances because the use of in-country private producer prices would be akin to comparing the benchmark to itself (i.e., such a benchmark would reflect the distortions of the government presence). See CWP Issues and Decision Memorandum at Comment 7. The Department reached a similar conclusion in Softwood Lumber:

> Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.

See Final Results of the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada, 67 FR 15545 (April 2, 2002), (Softwood Lumber) and accompanying Issues and Decision Memorandum (Softwood Lumber Decision Memorandum) at Comment 34. The comments raised by interested parties do not differ from those raised by parties in past proceedings regarding this issue. Therefore, we continue to find that a government's overwhelming involvement in the sale of the good in question requires the use of an out-of-country benchmark.

The GOC also takes issue with the Department's finding that, in the instant investigation, the level of the government's involvement in the sale of HRS in the PRC constitutes an overwhelming majority. We disagree. As explained above, during verification the GOC refused to provide the Department with the information that would enable it confirm the contemporaneity of the ownership in the business registration forms and prevented the Department from crosschecking the information in the business registration forms with other documents containing ownership information. Thus, for the same reasons discussed above in the "Adverse Facts Available" section and Comment 1 of this decision memorandum, we are applying AFA under section 776 of the Act with regard to the GOC's ownership information and assuming that all HRS producers in the PRC are government-owned. In light of our AFA finding under section 776 of the Act that all HRS producers in the PRC are government-owned, we determine that the government's involvement in the HRS market is overwhelming and, thus, the use of in-country prices is not viable. See CWP Decision Memorandum at Comment 7 where the Department reached a similar conclusion.

Comment 6: Whether the Department's De Facto Specificity Analysis Under the Provision of HRS for LTAR Program Was Flawed

The GOC contends that the Department's question on the sale of HRS in the Chinese market to assist in its examination of specificity was absurd because there is no HRS program and no such information exists and, therefore, cannot be provided.[54] The GOC states that it has no authority to demand detailed sales lists, categorized by region and customer type, from over 200 producers in the Chinese market. The GOC states that it was able to confirm with the Department that HRS touches virtually every sector of the economy. HRS is directly consumed by broad industry sectors such as the automotive, construction, appliance and pipe and tube industries, which are themselves made up of numerous sub-industries.[55] The GOC asserts that HRS is hardly a commodity for which de facto specificity may be found.

The GOC further argues that the Department's resorting to adverse facts is unjustified. The GOC states that the Department's explanation of why it applied adverse facts must include "{a}t a minimum" a determination "that a respondent could comply . . ." (See China Steel Corp. v. United States, 264 F. Supp. 2d 1339, 1360 (CIT 2003) (quoting Nippon Steel Corp. v. United States, 24 CIT 1158, 1171 (2000)) and "a willful decision not to comply or behavior below the standard for a reasonable respondent. See Nippon Steel Corp. v. United States, 264 CIT 1158, 1171 (2000). The GOC asserts that no such explanation was offered and no attempt was made by the Department to fashion an appropriate question to explore the particular facts of the "program" it is attempting to examine. As such, the GOC argues the circumstances of this case do not warrant the application of adverse facts, particularly given the responsive information it provided to the Department.

Petitioners respond that the Department's purpose in requesting the information was to obtain a list organized by industry and region of the companies in China, which obtained HRS from SOEs. They posit that the DOC's questions are relevant to the specificity analysis required by the statute, focusing on the scope of benefits and potential recipients of HRS for LTAR. However, rather than attempt to provide such a list, petitioners discuss that the GOC refused to submit the information stating that it would not be "feasible" to compile it.[56] Petitioners assert that the GOC did not make any effort to provide the information and, thus, failed to act to the best of its ability. Under these circumstances, petitioners argue that the Department's application of adverse facts available is warranted.

Petitioners add that even if the Department does not rely on AFA for the final determination, it should find the provision of HRS to be de facto specific based on statements provided by the GOC in the investigation. Specifically, petitioners note that the GOC stated:

> Large volumes of hot-rolled steel are consumed in downstream operations, producing cold-rolled and galvanized flat products. The automotive, construction, appliance, and

[54] The Department asked the following question: "Please provide a list by industry and by region of the number of companies which have received benefits under this program in the year the provision of benefits was approved and each of the preceding three years. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the preceding three years." See GOC's July 10, 2008 questionnaire response at 110.
[55] See GOC's July 10, 2008 questionnaire response at 104.
[56] See GOC's July 9, 2008 questionnaire response at 104 and GOC's August 21, 2008 supplemental questionnaire response at 7-8.

pipe and tube industries also purchase hot-rolled steel.[57]

Petitioners discuss that the Department found the provision of HRS to be de facto specific based on similar statements in the CWP Final. See CWP Decision Memorandum at Comment 7.

The Department's Position: We agree with petitioners that it is appropriate to apply AFA to our de facto specificity analysis of the provision of HRS at LTAR because the GOC failed to act to the best of its ability in providing the requested information. On two occasions, we requested from the GOC information on the provision of HRS to companies by industry and by region in order to have information to conduct our analysis.[58] It is the Department's established practice to examine the government's provision of an input, such as HRS, to recipients by industry and by region for the year in which the provision of the benefit was approved and the prior three years. See CWP Final, LWP Final, and HRC from India. In response to the Department's request for information, the GOC stated the no such list of information exists and that no data was available from which to derive such a list.[59] The GOC never asked the Department for clarification of the question and data sought, or suggested other means to provide data that would be informative to the Department's specificity analysis. The GOC's statement that "hot-rolled steel touches virtually every sector of the Chinese economy" is simply not sufficient information with which the Department can conduct a thorough and complete specificity analysis.

The Department finds that no new information has been submitted on the record of this proceeding to give it reason to revisit its preliminary finding regarding the application of AFA to the specificity analysis of the provision of HRS at LTAR. As such, we continue to find, consistent with sections 776(a) & (b) of the Act and that the GOC failed to provide the requested information. We further find that the GOC failed to act to the best of its ability and, therefore, in selecting from among the facts otherwise available, we have employed adverse inferences as described under section 776(b) of the Act. Specifically, we find that the provision of HRS to producers of line pipe by GOC authorities is de facto specific within the meaning of section 771(5A)(D)(iii) of the Act.

The Department's decision to rely on adverse inferences when lacking a response from a foreign government is in accordance with its practice. See, e.g., Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 11397, 11399 (March 7, 2006) (unchanged in the Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 38861 (July 10, 2006) (relying on adverse inferences in determining that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of the sections 771(5)(D)(i) and 771(5A)(D)(iii) of the Act, respectively).

Comment 7: Whether to Adjust the Benchmark Used in the Provision of HRS for LTAR Program for International Freight

Petitioners explain that under 19 CFR 351.511(a)(2)(iv), the Department will adjust the

[57] See GOC's July 9, 2008 questionnaire response at 104.
[58] See May 19, 2008 initial questionnaire and August 5, 2008 supplemental questionnaire.
[59] See GOC's July 10, 2008 questionnaire response at 110 and August 21, 2008 supplemental questionnaire response at 8.

benchmark price to reflect the price the firm paid or would pay if it imported the product in question. They note the regulation specifically states that the adjustment will include VAT, import duties, and delivery charges that would have been levied on the imported product. Petitioners explain that while the Department adjusted the HRS benchmark for import duties and VAT, it did not adjust the benchmark for international freight. Noting the Department's solicitation in the Preliminary Determination for comments from interested parties on this issue, petitioners urge the Department to use freight values on the record from export sales to the United States as a proxy for international shipping charges to Liaoning Province. See Preliminary Determination, 73 FR at 52307. Specifically, petitioners argue that the Department should use international freight charges from Northern Steel for shipments it made from Liaoning Province to the United States as a proxy for international shipping charges to China when calculating the HRS benchmark.

In the alternative, petitioners argue that the Department should rely on ocean freight rates from Maersk Lines, which was placed on the record in petitioners' factual submission. See Petitioners' September 30, 2008 submission at Exhibits 19 through 23. Petitioners note that in recent CVD investigations involving the PRC, the Department has utilized ocean freight data from Maersk Lines in past CVD proceedings. See e.g., Tires Final and Tires Decision Memorandum at Section IV.A.I and Laminated Woven Sacks from the People's Republic of China, 73 FR 35639 (June 24, 2008) (Sacks Final) and accompanying Issues and Decision Memorandum (Sacks Decision Memorandum) at Comment 17.

Respondents did not address this issue.

The Department's Position: We agree with petitioners. Pursuant to 19 CFR 351.511(a)(2)(iv), we have included the international freight rates from Maersk Lines in the HRS benchmark to reflect the price that respondents would have paid if they imported HRS. In keeping with these regulations, delivery charges would include all shipping, handling and related charges (e.g., foreign inland freight, local inland freight, and ocean freight) that would be incurred in delivering the product to the respondent's factory gate. Similarly, to ensure an appropriate level of comparability, domestic purchases from the government supplier should also be inclusive of all delivery charges incurred in delivering the product to the respondent's factory gate. Our approach in the instant investigation is consistent the Department's practice. See Sacks Decision Memorandum at Comment 17. See also HRC from India Decision Memorandum at Comment 17, where the Department adjusted the comparison price to reflect the price that the firm actually paid or would pay if it imported the product, including delivery charges and import duties.

We note however that in regard to the HRS benchmark price we only have information on the record regarding international freight. Thus, in calculating our benchmark price we have not included inland freight in our calculations.[60]

Comment 8: Whether the Department Erred When Adding Import Duties and VAT to the Benchmark Price Used in the Provision of HRS for LTAR Program

According to petitioners, 19 CFR 351.511(a) (2) (iv) requires that when measuring the adequacy of remuneration the Department should adjust the benchmark price to include import duties and taxes. China levies both VAT and import duties on imported products. Petitioners

[60] We note that we also lack domestic inland freight information.

argue, however, that in the final determination the Department should calculate the benchmark price by first computing the customs dutiable value (i.e., the HRS benchmark price plus international freight). Petitioners argue that the Department should then multiply the dutiable value by the corresponding duty rate. Petitioners contend that the Department should then multiple the resulting amount by the corresponding VAT rate to arrive at the benchmark price.

