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Investigation
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Public Document

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

DATE: June 12, 2009

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China

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I. Summary

The participating respondents in this proceeding are the Government of the People's Republic of China (GOC), and the two mandatory company respondents, Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited (collectively, Princeway), and Jiashan Superpower Tools Co., Ltd. (Superpower). On November 24, 2008, the Department published the Preliminary Determination of this investigation.[1] Subsequent to the Preliminary Determination, the Department issued a post-preliminary determination memorandum containing our preliminary analysis for the programs "Provision of Hot-Rolled Steel at Less Than Adequate Remuneration," and "Export Incentive Payments Characterized as 'VAT Rebates,'" for which we required additional information to make our preliminary determination.[2] In addition, this post-preliminary memorandum also contains our preliminary determination for three other possible subsidy programs that were found during the course of this investigation: 1) "Patent Subsidy Authorized by the Administration Rule for Patent Special Fund of Jiashan County, SHAN KE [2006] No. 58;" 2) "Foreign Trade Assistance Subsidy (Exhibition Attendance Incentive Policy of Jiashan County: Article II.24 of SZF 132);" and 3) Princeway's reduction of its taxable income through the amortization of its startup costs.

The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate the benefits from these programs. In

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

[2] See Post-Preliminary Determination.

the instant investigation, we received a case brief from the GOC regarding the Preliminary Determination and the Post-Preliminary Determination.[3] No other case briefs or rebuttal briefs were submitted in this investigation.

Since the publication of the Preliminary Determination, the Department has reached affirmative final countervailing duty determinations in several investigations of products from the People's Republic of China (PRC). As a result, consistent with our recent practice, [4] we have used the rates calculated in these intervening final determinations to revise the adverse facts available (AFA) rate applied for the program "Preferential Loans and 'Development Funds' for Export-Oriented Enterprises in Guangdong Province." A discussion of this rate adjustment can be found in the section "Selection of the Adverse Facts Available," below.

We have analyzed the comments submitted by the GOC in its case brief in the "Analysis of Comments" section below, which also contains the Department's responses to the issues raised in the GOC case brief. We recommend that you approve the positions we have described in this memorandum. Below is a complete list of the issues in this investigation for which we received comments from the GOC:

Comment 1:	Application of CVD Law to a Country that the Department Treats as an NME in a Parallel AD Investigation
Comment 2:	Double Counting/Overlapping Remedies
Comment 3:	Cut-off Date for Countervailing Subsidies
Comment 4:	Discount Rate Used for Benefit Calculations
Comment 5:	Public Authority Status of Hot-Rolled Steel Producer
Comment 6:	Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program)
Comment 7:	Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export Oriented Enterprise
Comment 8:	Import Tariff and VAT Exemptions for Encouraged Industries Importing Equipment for Domestic Operations
Comment 9:	Export Incentive Payments Characterized as "VAT Rebates"
Comment 10:	Amortization of Startup Costs in the PRC Tax Law
Comment 11:	Calculation of the All Others Rate
Comment 12:	Whether to Clarify the Scope Language for Hitches

II. Background

Since the publication of the Preliminary Determination, the Department has issued various supplemental questionnaires to the GOC, Princeway, and to Superpower. As detailed fully in the "Case History" section of the Federal Register notice issued simultaneously with this Issues and Decision Memorandum, the parties submitted timely responses to all of the Department's questionnaires and supplemental questionnaires. On December 23, 2008, the GOC submitted a

[3] No additional factual information has been placed on the record of this investigation since the issuance of the Post-Preliminary Determination. Thus, there has been no additional factual information received since the issuance of the Post-Preliminary Determination that impacts our decision for this final determination.
[4] See, e.g., Sodium Nitrite from the PRC, 73 FR at 38981.

timely request for a hearing pursuant to 19 CFR 351.310(c) and the Department's Preliminary Determination.

The Department conducted verification of the questionnaire responses submitted by the GOC (including the national, provincial, and local governments), Princeway, and Superpower from January 5 through January 21, 2009. The Department issued verification reports on February 27, 2009.[5] The Department issued its Post-Preliminary Determination on May 13, 2009.[6] On May 27, 2009, the GOC withdrew its request for a hearing.[7]

III. Subsidies Valuation

A. Date of Applicability of CVD Law to the PRC

Consistent with recent CVD determinations, we have determined that the date from which it is appropriate and administratively feasible to identify and measure subsidies in the PRC for purposes of the CVD law is December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO). Thus, only subsidies provided on or after December 11, 2001, are included in the "Programs Determined to be Countervailable" section, below. The basis for this decision is fully explained in Comment 2, below.

B. Allocation Period

In the Preliminary Determination, consistent with 19 CFR 351.524(d)(2), we used an average useful life (AUL) period as the allocation period for non-recurring subsidies provided on or after December 11, 2001. The AUL applicable to the tow-behind lawn groomers industry is 10 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. No party in this proceeding has disputed this allocation period. Thus, we have continued to use a 10-year AUL in this final determination.

C. Attribution of Subsidies – Sales Denominator

When selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considered the basis for the respondent company's receipt of benefit under each program at issue. Superpower provided purchase information concerning hot-rolled steel purchased during the period of investigation (POI) (i.e., 2007) that was produced by a hot-rolled steel producer determined to be a state-controlled entity. In prior cases the Department has examined all purchases of hot-rolled steel in investigating less than adequate remuneration (LTAR) allegations. In this case, however, we only have information on the record concerning purchases of hot-rolled steel used in producing subject merchandise. Thus, we have divided the total benefits calculated under this program by Superpower's total POI sales of subject merchandise. For export related subsidies, the Department attributed the subsidies only to products exported by the respondent companies and used export sales as the denominator,

[5] See GOC Verification Report, Princeway Verification Report, and Superpower Verification Report.
[6] See Post-Preliminary Determination.
[7] See GOC's Letter to the Secretary of Commerce, Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Withdrawal of Request for Hearing, (May 27, 2009).

pursuant to 19 CFR 351.525(b)(2). No party has commented on our selection of a denominator used in the Preliminary Determination for all other non-export related subsidies. Therefore, consistent with the Preliminary Determination,[8] for all other non-export related subsidies, the Department has continued to attribute these subsidies to the total sales of all products produced by Princeway and Superpower, respectively, and has used their total respective sales as the denominator in our calculations for this final determination, pursuant to 19 CFR 351.525(b)(3).

D. Benchmarks and Discount Rates

Although the Department is not calculating subsidy rates for any loans in this investigation, a benchmark interest rate was used to compute the discount rate that we used in the Preliminary Determination to allocate benefits of non-recurring subsidies over time. As fully explained in Comment 4, below, however, there are no allocable benefits in this final determination.