The Huludao Companies argue that the regulation calling for the addition of import tax to the benchmark price in LTAR analyses is predicted on a factual circumstance not present in this investigation with respect to the Huludao Companies; the complete absence of a marketplace for privately supplied HRS. The Department has now verified that the vast majority of Huludao's HRS suppliers were private entities and the vast majority of the HRS tonnage supplied to the Huludao Companies in the POI was supplied by private domestic entities and is not countervailable. Therefore, the notion that such HRS must be imported to be available on the market is not supported by substantial evidence on the record. Thus, by virtue of sourcing the benchmark from inside the PRC, there would be no need to add to the benchmark an import duty-component.

The Huludao Companies further argue that VAT is supposed to be neutral to a producer and that it is not a cost. They argue that the HRS supplier charges VAT to the Huludao Companies, who in turn pass it along to their customers when they sell subject merchandise. They explain that since the Huludao Companies are not the end-user of the subject merchandise, VAT is entirely neutral and should not artificially be added to their cost for the purpose of establishing an HRS benchmark. The Huludao Companies argue that in the CWP Final, the Department did its HRS benefit calculation net of VAT purchase prices compared to a net of VAT benchmark. The Huludao Companies add that VAT is actually not an expense that can be attributed to them since they export a significant amount of the subject merchandise to various world destinations.

The Department's Position: We agree with petitioners that the HRS benchmark price should include both import duties and VAT in order to make an accurate comparison. Under 19 CFR 351.511(a)(2)(iv), the Department will adjust the comparison price to reflect the price that the firm actually paid or would pay if it imported the product, including import duties and taxes. In keeping with these regulations, the benchmark would include all import duties and taxes incurred in delivering the product to the respondent's factory gate. Similarly, to ensure an appropriate level of comparability, domestic purchases from the government supplier should also be inclusive of all taxes or other fees paid on that product incurred in delivering the product to the respondent's factory gate. Therefore, we have applied this comparison analysis to the respondent firms. For the final determination, we adjusted our final calculations to include VAT and import duties in the benchmark price for HRS and we have included VAT to the price the respondent firms paid on domestically sourced HRS. Our approach is consistent with the Department's practice. See HRC from India Decision Memorandum at Comment 17. Further, we agree with petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties.

Comment 9: Whether the Department Should Add VAT of 17 Percent to the Purchase Price of HRS the Huludao Companies Acquired During the POI When Examining the Provision of HRS for LTAR

The Huludao Companies argue that if the Department applies any Benchmark steel prices to the HRS supplied to the Huludao Companies, such a benchmark must be applied on an "apples-to-apples" basis, i.e., on a net VAT to net VAT basis or a VAT loaded to VAT-loaded basis. The Huludao Companies argue that in the Preliminary Determination, the Department improperly applied a VAT loaded benchmark price for HRS to the Huludao Companies' net of VAT HRS purchase prices, thus inflating the benefit measured in the preliminary determination by that 17% difference. The Huludao Companies note that the Department has verified that all of their HRS purchases in the POI included a VAT component of 17 percent. For the final determination Huludao argues that the Department must compare the benchmark to the equivalent prices in Huludao's responses. Huludao adds that the Department should make its revisions in this respect retroactive to the Preliminary Determination.

Department's Position: Information on the record indicates that the Huludao Companies paid VAT on all purchases of HRS acquired during the POI. See Exhibits 15 and 16 of the verification report of the Huludao Companies. Therefore, in the final determination, when performing the benefit calculation, the Department has included VAT in the prices the Huludao Companies paid to its HRS suppliers.

Comment 10: Whether the Department Erred in Using an Inflation-Adjusted Interest Rate to Calculate the Short-Term Benchmark

In the Preliminary Determination, the Department computed a short-term benchmark interest rate based on the inflation-adjusted interest rates of countries with similar per capita gross national income (GNI) to the PRC. See 73 FR 52300. The Department then adjusted the interest rates by the respondent firms using an inflation rate based on the PRC's consumer price index (CPI).

Petitioners take issue with the methodology employed by the Department in the Preliminary Determination. Petitioners maintain that statute and the regulations do not contemplate the Department's benchmark methodology. They further argue that the Department's short-term benchmark methodology is unreliable due to the inaccuracies that are present in the PRC's CPI. Petitioners argue that the GOC suppresses the CPI-based inflation rate by deemphasizing housing-related costs in the index, keeping food, utility, and commodity costs low through government intervention in the markets, and curbs wages by discouraging worker's rights.

The GOC explains that the short-term benchmark methodology employed in CVD proceedings involving the PRC employs interest rate data from numerous countries and, thus, the benchmark interest rate is not specific to any given currency. As such, argues the GOC, as a proxy for currency conversion, it is both reasonable and necessary for the Department to adjust for inflation to ensure compatibility among interest rates. The GOC notes that the need for an inflation adjustment is explained in detail in a report included in one of the factual submissions it placed on the record. See the GOC's September 22, 2008 factual submission at Exhibit 39, pages 23 through 26.

The GOC contests petitioners' claims concerning the reliability of the GOC's inflation data. The GOC points out that the Department's findings in CFS Final contradict petitioners' arguments on this point. See Memorandum to the File from Shauna Lee-Alaia and Lawrence Norton, Analysts, Office of Policy, to David M. Spooner, Assistant Secretary for Import Administration, "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) at page 79, in which the Department concluded that labor law in the PRC grants the right to set wages above the government-set minimum wage.

In sum, to the extent the Department continues to utilize the short-term benchmark methodology employed in the Preliminary Determination, the GOC argues the Department should continue to adjust for inflation.

Department's Position: We have not adopted petitioners' position regarding inflation adjustments to calculate the short term benchmark in this final proceeding. The Department continues to apply a short-term benchmark interest rate based on the inflation-adjusted interest rates of countries with similar per capita gross national income (GNI) to the PRC.

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 rate; however, as noted above in the "Subsidies Valuation Information" section of this notice, there is not a functioning market for loans within the PRC. Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting a market-based benchmark interest rate based on the inflation-adjusted interest rates of countries with similar per capita gross income (GNI) to the PRC, using the same regression-based methodology that we employed in CFS. See CFS Decision Memorandum at Comment 10.

Pursuant to 19 CFR 351.504(a)(2)(i), 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 us to address this issue. As we explained in the CFS Final, when the Department compares prices across countries, it normally converts those prices into a common currency because cross-currency price comparisons would not make sense. See CFS Decision Memorandum 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 also makes sense because the benefit calculation should not reflect inflation expectations that differ across countries. While our regulations do not expressly permit 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. See CFS Decision Memorandum at Comment 10; see also CWP Decision Memorandum at Comment 8.

Comment 11: Whether the Department Should Revise Its Short-Term Benchmark Methodology by Either Basing the Short-Term Benchmark On a Simple Average of Applicable Short-Term Rates or Adding an Additional "Governance Factor" to the Regression Analysis

Petitioners urge the Department to utilize a simpler short-term benchmark methodology in the final determination. Specifically, they argue that the Department should calculate an external benchmark that is equivalent to a simple average of the short-term interest rates available in comparable lower-income countries, excluding aberrational entries and non-market economies.

If, however, the Department continues to utilize a regression-based methodology to calculate the short-term benchmark, petitioners urge the Department to add "voice and accountability" to the list of "governance factor" variables utilized.[61] Petitioners argue that the "voice and accountability" factor applies directly to the environment in the PRC where, according to petitioners, freedoms and democratic elections are non-existent. Petitioners acknowledge, but disagree with, the Department's prior refusal to add "voice and accountability" to the list of "governance factors" utilized in the regression-based short-term benchmark methodology and argues that the "voice and accountability" factor is the most significant indicator of a country's lending environment. See Tires Final and Tires Decision Memorandum at Comment E.4.

As discussed in further detail below, the GOC argues that the Department's regression-based benchmark methodology is flawed and should be abandoned in the final determination in favor of in-country benchmark interest rates.

The Department's Position: We disagree with petitioners that a simple average approach is warranted. 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) and CWP Decision Memorandum at "Benchmark for Short-Term RMB Denominated Loans". Thus, the benchmark should be a market-based rate; however, there is not a functioning market for loans within the PRC. Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting a market-based benchmark interest rate based on the inflation-adjusted interest rates of countries with similar per capita GNĨ to the PRC, using the same regression-based methodology that we employed in the CFS Final. See CWP Decision Memorandum at "Benchmark for Short-Term RMB Denominated Loans".

---

[61] In the Preliminary Determination, the Department's regression-based short-benchmark methodology utilized "governance factors" derived from a World Bank report that examines six categories: 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. See the Memorandum to the File from Kristen Johnson, Case Analyst, "Loan Benchmark Information," (September 2, 2008) (Preliminary Benchmark Memorandum).

The use of an external benchmark is consistent with the Departments practice. For example, in Softwood Lumber, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. In the current proceeding, the Department finds that the GOCs predominant role in the banking sector results in significant distortions that render the lending rates in the PRC unsuitable as market benchmarks. Therefore, as in Softwood Lumber, where domestic prices are not reliable, we have resorted to prices (i.e., benchmarks) outside the PRC.

Additionally we disagree with petitioners' request that the Department add the "voice and accountability" factor to the list of "governance factors" utilized in the regression-based short-term benchmark methodology. Petitioners made the same argument in the CFS Final. As explained in that proceeding, the Department finds that other governance indicators are more indicative of the factors that contribute to perceived risk in a country and that the "voice and accountability factor" is not a factor that a lender would consider when determining the risk associated with lending to a business in a particular country. See CFS Decision Memorandum at Comment 8.

In addition, as discussed in further detail below, we disagree with the GOC that our regression-based benchmark methodology is flawed.