IV. Application of Facts Available, Including the Application of Adverse Inferences

In the Preliminary Determination, we explained that the following five companies did not respond to the Department's "quantity and value" questionnaire that was issued during the respondent selection process in this investigation: 1) Qingdao Hundai Tools Co., Ltd.; 2) Qingdao Taifa Group Co., Ltd.; 3) Maxchief Investments Ltd.; 4) Qingdao EA Huabang Instrument Co.; and 5) World Factory Inc. (collectively, the non-cooperative companies).[9] Because these five companies did not cooperate to the best of their ability and withheld information requested by the Department, thus impeding our investigation, we find that the application of facts otherwise available is warranted under sections 776(a)(2)(A), (B), and (C) of the Tariff Act of 1930, as amended (the Act). Thus, we have based their CVD rates on facts otherwise available.

In selecting from among the facts available, the Department has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act, because the non-cooperative companies did not respond to our requests for information. Thus, these companies failed to cooperate to the best of their abilities, and our determination for these companies is based on the application of adverse facts available.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding.[10]

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with

[8] See Preliminary Determination, 73 FR at 70974.
[9] Id.
[10] See, e.g., Citric Acid from the PRC IDM, at 3.

complete and accurate information in a timely manner."[11] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[12] In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less."[13]

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[14] The Department considers information to be corroborated if it has probative value.[15] The Statement of Administrative Action (SAA) emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[16]

When the Department applies AFA, to the extent practicable, it will determine whether such information has probative value by evaluating the reliability and relevance of the information used. In this case, the information being used is previously calculated CVD rates. With regard to the reliability aspect of corroboration, we note that these rates were calculated in prior final CVD determinations. No information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.[17]

As explained in the Initiation Notice, and accompanying Initiation Checklist, [18] where the GOC can demonstrate through complete, verifiable, positive evidence that non-cooperative companies selected as mandatory respondents (including all of their facilities and cross-owned affiliates) are not located in particular provinces where subsidies are being investigated, the Department will not include those provincial programs in determining the countervailable subsidy rate for those

[11] Id.
[12] See SAA, at 870.
[13] See Rhone Poulenc v. United States, 899 F.2d at 1190.
[14] See SAA, at 870.
[15] Id., at 870.
[16] Id., at 869.
[17] See Flowers from Mexico, 61 FR 6812.
[18] See Initiation Notice, 73 FR 42324 and the accompanying Initiation Checklist, at 8.

non-cooperative companies. In this investigation, however, both companies selected as mandatory respondents have cooperated.

For the final determination, consistent with the Department's recent practice,[19] and with the Preliminary Determination,[20] we computed a total AFA rate for the non-cooperative companies generally using program-specific rates determined for the cooperating respondents or from past CVD cases involving the PRC. Specifically, for programs other than those involving income tax exemptions and reductions, we applied the highest calculated rate for the identical program in this investigation if a responding company used the identical program. If there was no identical program match within this investigation, we used the highest non-de minimis rate calculated for the same or similar program in another PRC CVD investigation. Absent an above-de minimis subsidy rate calculated for the same or similar program, we applied the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperative companies.[21]

Also for the final determination, we determine to apply the same program-specific rates to the non-cooperative companies that were used in the Preliminary Determination[22] and Post Preliminary Determination,[23] except for the program "Preferential Loans and 'Development Funds' for Export-Oriented Enterprises in Guangdong Province." As mentioned above, the Department has reached affirmative final countervailing duty determinations in several investigations of products from the PRC since the publication of the Preliminary Determination. As a result, we have used the rates calculated in these intervening final determinations to revise the AFA rate for the program, "Preferential Loans and 'Development Funds' for Export-Oriented Enterprises in Guangdong Province."[24] Thus, for this program, we have determined to apply the rate of 8.31 percent, the rate calculated for Guangdong Guanhao High-Tech Co., Ltd. for the program "Government Policy Lending" in LWTP from the PRC-Amended.[25]

Finally, we have also applied facts available, including the application of an adverse inference, in reaching our determinations of whether three GOC programs are countervailable: 1) "Provision of Hot-Rolled Steel at Less Than Adequate Remuneration;" 2) "Patent Subsidy Authorized by the Administration Rule for Patent Special Fund of Jiashan County, SHAN KE [2006] No. 58;" and 3) "Foreign Trade Assistance Subsidy (Exhibition Attendance Incentive Policy of Jiashan County: Article II.24 of SZF 132)." A complete discussion of the Department's decision to apply facts available in reaching a determination that these programs are countervailable can be found in the "Analysis of Programs" section, below, for each of these programs.

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[19] See, e.g., Citric Acid from the PRC IDM, at 4.
[20] See Preliminary Determination, 73 FR at 70975.
[21] See Citric Acid from the PRC IDM, at 4.
[22] See Preliminary Determination, 73 FR at 70975.
[23] See Post-Preliminary Determination, at 9, 14, and 16.
[24] See Sodium Nitrite from the PRC, 73 FR at 38981.
[25] See Memorandum to Susan Kuhbach, Director, Office 1, AD/CVD Operations, Countervailing Duty Investigation: Lightweight Thermal Paper from the People's Republic of China; Ministerial Error Allegations (October 29, 2008).

V. Analysis of Programs

A. Programs Determined to Be Countervailable

1. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program)

Petitioner alleged that under Article 8 of the FIE Tax Law, foreign-invested enterprises (FIEs) of a "productive nature" that are scheduled to operate for not less than 10 years may be exempt from income taxes during the first two years of profitability ("two free"), and may pay half of the applicable tax for the next three years ("three half").

Princeway stated that it received benefits under this program during the POI. Specifically, it paid no tax in 2006 pursuant to Article 8 of the FIE Tax Law as reflected in the tax return it filed during the POI, which it submitted as an attachment to its questionnaire response.

According to Superpower's questionnaire response, it also qualified for benefits under this program during the POI. Specifically, Superpower qualified for "three half" benefits during tax year 2006, reflected in the tax return it filed during the POI. Therefore, during tax year 2006, Superpower's central government income tax rate was reduced from 24 percent to 12 percent, and its local income tax rate was reduced from 2.4 percent to 1.2 percent.[26]

Consistent with the Preliminary Determination,[27] we determine that the income tax exemptions received by Princeway and Superpower under this program confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings, in accordance with section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemptions afforded by this program are limited as a matter of law to certain enterprises, i.e., "productive" FIEs, and, hence, are specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Princeway and Superpower as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided each company's tax savings received during the POI by its total sales during that period. To compute the amount of the tax savings, we compared the income tax rate Princeway and Superpower would have paid in the absence of the program with the income tax rate the companies actually paid. On this basis, we determine that Princeway received a countervailable subsidy of 0.46 percent ad valorem under this program and Superpower received a countervailable subsidy of 1.32 percent.

For a discussion of the GOC's comments and the Department's position concerning this program, refer to Comment 6, below.