Comment 12: Whether the IMF Rates Used in the Department's Short-Term Regression-Based Benchmark Methodology Are, In Fact, Long-Term Rates And Therefore Flawed

The GOC explains that the Department used lending rates from the IMF as the starting point in its short-term and long-term benchmark calculations. The GOC argues that in the past, the Department characterized the IMF's lending rates as short-term. However, the GOC points out that in the Thermal Paper Decision Memorandum, the Department acknowledged that the lending rates from the IMF were not short-term but rather short- and medium-term financing. See Thermal Paper Decision Memorandum at the "Benchmarks and Discounts Rates" section. As a result, in the Thermal Paper Final, the Department did not treat the regression-based interest rate derived from these rates as a short-term rate but instead applied the regression-based benchmark to loans with terms of two years or less. Id.

The GOC argues that the Department cannot continue to follow the approach from the Preliminary Determination in which derived short-term benchmark interest rates based on a mix of short- and long-term interest rate data from the IMF. Similarly, the GOC argues that the Department cannot use the flawed IMF lending rate data to calculate long-term benchmark interest rates.

The GOC further argues that the Department should not implement the benchmark calculated in Thermal Paper Final, where, according to the GOC, the Department sought to adjust for the presence of long-term interest rates in the IMF lending rate data by using the IMF lending data to derive benchmarks for loans with durations of two years or less. The GOC argues that the Department offered no basis for selecting a threshold of two years or less that it applied in the Thermal Paper Final. Therefore, the GOC argues that the IMF lending rate data cannot be used as a basis for deriving a short-term benchmark interest rate.

Petitioners maintain that the Department has previously rejected the argument put forth in the instant investigation. See Thermal Paper Decision Memorandum at Comment 9.

The Department's Position: Many of these countries reported lending and inflation rates to the IMF which are included in that agency's International Financial Statistics (IFS). The GOC contends that although the Department has characterized them as such, many of the reported lending rates are not short-term rates. We have reviewed the information submitted by the GOC and agree that certain of the interest rates used in our regression analysis may reflect maturities of longer than one-year. Indeed, the notes to the IFS state that these rates apply to loans that meet short- and medium-term financing needs. Therefore, we find that these rates should not be treated as exclusively short-term in nature. See 19 CFR 351.102, where a short-term loan is defined as having repayment terms of one-year or less. To address this concern, we will continue to use the same interest rate data from the IMF and regression-based benchmark rate methodology, but will apply it to loans with terms of two years or less. This approach is consistent with the Department's approach in prior investigations. See Thermal Paper Decision Memorandum at "Benchmark and Discount Rates" section.

Comment 13: Whether the Regression-Based Analysis Used to Derive the Short-Term Benchmark Interest Rate is Invalid

The GOC argues that the regression-based analysis used in the Preliminary Determination to derive the short-term benchmark interest rates is invalid. Citing to an economic report the GOC placed on the record, the GOC contends that there is no strong theoretical or statistical justification for the use of GNI as an indicator of interest rates. See the GOC's September 22, 2008 factual submission at page 15 of Exhibit 39.

The GOC further argues that none of the five "government factors" the Department relied upon in its regression-based benchmark calculation have any meaningful correlation to interest rates. The GOC notes that the Department's regression-based methodology, which purportedly attempts to prove that GNI is an indicator of interest rate levels, does not even include the GNI of the selected countries within its regression analysis. The GOC argues that absent evidence that the factors utilized by the Department actually influences the determination of interest rates, which the GOC contends the Department has yet to provide, there is no foundation for utilization of such factors to determine benchmark interest rates for the PRC.

Additionally, the GOC argues that the statistics that accompany the Department's regression statistics demonstrate that there is no statistically significant relationship between the average "government factor" and the CPI adjusted lending rate. The GOC maintains that the Department's regression analysis yields an R square statistic that is close to zero, indicating that the statistical model is not statistically significant at any standard level of confidence.

On this basis, the GOC argues that the Department should not use the regression-based approach to calculate short-term and long-term benchmarks interest rates.

Petitioners rebut the above argument by noting that the Department has previously rejected the GOC's arguments on this point. See Thermal Paper Decision Memorandum at Comment 9. Petitioners further argue that, as noted in the CFS Final, the Department's decision to use GNI as a proxy for interest rates was based on detailed analysis contained in economic reports and advice the Department received from banking experts at the Federal Reserve and the Treasury Department. See CFS Decision Memorandum at Comment 10.

The Department's Position: We disagree with the GOC's argument that the assumptions underlying the benchmark calculation are flawed and that there is no relationship between gross national income and interest rates. In the Preliminary Determination, we calculated an external benchmark using the regression-based methodology first developed in the CFS Final and further refined in the Tires Final and Thermal Paper Final. See CFS Decision Memorandum at Comment 10, Tires Decision Memorandum at Comment E.4, and Thermal Paper Decision Memorandum at Comment 9. This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes similar to that of the PRC, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to state-imposed distortions in the banking sector.

Comment 14: Whether the Department Should Revise the Manner in Which It Incorporated a Risk Premium to the RMB Denominated Long-Term Benchmark

In the Preliminary Determination, the Department calculated the RMB denominated long-term benchmark for a given year by first adding the short-term benchmark and inflation rate for the year in question. The Department then attached a "bump up" ratio to this sum to reflect the fact that lending institutions factor in a certain level of risk when issuing long-term loans. Specifically, the Department multiplied the sum of the short-term benchmark rate and the inflation rate by a ratio of short-term to long-term bond rates.[62]

The GOC argues that, to the extent that the Department continues to calculate the long-term benchmark rate as a partial function of a regression-based short-term rate, the Department should revise the manner in which it incorporates the risk premium into the long-term benchmark. The GOC argues that the Department should first find the difference between short-term and long-term bond rates, as opposed to calculating a ratio. The GOC further argues that the Department should then add the difference between the two bond rates to the sum of the short-term benchmark rate and the inflation rate. The GOC argues that basing its long-term benchmark in part on the difference between short-term and long-term bond rates more accurately reflects the manner in which commercial lenders estimate risk when issuing long-term debt.

Petitioners rebut the above argument and note that the Department has previously rejected the GOC's arguments on this point. See LWP Decision Memorandum at Comment 12.

The Department's Position: We disagree with the GOC that adding the spread between the short-term and long-term rates would yield a more accurate result. As we explained the LWP Final,[63] it is a general rule that a lender will not set an interest rate on an n-year loan that is lower than what he could earn, for example, on a short-term, one-year investment rolled over n-1 times. Thus, if "i_t" is the one-year rate in year t, the difference (mark-up) between the one-year rate and the n-year rate (in year one) is no less than $[(1 + i_1)(1 + i_2)(1 + i_3)\ldots(1 + i_n) - 1] - i_1$. This difference is an increasing function of the one-year rate in all years, i.e., the difference *increases* as the one-year rate in year one (or any other year) increases. This is exactly the result of the ratio approach – for a given loan term, as the short-term rate to which the (fixed) corporate bond rate ratio increases, the mark-up increases. The spread approach, in contrast, results in a mark-up that is *independent* of the short-term rate, i.e., the mark-up is the same whether the short-term

[62] The duration of the long-term bond used in the calculation of the ratio corresponded to the duration of the government loan in question.

[63] See LWP Decision Memorandum at comment 12.

rate to which the mark-up is applied is 2 percent or 10 percent. This result is particularly hard to explain when differences in short-term rates reflect differences in "baseline" risk levels, i.e., risk that is country- or market-specific and increases with the length of the loan term – something that the ratio approach, but not the spread approach, captures.

Comment 15: Whether the Department's Regulations Authorize the Use of Out-Of-Country Interest Rate Benchmarks

The GOC argues that nowhere does 19 CFR 351.505 authorize the Department to use an out-of-country interest rate. The GOC explains that 19 CFR 351.505(a)(ii) states that where the firm has no comparable commercial loans, the Department may use a national average interest rate for comparable commercial loans. According to the GOC, this regulation contains no requirement that benchmark loans be "market-determined." The GOC maintains that the fact that the GOC sets interest rates cannot be used as a basis for rejecting the interest rates for benchmark purposes. The GOC notes that the Federal Reserve Bank, a government authority, effectively sets short-term lending in the United States through its control over the discount rate, reserve requirements, and other monetary policy tools. Thus, the GOC argues that in the final determination the Department must derive short-term benchmark interest rates using interest rate data that reflects those rates charged inside the PRC.

The GOC further argues that, to the extent the Department finds that the GOC did not provide a financial contribution to the respondent firms via government-based policy lending, the Department should use the firms' outstanding long-term, commercial loans as the basis for its long-term discount benchmark rates as provided under 19 CFR 351.524(d)(2). Alternatively, the Department should use the average cost of long-term, fixed rate loans issued inside the PRC, as provided under 19 CFR 351.524(d)(3), as the basis for long-term discount benchmark rates.

Petitioners note that the Department has previously rejected the GOC's arguments on this point. See Sacks Decision Memorandum at Comment 20, CFS Decision Memorandum at Comment 10, Tires Decision Memorandum at Comment E.3.

The Department's 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, 73 FR at 52300; see also CFS Decision Memorandum at Comment 10 and Sacks Decision Memorandum at Comment 20.

As a result, the Department preliminarily determined that interest rates in the domestic Chinese banking sector do not provide a suitable basis for benchmarking the loans provided to respondents in this investigation and, thus, determined to use an external benchmark to measure the benefit of countervailable loans. See Preliminary Determination, 73 FR at 52300. The Department finds that no new information has been submitted on the record of this proceeding that calls into question the Department's previous findings regarding its rejection of internal benchmarks and its use of out-of-country benchmarks.

For loan valuation purposes, the Department's regulations stipulate that 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 19 CFR 351.505 (a)(2)(i). 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). Where we have determined that interest rates in a country are distorted, the Department is directed to find that such interest rates are unusable to measure the benefit from government loans. Id. Furthermore, in the CFS Final, 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 lending programs. See CFS Decision Memorandum, at Comment 10. 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 in a sector prevents us from applying an internal benchmark. See, e.g., Final Results of the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada, 67 FR 15545 (April 2, 2002), and accompanying Decision Memorandum at "Provincial Stumpage Programs Determined to Confer Subsidies;" see also CFS Decision Memorandum, at Comment10, CWP Decision Memorandum at Benchmarks for Short-Term RMB Denominated Loans, and Sacks Decision Memorandum at Comment 20.

Comment 16: Whether the Department Has the Legal Authority to Apply the CVD Law to the PRC While Simultaneously Treating the PRC as an NME in Parallel Antidumping Investigations

The GOC argues the Department's application of the CVD law to the PRC, a NME country under the AD statute, is impermissible under that statute and violates the Administrative Procedure Act. The GOC argues that the Court of Appeals for the Federal Circuit (CAFC) found that the statutory scheme does not permit the Department to impose countervailing duties against NME countries. See Georgetown Steel Corporation, et al., v. the United States, 801 F.2d 1308, 1314 (Fed. Cir. 1986) (Georgetown Steel). The GOC contests the Department's interpretation of Georgetown Steel, i.e., that the Court granted the Department discretion not to apply the CVD law to NME countries. According to the GOC, the Court affirmed the Department's own legal conclusion that the CVD law does not apply to NME countries.

The GOC also takes issue with what it claims is the Department's efforts to factually distinguish the PRC's economy from the traditional planned economies of the 1980s. The GOC claims this rationale ignores the reality of section 771(18) of the Act, which holds that a country may either be designated an NME country or a market economy country, not both. The GOC claims the Department acknowledge this interpretation of section 771(18) of the Act in the Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary, 67 FR 60223 (September 25, 2002) (Sulfanilic Acid from Hungary) and accompanying Issues and Decision Memorandum at Comment 1 (Sulfanilic Acid from Hungary Decision Memorandum), in which it refused to apply the CVD law to Hungary a year before Hungary graduated to a market economy status.

The GOC further argues that the application of the CVD law to the PRC constitutes a retroactive amendment to a binding rule that requires a formal rulemaking. The GOC argues that the Department has articulated this rule against the application of the CVD law against NME countries on three occasions.[64] The GOC asserts that the Department's decision to apply the CVD law to NME countries fundamentally reverses the rule of these three past actions and, therefore, requires a formal rulemaking. The GOC contends the failure to do so amounts to an arbitrary and capricious action by the Department.

On this basis, the GOC argues that the Department should terminate the current CVD proceeding with no further action.

Petitioners note that the Department has previously rejected the arguments that the GOC has submitted on this issue. Petitioners argue that in the Thermal Paper Final, the Department concluded that Georgetown Steel did not limit the Department's authority to apply the countervailing duty laws to NME countries, but merely upheld the Department's right to exercise its discretion not to do so in one investigation. See Thermal Paper Decision Memorandum at Comment 1. Petitioners also asserts that the Department has previously rejected the GOC's retroactivity argument, finding that there was never a binding rule against the application of the CVD laws to China and, therefore, there could be no impermissible retroactive amendment to any such rule. Id.

Petitioners add that the Act states that the Department can impose CVD duties to the government of a "country" that provides the subsidy and that the term "country" is defined broadly. Petitioners further argue that the statute also defines a "subsidies agreement country" to include a "WTO member country." They further contend that nowhere in the Act is the definition of "countervailable subsidy" limited to market economies. On this basis, petitioners contest the GOC's claims that the Act prohibits the application of the CVD law to NME countries.

The Department's Position: The Department has previously addressed the argument made by the GOC. See, e.g., Thermal Paper Decision Memorandum at Comment 1. The argument from the Thermal Paper Final is discussed below.

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; Final Negative Countervailing Duty Determination, 49 FR 19374 (May 7, 1984) (Wire Rod from Poland) and

---

[64] The three instances cited by the GOC are: 1. Textiles, Apparel, and Related Products from the People's Republic of China, 48 FR 46600 (October 13, 1983) and Carbon Steel Wire Rod from Poland; Preliminary Negative Countervailing Duty Determination, 49 FR 6768 (February 23, 1984), where the Department declined to apply the CVD law to NME countries after a comment period, 2. Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217 (July 9, 1993) (General Issues Appendix), which included a general issues appendix that resolved various CVD law-related issues, and 3. the Department's CVD regulations, 63 FR at 65360, where the Department limited the scope of its regulations to exclude NME countries.

Carbon Steel Wire Rod from Czechoslovakia: Final Negative Countervailing Duty Determination, 49 FR 19370 (May 7, 1984) (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 Thermal Paper Decision Memorandum at Comment 1. Therefore, the primary concern about the application of the CVD law to NMEs originally articulated in Wire Rod from Poland and Wire Rod from Czechoslovakia 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, 801 F.2d 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, 801 F.2d at 1318 (emphasis added).

The GOC argues that the Georgetown Steel court found that the CVD law cannot apply to NMEs. 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 Gov't of the People's Republic of China v. United States, 483 F. Supp. 2d at 1282 (citing Georgetown Steel, 801 F.2d at 1318). Therefore, the court declined to find that the Department's investigation of subsidies in China was ultra vires.

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 expressed its understanding that the Department already possesses the legal authority to apply the CVD law to NMEs on several occasions. 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). 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.

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).

In sum, while Congress (like the CAFC) deferred to the Department's practice, as was discussed in Georgetown Steel, of not applying the CVD law to the NMEs at issue, it did not conclude that the Department was unable to do so. To the contrary, Congress did not ratify any rule that the CVD law does not apply to NMEs because the Department never made such a rule.

We also disagree with the GOC's contention that the application of the CVD law to the PRC constitutes a retroactive amendment to a binding rule that requires a formal rulemaking. 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., SEC v. Chenery Corp., 332 U.S. 194, 202-03 (1947) (Chenery Corp.) ("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., 332 U.S. 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." See Chenery Corp., 332 U.S. at 203.

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., Wheel & Brake Div. v. United States, 746 F. Supp. 1093 (CIT 1990) (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"); Sonco Steel Tube Div. v. United States, 694 F. Supp. 959, 966 (CIT 1988) (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, S.A. v. United States, 10 CIT 399, 404-05, aff'd, 810 F.2d 1137 (Fed. Cir. 1987). The Department provided a fully reasoned analysis for its change of practice in this case. Thermal Paper Decision Memorandum at Comment 1.

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, S.R.L. v. United States, 77 F. Supp. 2d 1349, 1359 (citing SAA at 892) ("Antidumping and countervailing proceedings . . . are investigatory in nature.")).

The GOC additionally argues that the Department cannot make a determination in this case that is different from Sulfanilic Acid from Hungary because the AD law only contains one definition of NMEs. Contrary to the GOC's claims, the Department has not established types of NMEs. After its initial analysis of the Soviet-styled economies in the 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, 67 FR at 60223. 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 Wire Rod investigations. See Thermal Paper Decision Memorandum at Comment 1. 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.

Comment 17: Whether the Application of the CVD Law to the PRC Results in Double Counting of Duties

The GOC argues that the application of the CVD law in conjunction with an accompanying NME AD proceeding results in the double-counting of remedies. The GOC acknowledges that the Department has rejected arguments that double-counting exists on the basis that no evidence that domestic subsidies lowered domestic and export prices pro rata was presented. See e.g., 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 (AD Final of CFS from the PRC Decision Memorandum). The GOC points out that the Department's findings ignore the fact that the CVD and AD statutes presume that domestic subsidies do not result in dumping margins in market economy proceedings since the subsidy enables the producer to lower its home and U.S. price equivalently. The GOC argues that the Department has acknowledged this fact. See e.g., Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France, 69 FR 46501, 46505 (August 3, 2004). However, the GOC argues that the same conclusion cannot be reached in an NME AD proceeding, where the normal value is determined by prices from surrogate countries. Therefore, according to the GOC, while the receipt of subsidies would lower the U.S. price, the normal value price, which is exogenous to the NME country, would remain unaffected by the receipt of any subsidies. Thus, the GOC contends that double-counting is assured when the CVD law is applied in instances in which there is a companion NME AD proceeding.

The GOC further argues that the Department sought to avoid double-counting in ruling that Section 201 duties were not import duties to be deducted from U.S. price in dumping cases, finding that such a deduction would improperly collect 201 duties twice. See Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 19152, 19161 (April 12, 2004). The GOC also notes that the Department's decision to countervail HRS purchases, an input that is among the surrogate values utilized in the NME AD calculation methodology, is without question an obvious example of a double remedy that is prohibited under the WTO Agreement and U.S. law.

Petitioners argue that the Department has previously rejected the GOC's arguments on this point. They note that in the CFS Final the Department concluded that it is incorrect to assume that the export prices of a subsidized respondent will automatically be lower. See CFS Decision Memorandum at Comment 2. Petitioners continue that it is therefore also incorrect to assume that countervailing the domestic subsidies provided to a respondent while simultaneously applying the NME antidumping methodology to the respondent will result in double counting.

The Department's Position: The Department has previously addressed the double counting arguments raised by the GOC in the antidumping investigations of Coated Free Sheet Paper from the PRC and Circular Welded Carbon Quality Steel Pipe from the PRC. The GOC has not cited any statutory authority that would allow us to terminate this countervailing duty investigation to avoid double counting, and the CVD law provides no authority to make an adjustment to the CVD calculations to prevent double counting. If any adjustment to avoid a double remedy is possible, it would only be in the context of an antidumping investigation. Our response to the GOC's argument is consistent the Department's stance in prior CVD proceedings. See e.g., Thermal Paper Decision Memorandum at Comment 16.

Comment 18: Whether the Department Should Use a "Cut-Off" Date That Is More Recent Than December 11, 2001

The GOC contends that the Department's application of the CVD law to the PRC, which was first implemented in the CFS Final, represented a fundamental change to the Department's subsidy policy. Given the dramatic change represented by the CFS Final, the GOC contends that the Department should apply the CVD law to the PRC prospectively. Specifically, the GOC argues that the Department should make the make the "cut-off" date April 9, 2007, the date of the preliminary determination in the CFS Final.