[26] Superpower's eligibility for a 24 percent central rate, instead of the standard 30 percent rate, and a 2.4 percent local rate, instead of the standard 3 percent rate, is discussed below under the "Reduced Income Taxes Based on Geographic Location (Zhejiang and Shandong Provinces)" section, below.

[27] See Preliminary Determination, 73 FR at 70976-70977.

2. Income Tax Reductions for Export-Oriented Enterprises

Petitioner alleged that Article 75 of the FIE Tax Rules provides that FIEs that export 70 percent or more of the total value of their products may benefit from reduced tax rates. According to Petitioner, income tax rates for enterprises participating in this program may be reduced by 50 percent.

Superpower stated that it received benefits under this program for tax year 2006, as reflected in the tax return the company filed during the POI. Specifically, according to Superpower, it qualified for a 50 percent reduction in its central tax rate and a 100 percent reduction in its local tax rate. Because it had already received a 50 percent reduction in its central tax rate pursuant to the "Two Free, Three Half" program, only the 100 percent reduction of the local tax rate provided additional benefits.

Consistent with the Preliminary Determination,[28] we continue to find that the income tax rebate received by Superpower under this program confers a countervailable subsidy. The rebate 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, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

Superpower stated that in order to receive this rebate it had to obtain "the Certification of Export-oriented FIE."[29] Likewise, the GOC explained that benefits under this program are contingent upon a demonstration by an FIE that its export sales amount to 70 percent of its total sales.[30] Therefore, we determine that the rebate afforded by this program is contingent on Superpower's export performance and, hence, is specific under section 771(5A)(B) of the Act.

To calculate the benefit, we treated the income tax rebate enjoyed by Superpower as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the rebate received during the POI by the company's total export sales during that period. On this basis, we determine that Superpower received a countervailable subsidy of 0.15 percent ad valorem under this program.

3. Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export-Oriented Enterprise

Petitioner alleged that export-oriented FIEs are eligible for tax refunds on profits that are reinvested in the FIE, or into a new high-technology enterprise or export-oriented enterprise (EOE).

According to Superpower, it received two payments under this program in 2007. While the payments arise from profits made during tax years 2005 and 2006, Superpower applied for the rebates in 2007. Moreover, these rebates were approved and the rebate funds were paid to Superpower in 2007. According to Superpower, "the amount of assistance provided was determined by the amount of the reinvested profit and the amount of income tax already paid for

[28] See Preliminary Determination, 73 FR at 70977.
[29] See Superpower's October 8, 2008 Questionnaire Response, at 19.
[30] See GOC's October 8, 2008 Questionnaire Response, at I-19.

this amount of reinvested profit."[31] Likewise, according to the GOC, the refund amount depends on the "original applicable enterprise income tax rate," which, according to the FIE Tax Rules, is the effective rate (i.e., the standard 30 percent rate minus FIE reductions, etc.) applied to the enterprise in question in the year the profit was made (in this case, 2005 and 2006).[32]

Moreover, according to the GOC, while "the program is available to all qualifying FIEs," the amount of the refund is larger for reinvestments in EOEs.[33] Specifically, a standard FIE receives 40 percent of the refund received by an EOE.[34] The documents provided by Superpower (applications, approvals, etc.) are consistent with the formulas stated by the GOC and included in the FIE Tax Rules. The GOC also notes that "{t}he FIE, not the investor, applies for and receives the refund, of income taxes paid by the FIE, which it may pay to the investor."[35]

We determine that the income tax rebates received by Superpower under this program confer a countervailable subsidy. The rebates are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

As noted above, the GOC's response explains that larger rebates are provided to EOEs than to other FIEs. Based on our examination of the application and approval documents submitted by Superpower, we have determined that one of the two rebates received by Superpower during the POI was pursuant to the EOE formula and one was pursuant to the standard FIE formula. Therefore, we determine that one of the rebates afforded by this program is contingent on Superpower's export performance and, hence, is specific under section 771(5A)(B) of the Act. The other rebate is limited as a matter of law to certain enterprises (i.e., FIEs) and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax rebates enjoyed by Superpower as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the rebates by Superpower's total export sales and total sales during the POI, as applicable, pursuant to 19 CFR 351.525(b). On this basis, for this program, we determine that Superpower received a countervailable subsidy of 0.32 percent ad valorem attributable to its export sales during the POI, and a countervailable subsidy of 0.32 percent ad valorem attributable to its total sales during the POI.

For a discussion of the GOC's comments and the Department's position concerning this program, refer to Comment 7, below.

4. Import Tariff and VAT Exemptions for Encouraged Industries Importing Equipment for Domestic Operations

Petitioner alleged that the GOC administers a program that offers value added tax (VAT) and import tariff rebates on imported equipment. According to Petitioner, this program is available

[31] See Superpower's October 8, 2008 Questionnaire Response, at 22.
[32] See GOC's October 8, 2008 Questionnaire Response, at I-24.
[33] Id.
[34] Id.
[35] Id. at I-28.

to both FIEs and to certain domestic enterprises, and its purpose is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.

According to Princeway, it received benefits under this program for imported equipment because it "was established as an export-oriented enterprise to export all of its products to overseas markets. This status of the company falls within the category of encouragement under the Catalog of Industries Guidance for Foreign Business Investment . . . ."[36] Consequently, it received an exemption from customs duties and VAT on imported equipment.

Consistent with the Preliminary Determination,[37] we continue to find that the exemption received by Princeway under this program confers a countervailable subsidy. The exemption is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the VAT and tariff savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

As noted above, Princeway qualified for this exemption because it "was established as an export-oriented enterprise to export all of its products to overseas markets." Therefore, we determine the VAT and tariff exemption under this program is contingent on Princeway's export performance and, hence, is specific under section 771(5A)(B) of the Act.

Normally, we treat exemptions from indirect taxes and import charges, such as VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL.[38]

At the verification of Princeway's questionnaire responses, subsequent to the issuance of the Preliminary Determination, Princeway and the GOC presented corrections regarding the reported exempted import duties for imported equipment since the establishment of the company.[39] Specifically, Princeway originally reported the normal import duty rate for its imported equipment; however, all equipment imported by Princeway was qualified for the most favored nation rate. As a result, based on the revised imported equipment tariff rates that the GOC and Princeway provided during verification, and in a change from the Preliminary Determination, we now find that the benefits Princeway received from the import tariff and VAT exemptions for imported equipment no longer meet the "0.5 percent test" in any year after the 2001 cut-off date and through the POI.[40] Therefore, we are treating the benefits received by Princeway in each year from 2001 through the POI as allocated to the year of receipt, in accordance with 19 CFR 351.524(b)(2).

[36] See Princeway's October 8, 2008 Questionnaire Response, at 18.
[37] See Preliminary Determination, 73 FR at 70978.
[38] See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).
[39] See Princeway Verification Report, at 1.
[40] See 19 CFR 351.524(b)(2).