The GOC further argues that the December 11, 2001 "cut-off" date contradicts the practice the Department established in Sulfanilic Acid from Hungary, in which the Department found that it could not countervail subsidies received at a time when Hungary was classified as a NME country. The GOC argues that the Department has not offered a reasonable explanation for its departure from the precedent established in Sulfanilic Acid from Hungary.

The GOC also argues that the Department's findings, as provided in a memorandum issued as part of the antidumping investigation of certain lined paper products from the People's Republic of China undercut the Department's application of a December 11, 2001 "cut-off" date. See the Memorandum entitled, "China's Status as a Non-Market Economy (NME)," August 30, 2006 (Lined Paper Memorandum), issued as part of the antidumping investigation of certain lined paper products from the People's Republic of China. According to the GOC, the Department found that aspects of the Chinese economy during 2005 and through most of 2006 justify the continued application of the NME dumping methodology to the PRC. The GOC contends that, in light of the Department's findings in the Lined Paper Memorandum that the PRC's NME status should continue effectively through 2006, the use of a "cut-off" date of April 2007 in the instant investigation is appropriate.

Petitioners argue that the GOC has previously raised the same arguments concerning the "cut-off" date and note that the arguments have been rejected by the Department. See Thermal Paper Decision Memorandum at Comment 2, Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 73 FR 57323 (October 2, 2008) (LWP Final) and accompanying Issues and Decision Memorandum (AD LWP Decision Memorandum) at Comment 4, Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008) (CWP Final) and accompanying Issues and Decision Memorandum (CWP Decision Memorandum) at Comment 2, Sacks Decision Memorandum at Comment 2, and Tires Decision Memorandum at Comment A.4. They argue that the Department should continue to reject the GOC's arguments in the instant investigation.

Petitioners further note that in most recent final CVD determination involving the PRC, the Department found erroneous the GOC's claim that it did not have adequate notice that the CVD laws would be applied to the PRC prior to April 9, 2007. See Thermal Paper Decision Memorandum at Comment 2. In that investigation, the Department pointed out that CVD investigations of products from the PRC had been initiated at least as early as 1992 and that Congress had enacted legislation in 2000, which specifically authorized funding the Department to defend CVD measures that were imposed on products from the PRC. Id. Petitioners also note that in the Thermal Paper Final the Department concluded that the decision in Sulfanilic Acid from Hungary was not controlling. Id. Petitioners further explain that in Thermal Paper Final, the Department rejected the GOC's argument that continued treatment of the PRC as an NME country precluded the application of the CVD laws to the PRC on the basis that sufficient reforms had occurred in the country to enable the Department to identify and measure subsidies received before April 9, 2007. Id.

Petitioners discount the GOC's reliance on the Lined Paper Memorandum arguing that findings in AD proceedings do not necessarily apply to CVD proceedings. They further argue that unlike the AD proceeding in lined paper, the PRC's status as an NME country is not at issue in the instant investigation. Rather, argue petitioners, is the date on which the Chinese economy began to experience enough changes so as to enable the Department to identify and measure subsidies in the PRC. Petitioners contend that the date on which the Chinese economy began to undergo such changes occurred well in advance of April 2007.

The Department's Position: We disagree with the GOC that Sulfanilic Acid from Hungary undercuts the Department's application of a December 11, 2001 "cut-off" date for determining whether to countervail potential subsidies in China in this final determination. As noted in Comment 16 of this decision memorandum, the Department has revisited its original decision not to apply the CVD law to NMEs and has determined that it will reexamine 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.

For the same reasons provided in the CWP Final and other recent China CVD cases, 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 Decision Memorandum at Comment 2; see also LWP Decision Memorandum at Comment 4. Moreover, we reiterate our position, as stated in the CWP Final, 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.

We also disagree that the Department's findings in the Lined Paper Memorandum undercuts the Department's application of a December 11, 2001 "cut-off" date. As petitioners correctly note, at issue is not the PRC's status as an NME country. Rather, in determining the "cut-off" date, our focus is the date on which the Chinese economy began to experience enough changes so as to enable the Department to identify and measure subsidies in the PRC.

Comment 19: Whether Certain Interest-Free Loans the Huludao Companies Received Constituted Financial Contributions Received After December 11, 2001, the Date of the PRC's Accession to the World Trade Organization (WTO)

Petitioners explain that in the Preliminary Determination the Department errantly concluded that the Huludao Companies interest-free loans were not countervailable because they were received prior to the December 11, 2001 "cut-off" date. See 73 FR at 52312. Petitioners explain that the Department's practice is to treat outstanding loans as new financial contributions if there are significant changes to the loan, including any material change. See e.g., Thermal

Paper Decision Memorandum at Comment 10. Petitioners note that, as found in the Thermal Paper Final, the Department treats the outstanding remaining balance as a preferential loan if there is a reasonable expectation that the loan will be repaid. Id.

According to petitioners, the GOC made a material changes to the Huludao Companies' debt financing since 2001, thereby providing the companies with a new financial contribution. Specifically, petitioners contend that certain material changes occurred in 2005, which the Department should find constitutes the provision of a new financial contribution.[65] Accordingly, petitioners contend that the Department should treat any remaining balances on the loans in question as the provision of preferential loans that conferred countervailable benefits during the POI. Petitioners add that the Department should calculate the benefit on the loans in question using an uncreditworthy benchmark.

The GOC contests petitioners' claim that certain material changes occurred in 2005 in connection with the interest-free loan received by the Huludao Companies. The GOC notes that in past CVD proceedings, the Department has equated material changes on loans with such occurrences as changes in the terms of loans and the transfer of debt from one firm to another. See e.g., Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy, 64 FR 15508, 15516 (March 31, 1999) (Plate in Coils from Italy), and Thermal Paper Decision Memorandum at Comment 10. It argues that no such occurrence happened in connection with the interest-free loans issued to the Huludao Companies.

The GOC argues that given that no material changes were made to the financing in question and that the Huludao Companies received the financing in 1996, which is prior to the December 11, 2001 "cut-off" date, the Department should continue to find no countervailable benefits were received during the POI.

The Department's Position: We disagree with petitioners. In the Preliminary Determination, we explained the information on the record indicated that the Huludao Companies received the loans in question prior to the December 11, 2001 "cut-off" date and, therefore, we determined that the loans did not confer benefits upon the companies during the POI. See 73 FR at 52312. We disagree with petitioners' argument that the Huludao Companies and their lenders undertook certain actions with regard to the loans that constituted a material change thereby altering the issue date of the loans to the time period in which the purported material changes occurred. The alleged material change cited by petitioners does not fall under the description of material change that the Department has utilized in past CVD proceedings involving this issue. For example, the circumstances in the Thermal Paper Final dealt with debt forgiveness, which did not occur in the instant investigation. See Thermal Paper Decision Memorandum at Comment 10. Similarly, in Plate in Coils from Italy, the Department found that a material change had occurred with regard to a loan because the terms of the interest rate had changed. See 64 FR at 15516. Therefore, we continue to find that the Huludao Companies' loans in question were received prior to the "cut-off" date and that there were no material changes in the terms and conditions of the loans after the "cut-off" date. Therefore, no benefit from these loans was received during the POI.

[65] The material changes cited by petitioners involve business proprietary information and, therefore, cannot be summarized on the public record.

Comment 20: Whether the Department Erred in Refusing to Investigate the Creditworthiness of the Huludao Companies for Years 2004 Through 2007

Petitioners contest the Department's decision not to conduct an uncreditworthy investigation of the Huludao Companies. See the Department's September 23, 2008 memorandum to Melissa G. Skinner, Director, Office 3, Operations, from Eric B. Greynolds, Program Manager, Office 3, Operations, "Status of New Subsidy and Uncreditworthy Allegations Filed by Petitioners." Petitioners point out that the Department received their uncreditworthy allegation more than a month before the Preliminary Determination and that at the time of the Preliminary Determination the Department made no indication that their allegation was untimely or otherwise not in conformity with the Department's regulations. Petitioners explain that the Department issued its decision not to investigate the allegation more than seven weeks after the allegations were filed. They further explain that the due date of the final determination is more than three months after the date on which the allegations were filed.

Petitioners contend that the Department's practice is to investigate uncreditworthy allegations so long as parties have ample time to submit information and argument on the point. See Coated Free Sheet Paper from the People's Republic of China, Amended Preliminary Affirmative Countervailing Duty Determination, 72 FR 17484, 17490 (April 9, 2007) (Amended Preliminary Determination of CFS from the PRC). Petitioners argue that the standard applied in the Amended Preliminary Determination of CFS from the PRC has been met in the instant investigation.

Thus, petitioners assert that the Department had ample time to conduct an uncreditworthy investigation, particularly in light of the fact that petitioners placed its analysis and all the necessary information required for a creditworthy determination in their August 1, 2008 allegation.[66] On this basis, petitioners argue that the Department should find that the Huludao Companies were uncreditworthy in the final determination.

The GOC argues that the Department simply lacks the time required to conduct an investigation of petitioners' creditworthiness allegation. The GOC argues that the Department's time constraint is a direct result of petitioners' decision not to align the due date of the CVD final determination with that of the AD final determination and, thus, the facts of the instant investigation are distinct from the facts encountered in the CFS Final. The GOC notes that in CFS investigation the Department had 93 days between its preliminary determination and the commencement of verification while in the instant investigation the Department had roughly 28 days. The GOC also notes that the Department had 113 days to prepare for verification following the creditworthiness allegation in the CFS investigation while in the instant investigation the Department had only 67 days. The GOC adds that the Department had substantially more time between the start of verification and the final determination in the CFS investigation than in the instant investigation, which made possible the issuance of a post-preliminary determination regarding the creditworthiness allegation. Therefore, given the time constraints faced by the Department, the GOC argues that the Department was justified in its decision not to address petitioners' creditworthiness allegations.

---

[66] Citing to information in their August 1, 2008 allegation, petitioners reiterate their arguments that Huludao Seven Star Group, Huludao Steel Pipe, Huludao Bohai Oil Pipe were uncreditworthy during the period 2004 through 2007.