Accordingly, for the final determination, to calculate Princeway's countervailable subsidy rate from this program, we have treated Princeway's VAT and tariff exemption for the POI as a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii). Because the amount of the exemption received by Princeway is less than 0.5 percent of Princeway's export sales for the POI, we have allocated the entire benefit from the exemption to the year of receipt. We then divided the amount of the exemption received by Princeway during the POI by Princeway's export sales for the POI. On this basis, we determine that Princeway received a countervailable subsidy of 0.10 percent ad valorem.[41]

In its case brief, the GOC commented on the Department's discount rate used in this investigation. Because we are now allocating the entire POI benefit from this program to the POI, we now find that a discount rate is no longer necessary to calculate the countervailable subsidies for programs in this investigation.

5. Reduced Income Taxes Based on Geographic Location (Zhejiang and Shandong Provinces)

Petitioner alleged that special economic zones (SEZs) exist in the PRC to encourage foreign investment and the development of industry. According to Petitioner, these SEZs may be designated as coastal economic development zones, SEZs, or as economic and technical development zones. Petitioner claimed that benefits received by the industries operating in these SEZs include, inter alia, preferential income tax rates.

Superpower stated that it is eligible for reduced income tax rates as it is located in Jiashan, a coastal economic development zone. Specifically, under Article 7 of the FIE Tax Law, it is eligible for a central government tax rate of 24 percent and, under the discretion afforded to provincial and municipal governments by Article 9 of the FIE Tax Law, it is eligible for a local tax rate of 2.4 percent, because of its location in a coastal economic development zone. These reduced tax rates are reflected in the tax return Superpower filed in 2007.

We determine that the income tax exemption received by Superpower under this program confers a countervailable subsidy. The exemption is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of 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 afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Superpower as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by its total sales during that period. To compute the amount of the tax savings, we compared the income tax rate Superpower would have paid in the absence of the program with the income tax rate the company actually paid. On this basis, we determine that Superpower received a countervailable subsidy of 0.66 percent ad valorem under this program.

[41] See Princeway Calculation Memorandum.

6. Provision of Hot-Rolled Steel at Less Than Adequate Remuneration

Petitioner alleged that hot-rolled steel is the primary input into the subject merchandise, and that many producers of subject merchandise purchase hot-rolled steel, and handle both the processing and assembly operations to manufacture the lawn grooming products under investigation. Petitioner claimed that Chinese producers of lawn groomers have benefited by obtaining hot-rolled steel from GOC-owned or controlled steel producers at less than adequate remuneration. Petitioner also argued that the GOC's control over the hot-rolled steel industry allows it to provide hot-rolled steel at favorable prices to industries producing higher value-added products, which lowers the cost of production for Chinese producers of subject merchandise.

Both Princeway and Superpower reported purchasing hot-rolled steel during the POI. According to Princeway, all of the hot-rolled steel it purchased during the POI was produced in Taiwan. As there is no evidence that the hot-rolled steel purchased by Princeway was produced or supplied by state-owned enterprises (SOEs), there is no financial contribution involved in Princeway's purchases and we determine that this program was not used by Princeway. Regarding Superpower, the GOC and Superpower each reported that all of the hot-rolled steel it purchased during the POI was produced by privately-held companies. As discussed below, however, we determine, as AFA, that a portion of the steel Superpower purchased during the POI was produced and supplied by a state-controlled company.

In our initial questionnaire, we asked the GOC to submit information regarding the Chinese hot-rolled steel industry, and the GOC's role in this industry, for the years 2005 through 2007. Specifically, we asked the GOC to submit information such as the total number of Chinese hot-rolled steel producers, the total volume and value of domestic consumption of hot-rolled steel in the PRC, and information identifying the PRC's largest hot-rolled steel producers (in terms of sales and quantity produced) in which the GOC maintains an ownership or management interest.[42] In its October 8, 2008 submission, the GOC responded that neither Princeway nor Superpower purchased hot-rolled steel that was produced by GOC-owned or controlled steel producers during the POI and, therefore, the GOC believed that it was not necessary to respond to certain questions.[43] Specifically, the GOC indicated that it did not need to provide information regarding, inter alia, the number of hot-rolled steel producers in the PRC, the names of the top ten Chinese hot-rolled steel companies in which the GOC maintains an ownership or management interest, and the role of state-owned trading companies in the distribution of both domestic and imported hot-rolled steel.[44]

In our November 25, 2008 supplemental questionnaire to the GOC, we noted that the Department had not yet reached a determination on whether the mandatory respondents had used this program, and we again asked the GOC to respond to questions I.1 through I.4 of the Department's initial questionnaire concerning the Chinese hot-rolled steel industry, and the GOC's role in this industry.[45]

[42] See Department's August 18, 2008 Initial Questionnaire, at II-6.
[43] See GOC's October 8, 2008 Submission, at I-53.
[44] Id.
[45] See Department's November 25, 2008 Supplemental Questionnaire to the GOC, at 4.

In its response, the GOC responded to some of our questions; however, the GOC also claimed that some of the information regarding the structure of the Chinese hot-rolled steel industry that we requested, e.g., the total volume and value of consumption of hot-rolled steel in the PRC, was not currently available and that it would have to ask an independent third party, such as the China Iron and Steel Association, for this kind of information.[46] The GOC never subsequently provided this information.

On December 22, 2008, via a phone conference, the Department informed the GOC's counsel that, during the upcoming verification, the Department did not intend to discuss with the GOC information relating to the structure of the hot-rolled steel industry in the PRC because the GOC had not provided complete information on this topic, as requested by the Department. On December 23, 2008, via a second phone call, the GOC requested that the Department verify the information the GOC had submitted regarding industry structure. On December 24, 2008, the Department informed the GOC's counsel by phone that the Department would not discuss any information regarding industry structure during the upcoming verification because the GOC had not provided complete responses to all questions concerning the structure of the hot-rolled steel industry. The Department also informed the GOC that it was free to submit, prior to verification, arguments concerning the appropriateness of verifying such figures.[47] We received no such arguments.

The GOC and Superpower each reported that all of the hot-rolled steel Superpower purchased during the POI was obtained from privately-owned Chinese companies, none of which were GOC-owned or controlled.[48] However, record information indicates that "HRS-Provider-X,"[49] was previously partially owned by the Zhangjiagang Municipal Industrial Public-Owned Asset Management Co., Ltd. (ZMIPOAMC), a GOC entity.[50]

We asked the GOC to provide an explanation about the possible government ownership of HRS-Provider-X and also to provide corporate information concerning this company, such as business registration documents and amendments to HRS-Provider-X's articles of association.[51] The GOC submitted the requested documents, and reported that ZMIPOAMC sold its equity share in HRS-Provider-X to private investors in 2004.[52] In addition, the GOC reported that it was informed by HRS-Provider-X that all of the terms of this sale were completed.[53]

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[46] See GOC's December 10, 2008 Submission, at S2A-10.
[47] See Phone Calls with GOC Counsel Memorandum.
[48] See Superpower's October 8, 2008 Submission, at 30.
[49] The identity of this hot-rolled steel provider is business proprietary information, and cannot be identified in this public document. For purposes of this public document, we are referring to this hot-rolled steel provider as "HRS-Provider-X." The identity of this hot-rolled steel provider, along with certain ownership information regarding HRS-Provider-X that is business proprietary, can be found in the Department's Post-Preliminary Determination at the section, "Provision of Hot-Rolled Steel at Less Than Adequate Remuneration."
[50] Exhibit O-II.I.2 of the GOC's October 8, 2008 submission stated that the name of this entity is the "Zhangjiagang Municipal Industrial State-Owned Asset Management Co., Ltd." (emphasis added). The GOC corrected the name of this agency during verification of the GOC questionnaire responses. See Department's November 25, 2008 Supplemental Questionnaire to the GOC, at Appendix 2, for information concerning the Department's research regarding HRS-Provider-X's ownership structure.
[51] See Department's November 25, 2008 Supplemental Questionnaire to the GOC, at 2-4.
[52] See GOC's December 10, 2008 Submission, at S2A-4.
[53] See id., at S2B-7.

Our GOC verification outline requested that the GOC make officials available from the Administration of Industry and Commerce (AIC) to discuss the documents that a company is required to file with that agency that would indicate its ownership, and we also requested that these officials make HRS-Provider-X's corporate AIC file available for our review.[54] The GOC provided HRS-Provider-X's corporate AIC file as we requested. However, before we were allowed to review this file, GOC officials stated that we could not take any of the documents in the file as verification exhibits and that we could not take notes concerning the documents or disclose details on the contents of the documents, even under the APO.[55] The GOC explained that because HRS-Provider-X is a privately-held company and is not a respondent in this investigation, these were the only terms under which HRS-Provider-X would agree to allow us to review its AIC file. Our examination of HRS-Provider-X's AIC file indicated that the documents in this file were not consistent with the GOC's statement that all terms of the share transfer between HRS-Provider-X and ZMIPOAMC were completed during 2004.[56]

We discussed our concerns with the GOC officials at verification, and we informed them that if they wished to make arguments concerning whether HRS-Provider-X was still government-controlled or was a privately held company, the GOC would have to place the relevant documents in HRS-Provider-X's AIC file on the record of this investigation.[57] We met with GOC officials several days later during verification and gave the GOC another opportunity to place portions of HRS-Provider-X's AIC file on the record of this investigation, but the GOC repeated its claim that it did not have permission from HRS-Provider-X to do so. We informed the GOC that our verification report would only specify whether the documents in HRS-Provider-X's AIC file were consistent with what the GOC reported regarding the sale of ZMIPOAMC's equity in HRS-Provider-X.[58]

Consistent with the Post-Preliminary Determination, the Department determines that, pursuant to section 776(a)(2)(D) of the Act, the use of facts available is warranted, given that the Department was unable to verify the precise relationship between HRS-Provider-X and ZMIPOAMC. Moreover, we determine that an adverse inference is appropriate under section 776(b) of the Act because the GOC has failed to act to the best of its ability to comply with the request for information. The inconsistency of the GOC's statements in its questionnaire response, concerning whether it had completed the sale of its shares of HRS-Provider-X, with the AIC documents the Department examined at verification, combined with the GOC's unwillingness to place on the record of this investigation relevant information regarding the ownership of HRS-Provider-X that we examined at verification, justifies the use of AFA. As a result, we determine that HRS-Provider-X was a state-controlled producer of hot-rolled steel during the POI and a government "authority" under the Act.

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[54] See Letter to the GOC, Countervailing Duty Investigation: Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China, at 3 (December 24, 2008).
[55] See GOC Verification Report, at 5.
[56] Id.
[57] The Department also discussed with the GOC the methods it had used to confirm the status of the other companies that produced hot-rolled steel purchased by Superpower. During this discussion we reviewed various AIC documents that had been placed on the record prior to verification indicating these companies were privately held. See GOC Verification Report, at 6-7.
[58] Id.

As AFA, and consistent with the Post-Preliminary Determination,[59] we determine that the GOC provides hot-rolled steel to Superpower through a public authority, HRS-Provider-X. On this basis, we determine that the GOC's provision of hot-rolled steel to Superpower through HRS-Provider-X provides a government financial contribution to Superpower within the meaning of section 771(5)(D)(iii) of the Act.

As discussed above, the GOC did not fully respond to our questions regarding the hot-rolled steel industry in the PRC or its role in this industry. Although we requested that the GOC provide a list of industries in the PRC that purchase hot-rolled steel, along with information identifying the largest hot-rolled steel producers in which the GOC maintains an ownership or management interest, and information regarding domestic consumption, the GOC failed to do so.[60] As a result, the Department was unable to analyze the specificity of this program. Therefore, we determine that, pursuant to section 776(a)(2)(A) of the Act, the use of facts available is warranted for determining whether this program is specific. Moreover, we determine that an adverse inference is appropriate under section 776(b) of the Act, given the GOC's refusal to provide the information requested after repeated requests and noting that it had provided similar information for other investigations.[61] As AFA, we find that these industries are "limited in number" and, hence, that the provision of hot-rolled steel is de facto specific under section 771(5A)(D)(iii)(I) of the Act.

The Department's regulation at 19 CFR 351.511(a)(2) sets 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").

The Department's regulations state that the preferred benchmark in the hierarchy is an observed market price "resulting from actual transactions in the country in question."[62] This is because in-country prices generally would be expected to reflect most closely the prevailing market conditions for the good in the country in which the government good is being provided.

However, because of the GOC's failure to provide all of the necessary information we requested concerning its involvement in the PRC hot-rolled steel market, we are making the adverse finding that the GOC is a predominant supplier of hot-rolled steel.[63] We are also making the further adverse inference that the portion of the domestic consumption of hot-rolled steel that is

[59] See Post-Preliminary Determination, at 6.
[60] See GOC's October 8, 2008 Submission, at I-59.
[61] See, e.g., LWRP from the PRC IDM, at "Hot-Rolled Steel Benchmark Issues;" see also LWRP from the PRC Preliminary, 72 FR 67703, 67707-08.
[62] See 19 CFR 351.511(a)(2)(i).
[63] The GOC did provide certain production data for state-owned or controlled hot-rolled steel producers. However, the GOC did not provide all of the information requested by the Department. As noted above, it did not, for example, provide data on domestic consumption.

supplied by private parties, or that is imported, is negligible.[64] When the government is the predominant provider of a good or service, it can affect private prices for that good or service such that private prices are effectively determined by the government. In such a circumstance, comparing the government price with an in-country private price cannot capture the full extent of the subsidy benefit, and for this reason private prices cannot serve as an appropriate benchmark.[65] Therefore, because of the GOC's predominant role, the Department is not able to rely on prices stemming from actual transactions within the PRC, i.e., tier one, for determining what constitutes adequate remuneration from government-provided hot-rolled steel.[66] Instead, relying on AFA, we have used a world market price as a benchmark to compare Superpower's reported purchase price from its state-owned hot-rolled steel supplier.