The Department's Position: We disagree with petitioners. Petitioners submitted their uncreditworthy allegations 32 days before the signature date of the Preliminary Determination. Due to the timing of petitioners' allegations, the Department lacked the time and resources to address the issue prior to the Preliminary Determination. Thus, the earliest the Department would have been able to address the allegations was after the issuance of the Preliminary Determination.

Petitioners cite to the CVD proceeding on CFS in support of their contention that the Department is obligated to examine their uncreditworthy allegations in the instant investigation. However, in the CVD proceeding on CFS, the Department had substantially more time between Preliminary Determination and the commencement of verification than it had in the instant investigation.[67] In the instant investigation, the due date of the final CVD determination was not aligned with the date of the final AD determination. As a result, the Department had only 76 days to prepare for verification, conduct verification, issue verification reports, analyze interested parties case briefs, amend calculations (as necessary), and issue the final determination and issues and decision memorandum. Therefore, as indicated in the September 23, 2008 Memorandum to Melissa G. Skinner, Director, Office 3, Operations, from Eric B. Greynolds, Program Manager, Office 3, Operations, "Status of New Subsidy and Uncreditworthy Allegations Filed By Petitioners," the Department determined that it did not have the resources or time to examine petitioners' uncreditworthy allegations.

Comment 21: Whether the GOC Established an Industrial Policy to Encourage Preferential Lending to the Producers of Subject Merchandise

The GOC argues that the Department's preliminary finding that Huludao Bohai Oil Pipe was the recipient of policy lending under Article 16 of the Iron and Steel Policy was based on an erroneous assumption. The GOC states that the Department verified the scope of what is covered by the Iron and Steel Policy (i.e., footnote 1 of the policy) and learned that the term "metal products" pertains to wire product and nothing else.[68] The GOC posits that because the Iron and Steel Policy does not cover welded line pipe, the Department should reverse its finding for the final determination.

The Huludao Companies note that the Department preliminarily determined that certain domestic loans were countervailable because they purportedly were made under Article 16 of the GOC Iron & Steel Policy and were contingent upon the purchase of domestic equipment. However, they argue that certain loans were not contingent on the purchase of domestically purchased equipment. The Huludao Companies contend that, to the contrary, the Department verified that all three of these loans were not contingent upon the purchase of domestic equipment and made no mention of the Article 16 of the Iron and Steel Policy. Meanwhile, according to the Huludao Companies, the GOC asserted that Article 16 does not apply to downstream articles such as the subject merchandise. The Huludao Companies argue that, based on the more complete verified record, the Department's preliminary factual findings are not supported by substantial evidence. Thus, Huludao Companies argue that the record evidence demonstrates that the loans were general-purpose loans that are not countervailable.

Petitioners argue that the GOC has failed to provide any evidence to support its claim that

---

[67] The date on which verification commences is relevant because the Department normally does not solicit or accept new factual information less than seven days prior to the start of verification.

[68] See GOC Verification Report at 4-5.

the Iron and Steel Policy does not include line pipe and, therefore, the Department, consistent with earlier determinations, should continue to find that line pipe is included in that policy. Petitioners state that the same claim by the GOC was rejected in the LWP Final and CWP Final. They discuss that in both cases the Department found that the GOC failed to demonstrate that the term "metal products" in the Iron and Steel Policy's list of eligible products was strictly limited to "wire products" as the GOC claimed. See LWP Decision Memorandum at Comment 14, and CWP Decision Memorandum at Comment 8. Petitioners note that because the GOC failed to document the types of iron and steel products, which are subject to the Iron and Steel Policy, the Department concluded that the term "metal products" could encompass a broader range of products, including pipe and tube. Petitioners add that it is hardly credible that a policy issued by the central government to cover the steel and iron industries in their entirety would apply only to steel wire products.

Petitioners assert that in the instant investigation the GOC has presented no information that would warrant a reconsideration of these determinations. They note that the industry trade publication which the GOC presented at verification is the same publication which the GOC submitted in support of its claims in LWP Final and CWP Final, which were rejected by the Department. Petitioners add that the Steel Yearbook page submitted by the GOC adds nothing. Petitioners contend that there is no evidence that the Steel Yearbook was intended to define the scope of the Iron and Steel Policy and, as such, cannot serve as evidence of the types of iron and steel products, which are subject to that policy.

The Department's Position: With respect to the GOC claim that the Iron and Steel Policy does not cover welded line pipe, we do not agree. First, we note that the terms of the Iron and Steel Industry Policy (at footnote 1) demonstrate that the term "iron and steel industry" includes *carbon* products of which circular welded *carbon* quality steel line pipe is a subset. Further, despite the fact that the GOC was on notice from Department decisions in two prior investigations (during which the Iron and Steel Industry Policy was reviewed), during verification the GOC refused to provide any information related to the industries eligible to receive assistance under Article 16. See GOC Verification Report at page 5. Accordingly, the Department finds that the GOC impeded its investigation. Additionally, the GOC's unwillingness to provide this information precluded us from verifying at the national government its claim that line pipe producers were not subject to the approval and endorsement provisions of the Iron and Steel Industry Policy. Therefore, we are applying an adverse inference and determining that the Iron and Steel Policy covers line pipe producers and that such policy is specific under section 771(5A)(D)(i) of the Act.

Article 16 of the Iron and Steel Industry Policy provides for assistance and support for the use of domestically produced equipment. Such support includes the use of "interest assistance", which is not further defined in the Iron and Steel Industry Policy. The GOC has claimed that the term "interest assistance" under Article 16 is limited to grants for interest payment. However, in prior investigations, the Department has understood Article 16 to refer to loans in the form of "discounted interest rates." See CWP Decision Memorandum at Comment 8, see also LWP Decision Memorandum at Comment 14. The GOC failed to provide any evidence to support their claim in this investigation that the term "interest assistance" is limited to grants for interest payments. As we found in the Preliminary Determination, the Huludao Companies received loans for the purchase of domestically produced equipment. Therefore, as we did in the Preliminary Determination, we continue to find that this loan was provided under the Iron and Steel Policy, a policy that provides preferential lending to line pipe producers in a manner that constitutes a financial contribution under section 771(5)(D)(i) of the Act.

Comment 22: Whether the Department Should Countervail the Provision of Land for LTAR

The GOC claims that the provision of land-use rights does not confer a financial contribution because the sale of usage rights does not fall within any categories described by section 771(5)(D) of the Act. The GOC argues that a land-use right is neither a good nor service, but realty. In support, the GOC points to Black's Law Dictionary, and claims that land does not fall under the definition of either good or service. The GOC asserts that the Department's practice has no real bearing when the practice is inconsistent with the law and, therefore, the provision of land cannot be considered a financial contribution.

The GOC also objects to the benchmark used by the Department to measure whether adequate remuneration was received. First, the GOC contends that the statute requires the Department to consider adequate remuneration in relation to prevailing market conditions for land in China and not through the use of an out-of-country benchmark price, which, in this case, is a land price from Thailand. The GOC states that the market conditions to be considered are price, quality, availability, marketability, transportation, and other conditions of purchase or sale in China. The GOC asserts that none of these market conditions for the price of land in Thailand can be the prevailing market conditions in China. The GOC adds that domestic benchmarks are available in this case.[69]

The GOC argues that even if there were no domestic benchmarks available, an external land price benchmark would not be permissible under the statute because the value of land in another country can be determined only on the basis of the derived demand in that other country. The GOC states that the Department has sought to justify its rationale for an out-out-country benchmark based on its determination in Softwood Lumber from Canada and in CFS from Indonesia.[70] The GOC, however, notes that a NAFTA panel rejected the use of cross-border benchmarks for timber in Softwood Lumber from Canada.[71] Concerning CFS from Indonesia, the GOC argues that because the Department's determination with respect to land was not challenged does not make the practice correct.

The GOC also states that the Department rejected cross-border benchmarks in the Lumber I litigation as "arbitrary and capricious," recognizing that cross-border differences in "terrain and climate" make cross-border comparisons impossible.[72] The GOC adds that the Department made a similar finding in Lumber III[73] and in the Lumber IV remand determinations complied with the NAFTA panel's decision and determined that, to calculate the benefit, "the methodology should rely on prices and costs in Canada."[74] According to the GOC, land is even more unique than timber and economic conditions affecting land use in Thailand are not and

---

[69] The GOC references Exhibit D-27 and D-36 of the GOC's August 22, 2008 supplemental questionnaire response for benchmark prices in Haicheng and Huludao, respectively.
[70] See Sacks Decision Memorandum at 63-64.
[71] See In the Matter of Certain Softwood Lumber Products from Canada, NAFTA USA-CDA-2002-1904-03 (August 13, 2003) Panel Decision at 27-35.
[72] See Certain Softwood Lumber Products from Canada, 48 FR 24159, 24168, and 24182 (May 31, 1983).
[73] See Certain Softwood Lumber Products from Canada, 57 FR 22507 (May 8, 1992).
[74] See In the Matter of Certain Lumber Products from Canada, Secretariat File No. USA-CDA-2002-1904-03, First Remand Determination (January 12, 2004) at 5.

cannot be considered comparable to conditions in China.

The GOC further claims that Article 14 of the SCM Agreement exhibits a clear preference for "in-country" benchmarks. The GOC concedes that Article 14 does not mean that in-country benchmarks must be used in every circumstance, but that the WTO Appellate Body made clear in the context of Article 14(d) that the situations in which surrogate, third country benchmarks may be used is limited. The GOC states that an administrating body must establish that the market of the investigated member country cannot yield reliable benchmarks. The GOC also argues that any alternative benchmark must be validated by demonstrating that it relates to the prevailing market conditions in the country of provision. The GOC asserts that nothing in China's Protocol of Accession alters the disciplines that govern the use of surrogates under Article 14 of the SCM Agreement. In fact China's Protocol states that although "prevailing terms and conditions in China may not always be available as appropriate benchmarks," the importing WTO member country should, where practicable, "adjust such prevailing terms and conditions before considering the use of terms and conditions outside of China."[75] The GOC adds that if adjustments are not practicable, then third-country benchmarks may be used but there must be a rational basis for the selected surrogate. In this investigation, the GOC argues that the Department cannot demonstrate that its Thai surrogate is rationally related to conditions in China. In fact, the GOC posits the Department has made no adjustments for differences in market conditions affecting land values between Thailand and China.