In LWRP from the PRC, we also determined, in accordance with section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(2), to use a world market price as a benchmark for adequate remuneration. Specifically, we relied on information from Steel Benchmarker.[67] In the instant investigation, we are again relying on this publicly available information as a benchmark, updated to reflect our more recent POI.[68] Pursuant to 19 CFR 351.511(a)(2)(iv), we have added the applicable freight, PRC import duty, and PRC VAT charges to the Steel Benchmarker world export price.

To calculate the countervailable subsidy rate, we compared the monthly weighted-average prices paid by Superpower for the hot-rolled steel purchased from the state-controlled steel supplier/producer to the applicable monthly world export prices listed in Steel Benchmarker, adjusted for freight and PRC import charges.[69] We treated the difference between the amounts that Superpower would have paid using the Steel Benchmarker prices and the amounts Superpower actually paid as the benefit. In prior cases the Department has examined all purchases of hot-rolled steel in investigating LTAR allegations. In this case, however, we only have information on the record concerning purchases of hot-rolled steel used in producing subject merchandise. Thus, we have divided the total benefits calculated under this program by Superpower's total POI sales of subject merchandise. Subsequent to the issuance of the Post-Preliminary Determination, the Department identified a clerical error in its calculation regarding

[64] While the GOC provided data on the volume and value of hot-rolled steel produced by domestic companies, along with the volume and value of imported hot-rolled steel, our analysis of these data indicates that imports of hot-rolled steel during the POI amount to approximately one percent of the amount of hot-rolled steel produced domestically. Thus, even if we had complete information on the record concerning the PRC hot-rolled steel industry it is unlikely that we would conclude imports of hot-rolled steel could serve as reliable benchmarks because of the PRC's predominant role in the market. We also note that the data for domestic production were provided on a different basis than the import data, making this comparison difficult. Also, the GOC did not provide any data on domestic consumption.

[65] See, e.g., Softwood Lumber From Canada 1st AR and Rescission of Certain Company-Specific Reviews IDM, at 94.

[66] As explained in the preambular language addressing 19 CFR 351.511(a), "While we recognize that government involvement in a market may have some impact on the price of the good or service in the market, such distortion will normally be minimal unless the government provider constitutes a majority, or in certain circumstances, a substantial portion of the market." See Countervailing Duties; Final Rule, 63 FR 65348, 65377 (November 25, 1998).

[67] See, e.g., LWRP from the PRC IDM, at "Hot-Rolled Steel Benchmark Issues."

[68] See Petition, at Exhibit II-77.

[69] See Superpower Calculation Memorandum.

the freight charges used to calculate the benchmark for this program. We have corrected this error for the final determination.[70] As a result of this correction, we determine that Superpower received a countervailable subsidy of 10.50 percent ad valorem.

As discussed above, Princeway reported that all of the hot-rolled steel it purchased during the POI was produced in Taiwan.[71] To further examine Princeway's claim, in our supplemental questionnaires we asked Princeway to submit information regarding its POI hot-rolled steel purchases, e.g., invoices, mill certificates, and shipment and customs documentation, which Princeway provided.[72] The information provided by Princeway was consistent with its claim that all of the hot-rolled steel it purchased during the POI was produced in Taiwan. During the verification of Princeway's questionnaire responses, we reviewed additional information regarding Princeway's POI hot-rolled steel purchases, e.g., certificates of origin, export declaration forms, and purchase agreements, without noting any discrepancies with what Princeway reported.[73] As a result, we determine that this program was not used by Princeway.

Because Superpower was the only respondent for which we calculated a company-specific rate in this proceeding, we are applying Superpower's rate of 10.50 percent ad valorem to the non-cooperative companies as adverse facts available for this program.

For a discussion of the GOC's comments and the Department's position concerning this program, refer to Comment 5, below.

7. Patent Subsidy Authorized by the Administration Rule for Patent Special Fund of Jiashan County, SHAN KE [2006] No. 58

In its questionnaire responses regarding this program, Superpower reported that it received two grants during the POI from the government of Jiashan County, the county where Superpower is located.[74] According to Superpower, the company received one grant for operating as a "Patent Demonstrating Enterprise," the other grant was awarded to Superpower based on the patents that the company holds.[75] The GOC's questionnaire responses state that Superpower received assistance regarding the company's patents, and confirmed the amount of government assistance Superpower received during the POI from this program.[76] However, despite repeated requests, the GOC would only confirm the grant amounts received by Superpower, and it did not respond to any of our questions regarding the purpose of this program, the eligibility requirements for participating in this program, or the laws and regulations that governed this program during the POI.[77]

[70] Id.
[71] See Princeway's October 8, 2008 Submission, at 27.
[72] See, e.g., Princeway's December 12, 2008 Submission at Exhibits 5, 6, 7, and 8; see also Princeway's December 30, 2008 Submission.
[73] See Princeway Verification Report, at 8.
[74] See Superpower's December 10, 2008 Submission, at 1.
[75] Id., at 3.
[76] See GOC's December 10, 2008 Submission, at S2A-3.
[77] See id.; see also GOC's December 31, 2008 Submission, at S4-3.

On December 22, 2008, the Department held a telephone conference with counsel for the GOC regarding the agenda for the pending verification proceedings, in which we stated that we did not intend to discuss the operation of the various Jiashan County subsidy programs relevant to Superpower because we did not receive complete questionnaire responses from the GOC regarding these programs.[78] During the verification of the GOC questionnaire responses, we only asked GOC officials to confirm the amounts of assistance Superpower received under this program as reported in the GOC questionnaire responses. Officials from the GOC provided documentation demonstrating that the amounts received by Superpower are consistent with what the GOC and Superpower reported.

At verification, Superpower personnel explained that the company was selected as a Patent Demonstrating Enterprise by the government of Jiashan County, which recognized Superpower as a "patent-holding model company" within the county. Superpower officials informed us that they believed this grant was provided as an incentive to other companies within the county to develop new products and processes that could lead to more patents for local companies.[79] Superpower personnel explained that the company holds many patents, and that they were uncertain how many patents were necessary for the company to qualify for this grant. Company personnel further explained that they were notified by government officials regarding Superpower's eligibility for these two grants.[80]

As discussed above, section 776 of the Act governs the use of facts available and the use of adverse inferences. The questionnaire responses from both the GOC and Superpower reported that Superpower received assistance under this program during the POI, and at verification, we were able to confirm the amount of assistance that Superpower received. However, because the GOC did not provide requested information regarding other aspects of this program, the Department must rely on facts available for its analysis of this program. In addition, we determine that the GOC did not cooperate to the best of its ability, because it failed to respond to our repeated requests to provide information concerning the operation of this program, including its purpose and the eligibility requirements. Accordingly, we determine that that the grants provided to Superpower under this program provide a financial contribution to Superpower in the form of a direct transfer of funds, pursuant to section 771(5)(D)(i) of the Act. We also determine that these grants conferred a benefit on Superpower in the amount of the grants received by Superpower, in accordance with section 771(5)(E) of the Act, and 19 CFR 351.504(a). Further, in accordance with section 776(b) of the Act, we determine that it is appropriate to apply an adverse inference and determine that the GOC's provision of grants to Superpower under this program is specific to certain enterprises in accordance with section 771(5A)(D)(i) of the Act.

To calculate Superpower's countervailable subsidy rate from this program, we treated the grants received by Superpower as non-recurring subsidies, in accordance with 19 CFR 351.524(c)(1). Further, for this non-recurring subsidy, 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

[78] See Phone Calls with GOC Counsel Memorandum.
[79] See Superpower Verification Report, at 12.
[80] Id.

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 10-year average useful life for lawn groomers.[81] Because the amount of the grants received by Superpower is less than 0.5 percent of Superpower's total sales for the POI, we have allocated the entire benefit from the grants to the year of receipt. We then divided the amount of grants received by Superpower during the POI by Superpower's total sales for the POI. On this basis, we determine that Superpower received a countervailable subsidy of 0.01 percent ad valorem.[82]

Because Superpower was the only respondent for which we calculated a company-specific rate in this proceeding, we are applying Superpower's rate of 0.01 percent ad valorem to the non-cooperative companies as adverse facts available for this program.

8. Foreign Trade Assistance Subsidy (Exhibition Attendance Incentive Policy of Jiashan County: Article II.24 of SZF 132).

In its questionnaire responses, Superpower reported that the government of Jiashan County provided assistance during the POI to support the company's participation in trade shows that were held in 2006.[83] According to Superpower, the company participated in two international trade shows in 2006; in Mexico and in the United Kingdom. Superpower reported that the company submitted an application to the local government authority for assistance related to participating in these international trade shows, and received the funds from the local government during the POI. The GOC's questionnaire responses confirmed that Superpower received assistance during the POI from this program, and provided the amount of assistance that the company reported it had received.[84] However, despite repeated requests, the GOC only confirmed the grant amounts received by Superpower from this program, and it did not provide information requested by the Department regarding the purpose of the program, the eligibility requirements for participating in this program, or the laws and regulations that governed this program during the POI.[85]

At the verification of Superpower's questionnaire responses, company officials discussed this program with the Department's verification team, and provided information consistent with what the company reported to the Department regarding the grant amounts received by Superpower.[86] During the Department's December 22, 2008 telephone conference with counsel for the GOC concerning the verification agenda, we stated that because we did not receive complete questionnaire responses about this program, we did not intend to discuss the operation of this program with the GOC.[87] During verification of the GOC questionnaire responses, we only asked GOC officials to confirm the amounts of assistance Superpower received during the POI under this program, as reported in the GOC questionnaire responses. GOC officials provided

[81] See Preliminary Determination, 73 FR at 70973.
[82] See Superpower Calculation Memorandum.
[83] See Superpower's December 10, 2008 Submission, at 6.
[84] See GOC's December 10, 2008 Submission, at S2A-3.
[85] See id.; see also GOC's December 31, 2008 Submission, at S4-3.
[86] See Superpower Verification Report, at 13.
[87] See Phone Calls with GOC Counsel Memorandum.

documentation demonstrating that the amount received by Superpower is consistent with what was reported by the GOC and by Superpower.[88]

As discussed above, section 776 of the Act governs the use of facts available and the use of adverse inferences. The questionnaire responses from both the GOC and Superpower reported that Superpower received assistance under this program during the POI, and at verification, we were able to confirm the amount of assistance that Superpower received. However, because the GOC did not provide requested information regarding other aspects of this program, the Department must rely on facts available for its analysis of this program. Further, we determine that the GOC did not cooperate to the best of its ability, because it did not respond to our repeated requests to provide information concerning this program, including the program's purpose and the eligibility requirements. Accordingly, we determine that the grants provided to Superpower under this program provide a financial contribution to Superpower in the form of a direct transfer of funds, pursuant to section 771(5)(D)(i) of the Act. We also determine that these grants conferred a benefit on Superpower in the amount of the grants received by Superpower, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a). In accordance with section 776(b) of the Act, we determine that it is appropriate to apply an adverse inference and determine that the GOC's provision of grants to Superpower under this program is contingent on Superpower's export performance and, therefore, specific under section 771(5A)(B) of the Act.

To calculate Superpower's countervailable subsidy rate from this program, we treated the grants received by Superpower as non-recurring subsidies, in accordance with 19 CFR 351.524(c)(1). Further, for this non-recurring subsidy, we have applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). Because the amount of the grants received by Superpower is less than 0.5 percent of Superpower's export sales for the POI, we have allocated the entire benefit from the grants to the year of receipt. We then divided the amount of grants received by Superpower during the POI by Superpower's export sales for the POI. On this basis, we determine that Superpower received a countervailable subsidy of 0.02 percent ad valorem.[89]

Because Superpower was the only respondent for which we calculated a company-specific rate in this proceeding, we are applying Superpower's rate of 0.02 percent ad valorem to the non-cooperative companies as adverse facts available for this program.

B. Programs Determined to be Not Countervailable

1. Export Incentive Payments Characterized as "VAT Rebates"

Consistent with the Post-Preliminary Determination, we continue to find that the PRC's VAT export rebate program does not confer a countervailable subsidy on the subject merchandise within the context of 19 CFR 351.517(a).[90]

[88] See GOC Verification Report, at 13.
[89] See Superpower Calculation Memorandum.
[90] See Post-Preliminary Determination, at 11.

C. Program For Which We Determine Producers and Exporters of Lawn Groomers to be Ineligible

1. Consumption Tax and VAT Exemptions for Processing and Assembling Goods for Export, and for Related Processing Costs

Consistent with the Preliminary Determination, we continue to determine that producers and exporters of lawn groomers are not subject to a consumption tax as they are not producers of the taxed goods and, thus, that they are not eligible to benefit from any reduced rates for consumption taxes.[91]

D. Programs For Which the Department is Deferring Investigation to Any Future Administrative Review

1. Amortization of Startup Costs Under Article 49 of the FIE Tax Regulations

Consistent with the Post-Preliminary Determination, because we do not have the requisite information on the record, we intend to defer a complete investigation of the amortization of start-up costs until the first administrative review, if a countervailing duty order is issued and such a review is requested. See 19 CFR 351.311.[92]

E. Programs Determined Not to Have Been Used or Not to Have Provided Benefits During the POI

In the Preliminary Determination, we consolidated the list of not used programs by removing what we preliminarily determined to be "redundant VAT and import tariff allegations."[93] We did so based on information provided by the GOC concerning the authority of local and provincial governments to regulate the collection of VAT and import tariffs. While we discovered no contrary information subsequent to the Preliminary Determination regarding the particular allegations in this investigation, and continue to determine that these allegations are redundant in this investigation, we are not making a determination regarding the possible existence of separate local and provincial VAT and import tariff programs in general.