Even if the Department does not believe there is a competitive market for land-use rights in China, the GOC claims that the Department should find Chinese prices are consistent with market principles. The GOC posits that there is a functioning land-use rights market in China bound by specific laws and regulations defining how land-use rights may be transferred and at what price; minimum prices established for government granted land; and standards in place to appraise land-use right values; and pricing benchmarks established at the provincial level and local jurisdictions without an industrial policy.[76] Therefore, the GOC argues that since land-use price benchmarks calculated by the government are consistent with market principles, the land price benchmarks in China should at least be utilized within the context of third-tier benchmarks under the Department's regulations.[77]

The Huludao Companies reiterate the arguments of the GOC and urge the Department to conduct its benefit analysis using an in-country benchmark. They claim that the use of such a benchmark will indicate that the Huludao Companies did not acquire its land-use rights for LTAR.

Finally, GOC argues that the Department's approach to specificity with respect to provision of land-use rights and resort to AFA are unreasonable. In the Preliminary Determination (see 73 FR 52302), the GOC states that the Department cites willful non-cooperation where it had requested information that simply does not exist or is not available in any practicable form. The GOC contends that asking boilerplate questions that bear little or no relationship to the issue at hand afforded little opportunity for the GOC to provide a responsive answer.[78] The GOC asserts that the information it could and did provide is relevant to the issue

---

[75] See Accession of the People's Republic of China, WT/L/432 (November 23, 2001) at para. 15(b).

[76] The GOC references Exhibit D-27 and D-36 of the GOC's August 22, 2008 supplemental questionnaire response for benchmark prices in Haicheng and Huludao, respectively.

[77] See 19 CFR 351.511(a)(2)(iii).

[78] In its case brief (at 32), the GOC references the following question: "Please provide a list by industry and by region of the number of companies which have received benefits under this program in the year the provision of benefits was approved and each of the preceding three years. Provide the total amounts of benefits received by each

of specificity as it relates to land and is consistent with how the Department has characterized the issue of specificity in prior cases.

The GOC contends that in this and past cases the Department has discussed its benefit analysis in terms of the problems associated with specificity, i.e., whether the applicable land use laws are followed and enforced in China. The GOC discusses that in the Preliminary Determination (see 73 FR 52305), the Department states that "consistent with the Department's decision in Sacks Final and Tires Final, we preliminarily find that there is wide divergence between the de jure reforms of the market for land-use rights and the de facto implementation of such reforms" and that local corruption is another "de facto problem." The GOC argues that the Department needs to commit these concerns to its specificity analysis and frame that analysis in terms of whether for the transactions being investigated the applicable land-use laws were followed. If the laws, which the GOC submitted to the Department, were followed, then the GOC asserts that the Department should find no specificity. The GOC further argues that to do otherwise would continue the Department's incoherent analysis on regional specificity. The GOC adds that it is impossible for the Department to manage all the factors that go into the pricing and use of each individual piece of land to determine predominant or disproportionate use by a group or industries or enterprises.

Petitioners agree with the Department's preliminary determination that land-use rights are properly treated as a provision of a good or service under the Act. Petitioners also agree that it is appropriate to use a third-country benchmark to measure adequate remuneration and concurs with the Department selection of land prices from Thailand as the benchmark.

Petitioners reject the GOC's arguments that the NAFTA panel decision in Certain Softwood Lumber from Canada and the provisions of the SCM Agreement preclude the use of external benchmarks. Id. They discuss that the Department stated that NAFTA panel decisions have no precedential value and concerning the SCM Agreement, stated that it is bound by the U.S. law and precedent, not interpretations of the SCM Agreement.

Concerning Chinese land prices, petitioners state that Department has previously determined that there is no support for the GOC's claim that land prices in China are consistent with market principles,[79] and state that the GOC has raised no new arguments that would warrant a reconsideration of the Department's prior decision

Finally, petitioners respond that the GOC, in its specificity arguments ignored section 771(5A)(D)(iv) of the Act, which provides that a subsidy is specific when it is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy. Petitioners state that the record shows that the Huludao Longgang District Land Administration Bureau granted the Huludao Companies' land-use rights in 2004 and 2006. They contend that the land grants were strictly limited to subsections of Longgang District, i.e., the Beigang Industrial Zone. Therefore, they argue the granting of land-use rights was limited to a designated geographical region within the jurisdiction of the authority providing the subsidy. Therefore, petitioners argue that the Department should continue to find the granting of land to Huludao by the Huludao Longgang District Land Administration Bureau specific under section 771(5A)(D)(iv) of the Act.

Petitioners also contend that the GOC's assertion that the Department needs to address whether the applicable land-use laws are followed and enforced in China in its specificity

---

type of industry in each region in the year the provision of benefits was approved and each of the preceding three years."

[79] See Thermal Paper Decision Memorandum at Comment 12.

analysis is flawed. To support its argument, petitioners note that the GOC cited the following statement made by the Department in the preliminary determination:

> Consistent with the Department's decision in Sacks Final and Tires Final, we preliminarily find that there is a wide divergence between the de jure reforms of the market for land-use rights and the de facto implementation of such reforms.[80]

Petitioners state that, contrary to the GOC's assertion, the statement was not found in the Department's discussion of specificity, but in the discussion of comparative benchmarks.

The Department's Position: The Department continues to take the position that the provision of land is the provision of a good or service and, consequently, a financial contribution under section 771(5)(D)(iii) of the Act. As the GOC has acknowledged, the Department has treated land as a good or service in several past cases.[81]

Moreover, we note that 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.

The Department has countervailed land leases, 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 v. Knight, 389 U.S. 332 (1967) 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 SEC v. Zandford, 535 U.S. 813 (2002). Therefore, our practice of treating land as a good or service is fully consistent with the Act.

With respect to the benchmark, we have determined that Chinese land prices are distorted by the significant government role in the market and, hence, cannot be used as a benchmark.[82] Also because of government involvement and because property rights remain poorly defined and weakly enforced, we further determine that land prices in China are not in accordance with

---

[80] See Preliminary Determination, 73 FR 52305.

[81] See Thermal Paper Decision Memorandum at Comment 12, and Sacks Decision Memorandum at 52, citing Steel Wire Rod from Germany, 62 FR 54994 and Steel Wire Rod from Italy, 63 FR 40481.

[82] See Thermal Paper Decision Memorandum at Comment 12, and Sacks Decision Memorandum at 15 and Comment 10.

market principles (see 19 CFR 351.511(a)(2)(iii)).[83] Therefore, consistent with the Thermal Paper Final, Sacks Final and Tires Final, we determine that land values in Thailand provide an accurate benchmark. As we stated there, the Department has 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 capital[84] 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.[85]

With respect to the NAFTA Panel decision cited by the GOC, 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, where 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.

Finally, with respect to the SCM Agreement, the GOC has argued that Article 14 requires us to first seek to adjust prices in China before adopting an out-of-country benchmark. While the GOC relies on the SCM Agreement**,** we note the Department is bound by U.S. law and precedent. After agreeing to the SCM Agreement**,** the United States revised its related trade laws and regulations to be in accordance with the agreement, as reflected in its administrative practice. While in practice the Department does look to prices within the exporting country to serve as a benchmark, we have already described above that the use of prices within China would cause undue difficulties. Moreover, the GOC has provided no bases for making adjustments to such prices and given the lack of any market-determined prices for land-use fees in China, deriving such an adjustment would be a highly complex, speculative and impracticable exercise.

With respect to specificity, we continue to find that the acquisition of land-use rights located within economic development zones are specific under section 771(5A)(D)(iv) of the Act because the use of such land is limited to those firms permitted to operate in the designated development zones.[86] We also continue to find that it was appropriate to find, pursuant to section 776 of the Act, that the Huludao Companies' acquisition of land-use rights in 2006 was de facto specific under section 771(5A)(D)(iii) of the Act.

---

[83] See Thermal Paper Decision Memorandum at Comment 12, and Sacks Decision Memorandum at 16.
[84] China and Thailand have similar per capita GNI at $2,010 and $2,990, respectively.
[85] See LWP Decision Memorandum at Comment 11, and Tires Decision Memorandum at 190.
[86] Our specificity finding in this regard applies to the land-use rights acquired the Huludao Companies acquired in 2006.

Regarding our de facto specificity finding in which we applied AFA under section 776 of the Act, the Department has solicited usage information from foreign governments when examining whether land was sold for LTAR to a limited number of enterprises or industries. See e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany, 62 FR 54990, 54994 (Oct. 22, 1997) (German Wire Rod):

> We verified that there are a very large number of enterprises currently leasing land in the port from the Government of the Free and Hanseatic City of Hamburg. These enterprises cover a wide variety of industries, such as container storage and shipping, oil tanks and refineries, shipyards, car importers, and coffee and grain mills and storage facilities. There are no special provisions made for different industries. Because IHSW pays a standard rate charged by the GOH to all enterprises leasing land similar to IHSW's and because these prices are set in reference to market conditions, we determine that IHSW's lease rate is not countervailable.

See also Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy: 63 FR 40474, 40482: "The lease is specific within the meaning of section 771(5A)(D) of the Act because the lease is limited to CAS." The Department has also solicited usage information from foreign governments in other CVD proceedings involving the provision of a good for LTAR. See e.g., Softwood Lumber Decision Memorandum at "Specificity" section. Therefore, the GOC is incorrect to argue that the Department applied an inconsistent approach with regard to specificity in the Preliminary Determination.

The GOC is correct in noting that the Department has analyzed whether the provision of land is specific in CVD proceedings involving the PRC by reviewing whether respondents' acquisition of land-use rights was consistent with land administration laws. See Tires Decision Memorandum at Comment F.12. However, it is incorrect to argue that since it has found specificity under such an approach in a CVD proceeding involving the PRC that the Department has therefore abandoned examining whether foreign governments, in point of fact, provide land for LTAR to a limited number of users. See Tires Decision Memorandum at Comment F.12:

> 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).

See also Sacks Decision Memorandum at Comment 9:

> With respect to the GOC's argument that we cannot countervail land because there is no de facto specificity in the park and because we did not countervail electricity, we disagree. As noted above in the "Analysis of Programs" section for the "Government Provision of Electricity," we have determined the GOC's provision of electricity is neither de jure nor de facto specific. Because the provision of land-use rights is regionally specific under section 771(5A)(D)(iv) of the Act, there is no requirement in our law for evaluating specificity on a de facto basis, i.e., pursuant to the criteria set forth under section 771(5A)(D)(iii).

As explained above in the "Adverse Facts Available" section above, the GOC failed to provide the de facto specificity information requested by the Department and, therefore, we are applying facts available under sections776(a)(2)(A) and (B) of the Act. As further explained above in the "Adverse Facts Available" section, we find that in failing to provide the requested information, the GOC failed to act to the best of its ability and therefore we are relying on adverse inferences when selecting from among the facts available, as described under section 776(b) of the Act. Specifically, we find that the provision of land-use rights to Huludao in 2004 by GOC authorities is de facto specific within the meaning of section 771(5A)(D)(iii) of the Act.

Comment 23: Whether the Department Should Add an Additional Land-Use Right Acquisition by the Huludao Companies to its Subsidy Analysis Under the Provision of Land for LTAR Program

Petitioners state that in the final determination the Department should continue to find that the GOC's provision of land for less than adequate remuneration is a countervailable subsidy. However, with respect to Huludao Companies, they urge the Department to include in its final determination a fourth parcel of land purchased by Huludao Steel Pipe in 2004 from the Bureau of Land Resources of Longgang District, Huludao City in Liaoning Province. Petitioners claim that information collected at verification contradicts information the Huludao Companies supplied in their August 18, 2008 supplemental questionnaire response. Petitioners argue that information review at verification indicates that the fourth parcel of land was, in fact, purchased by Huludao Steel Pipe in 2004 and, as such, should be included in the Department's subsidy analysis for the final determination.

Respondents did not comment.

The Department's Position: We agree with petitioners. In the Preliminary Determination we found that with regard to Huludao Companies, we considered two parcels of land purchased in 2004 and used by Huludao Steel Pipe, and one parcel of land purchased in 2006 and used by Huludao Bohai. However, the information collected at verification indicates that Huludao Steel Pipe also acquired a third parcel of land in 2004, as opposed to being purchased by an affiliate company that produces non-subject merchandise. See Verification Report of the Huludao Companies at page 7. Therefore, we have included this additional parcel of land in our benefit calculations. For calculation purposes we treated this parcel of land the same as the other parcels of land purchased by Huludao Steel Pipe in 2004.

Comment 24: Whether Northern Steel Acquired Land-Use Rights from a Government Authority

The GOC states that the Department verified that Northern Steel's land-use rights were obtained on the secondary market by means of an auction and not transacted for directly from the land bureau.[87] The GOC contends that by participating in the auction Northern Steel paid full market value for the land. As such, the GOC argues that Northern Steel's land-use transaction should not be countervailed.

Petitioners respond that the Department must reject the GOC's claim based on record

[87] See Haicheng Verification Report at 3-4.

evidence. Petitioners discuss that Northern Steel itself stated that it directly purchased land from the Haicheng State-owned Land and Resources Bureau, a government agency,[88] and submitted land contracts.[89]

Petitioners also argue that the GOC's assertion that Northern Steel obtained land-use rights in an auction on the secondary market is incorrect. Petitioners discuss that the transaction was a transfer of "creditor's rights" between Northern Steel and a company called Haian Coating through an instrument of the GOC (i.e., the Great Wall Asset Management Company). Petitioners argue that the transaction was a direct transfer from the GOC to Northern Steel and not a secondary market transaction. Petitioner further argue that the transaction was not an auction stating that, as the Department verified, Northern Steel had already taken over the management of Haian Coating and "commenced production of line pipe using Haian Coating's assets" by March 2006, which was three months before the alleged auction took place.[90]

Petitioners assert that given the facts the Department cannot conclude that Northern Steel's land-use rights were acquired on the secondary market and, therefore, should continue to countervail the GOC's provision of land to Northern Steel for LTAR.

The Department's Position: As discussed above in the "Provision of Land at Less Than Adequate Remuneration" section, the Department verified that Northern Steel's purchase of land-use rights for land in the Economic Development Zone, Haicheng was part of the assets that the company purchased from Great Wall via an auction in June 2006, and were not a direct purchase from the Haicheng State-owned Land and Resources Bureau.

The Department determined that there was insufficient time to examine the facts concerning Northern Steel's asset purchase from Great Wall in this investigation.[91] However, if a countervailing duty order is issued in this investigation and a subsequent administrative review is requested for Northern Steel, we intend to examine Northern Steel's purchase of Haian Coating's assets, inclusive of land, from Great Wall.

Comment 25: Whether Certain Loans Issued to the Huludao Companies from State-Owned Banks Were Contingent Upon Exports

In the Preliminary Determination, the Department countervailed certain loans received by the Huludao Companies on the basis that they were contingent upon export. However, the Huludao Companies contend that their loans involving exports were not expressly made for the purpose of exporting under a GOC program; rather, they were very short term commercial loans highly collateralized by letters of credit that should not be countervailed. The Huludao Companies assert that the Department has now verified that the loans were not contingent upon export; rather, the loans were commercial loans backed by letters of credit. The Huludao Companies point out that the fact that such loans were associated with exports is secondary to the fact that the interest rate was negotiated on the basis of letters of credit as collateral where the bank itself held title to the goods until payment was effected. Because these were merely highly collateralized loans, and not contingent upon export, the Huludao Companies submit that no benefit was conferred in the setting of the interest rates on those loans and, as such, they should

[88] See Northern Steel's July 14, 2008 questionnaire response at 27.
[89] See Northern Steel's August 6, 2008 supplemental questionnaire response at Exhibit 104.
[90] See Northern Steel Verification Report at 3.
[91] See "Company History" section above.

not be countervailed in the final determination.

The Huludao Companies argue that should the Department continue to countervail the "export" loans in question, the benchmark rates should be based on the interest rates charged on the Huludao Companies' outstanding commercial loans it received from other Chinese institutions that the Department has found are not countervailable.

The Department's Position: In the Preliminary Determination, the Department countervailed certain loans that it identified as being contingent upon export sales based on record information that was available at that time. In response to a questionnaire from the Department, the Huludao Companies identified its outstanding loans that were related to export activities. See Huludao's September 24, 2008 submission at 1. At verification, we reviewed the contracts for those loans identified as export loans as well as the ones identified as non-export loans and found no discrepancies. See Huludao Verification Report at 9 and VE-11. We verified that the company received loans based on letters of credit that were contingent upon export activity. The fact that the letters of credit were contingent upon export is critical to the Department's subsidy analysis because such contingencies render the loans specific under Section 771(5A)(A) of the Act.

Comment 26: Whether There Is Sufficient Information to Determine that a Program-Wide Change Occurred With Respect to the Domestic Income Tax Credit for Domestically-Produced Equipment Program

The Huludao Companies assert that the Department verified the "program-wide changes" to China's Income Tax Credit scheme which merit reconsideration of the program's countervailable status. They note that since the program was terminated January 1, 2008, over nine months prior to the Department's Preliminary Determination and since the program will have no long term effects lingering after the Preliminary Determination or in the first period of review, the Department should not countervail this program for the purposes of the final determination

Petitioners argue that the Huludao Companies have failed to meet its burden to demonstrate that a program-wide change has occurred. They argue that the GOC and the Huludao Companies failed to submit any information after the Preliminary Determination to support their contention that a program-wide change had occurred with regard to the program. They also argue that the Huludao Companies' claim of a program-wide change fails to meet the criteria set forth under 19 CFR 351.526(d)(1), which states that the Department will not adjust the cash deposit rate if the program-wide change consists of a program and the Department determines that, ". . .residual benefits may continue to be bestowed under the terminated program."

Petitioners explain that the Huludao Companies acknowledge that the purported program-wide change applies to their tax liability for 2008 and subsequent years and that no tax return prepared for the fiscal/calendar year 2008 or beyond could benefit from such credits. Thus, petitioners argue that the Huludao Companies will still be able to receive benefits under the program in 2007 that will be reported in the tax return filed in 2008.

Petitioners note that under 19 CFR 509(b)(1), the benefit from a direct tax program, such as at issue here, is measured based on the tax return filed in the period of investigation or review. Thus, in the instant investigation, the Department reviewed the tax return for tax year 2006 that the Huludao Companies filed during calendar year 2007. Similarly, petitioners point out that for the first administrative review, covering calendar year 2008, the Department would examine the tax return for tax year 2007 that was filed during 2008. Therefore, according to petitioners, program-wide changes cannot be found to exist with regard to this program because, pursuant to 19 CFR 351.526(d)(1), residual benefits may continue to be bestowed under the program.

The Department's Position: We agree with petitioners. Information on the record indicates that firms will be able to claim tax benefits under this program during tax year 2007. Under 19 CFR 351.509(b)(1), the Department examines benefits under direct tax programs by examining the tax return filed during the period of investigation or review. Thus, in the case of the program at issue, respondents would continue to benefit from this program under a review covering calendar year 2008 (e.g., in a review covering calendar year 2008, the Department would examine tax returns covering tax year 2007 that were filed during calendar year 2008). Therefore, given these circumstances, we find that the Huludao Companies' claim of a program-wide change fails to meet the criteria set forth under 19 CFR 351.526(d)(1), which states that the Department will not find a program-wide change to have occurred in instances in which residual benefits may continue to be bestowed under the program.

VII. Recommendation

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

__________ Agree   __________ Disagree

____
David M. Spooner
Assistant Secretary
for Import Administration

____
Date