1. Income Tax Credits for FIEs Purchasing Domestically Produced Equipment
2. Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies
3. VAT Refunds for FIEs Purchasing Domestically Produced Equipment
4. Export-Based "Reward" Subsidies for Enterprises in Zhejiang Province
5. Refunds of Legal Fees Paid in Antidumping and Countervailing Duty Investigations in Zhejiang Province and Jiashan County
6. Income Tax Programs in Huimin Industrial Park in Zhejiang Province

[91] See Preliminary Determination, 73 FR at 70979.
[92] See Post-Preliminary Determination, at 16.
[93] See Preliminary Determination, 73 FR at 70980.

7. Export-Based "Reward" Subsidies for Enterprises in Huimin Industrial Park in Zhejiang Province
8. Income Tax Programs in the Hangzhou Export Processing Zone in Zhejiang Province
9. Provision of Land for Less Than Adequate Remuneration for Export-Oriented FIEs for Enterprises Located in Shandong Province
10. Income Tax Programs for FIEs Located in Qingdao Municipality
11. Income Tax Offsets and/or Refunds for FIEs Purchasing Domestic Equipment in Qingdao Municipality
12. Provision of Land for Less Than Adequate Remuneration for Export-Oriented FIEs Located in Qingdao Municipality
13. Income Tax Programs in the Lingang Processing Industrial Zone
14. Income Tax Programs for FIEs in Guangdong Province
15. Funds for Outward Expansion of Industries in Guangdong Province
16. Loans and Development Funds for Export-Oriented Enterprises in Guangdong Province
17. Income Tax Programs for FIEs in Dongguan City in Guangdong Province
18. Income Tax Programs for Export-Oriented FIEs in Dongguan City in Guangdong Province

VI. Analysis of Comments

Comment 1: Application of CVD Law to a Country that the Department Treats as an NME in a Parallel AD Investigation

The GOC objects to the initiation and continuation of a CVD investigation involving a country that the Department continues to treat as an NME for purposes of AD investigations, claiming that the Department has no authority to do so. The GOC contends that the Federal Circuit has ruled that the CVD law cannot be applied to NMEs, and that the Department has consistently refused to do so for two decades after the Federal Circuit's ruling. According to the GOC, the Federal Circuit did not hold this issue to be within the Department's discretion as the Department believes. Instead, in the GOC's opinion, the Federal Circuit made clear that the Department does not have the authority to begin applying the CVD law to the PRC on its own because the Court stated that it is up to Congress to decide what remedies are appropriate.

According to the GOC, the Department has provided the following legal reasons to support the application of the CVD law to the PRC: (1) the PRC's commitment to be bound by the SCM Agreement; (2) certain concessions contained in the PRC's Accession Protocol; and (3) Congressional statements urging the Department to enforce its rights under these agreements. The GOC argues, however, that neither the SCM Agreement nor the PRC's Accession Protocol is part of U.S. domestic law and, therefore, cannot be relied upon as support for any findings or conclusions. The GOC contends that these agreements only have legal effect to the extent that Congress enacts provisions implementing them in U.S. domestic law. Also, the GOC notes that statements by Congress do not imply the existence of, or any change to, remedies available under U.S. domestic law.

The GOC further argues that there are problems with applying the CVD law to a country the Department treats as an NME. First, the GOC notes that, in the Preliminary Determination, with respect to non-recurring programs determined to be countervailable, such as import tariff and VAT exemptions for encouraged industries importing equipment for domestic operations, the Department stated that "Chinese interest and discount rates are not reliable as benchmarks because of the pervasiveness of the GOC's intervention in the banking sector."[94] Thus, the Department had to construct a discount rate based on external loan benchmarks from other countries. Second, the GOC states that with respect to the Department's determination of a subsidy on hot-rolled steel inputs, the Department used an external benchmark based on world market prices to determine whether a subsidy existed, and to calculate the amount of that subsidy. In the GOC's opinion, if the Department affirms these findings in the final determination, it will have concluded that there is no way to measure the alleged subsidies with reference to a market benchmark reflecting supply and demand conditions in China, and that there is no way of measuring the deviation or misallocation caused by the governmental intervention. According to the GOC, this was the key consideration underlying the Department's 20-year practice of not applying the CVD law to NMEs, and thus, there is no basis for departing from that past practice.

The GOC argues that the Department's Georgetown Steel Memorandum purportedly analyzes the Chinese economy in the abstract, without regard to any specific program under investigation, and that this analysis is not accurate when transferred to the context of the specific programs at issue in this investigation. As such, the GOC argues that the findings in the Georgetown Steel Memorandum have nothing to do with any program under investigation in the Chinese coated free sheet paper investigation or in the instant case, and are thus irrelevant to the question of whether subsidies can be fairly and accurately measured in China's current economy.

The GOC argues that the Department's calculation of the discount rate used in the instant investigation illustrates this point. The GOC notes that after finding that all interest rates in China are not suitable because of the pervasiveness of the GOC's intervention in the banking sector, the Department bases the discount rate instead on interest rates from approximately 30 countries, each with its own currency, monetary policy, savings rate, etc., and adjusts these for each country's inflation rate. The GOC contends that this method cannot reflect what a market rate would be in China without government intervention, which supposedly is the Department's goal. The GOC argues that the Department cannot have it both ways by finding that prices in China are sufficiently market-based such that it can measure subsidies, while at the same time finding that it cannot use prices in China to measure subsides because of the government's significant role in the market.

Department's Position:

The Department has previously addressed the argument raised by the GOC. The Department's position on the issues raised are fully explained in CFS from the PRC, CWP from the PRC,

[94] See Princeway Preliminary Calculation Memorandum.

LWRP from the PRC, LWS from the PRC, OTR Tires from the PRC, LWTP from the PRC, CWLP from the PRC, CWASPP from the PRC, and, most recently, Citric Acid from the PRC.[95]

Congress granted the Department the general authority to conduct CVD investigations.[96] 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 . . ."[97] 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.[98]

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."[99] The Department reached this conclusion, in large part, because both output and input prices were centrally administered, thereby effectively administering profits as well.[100] The Department explained that "{t}his is the background that does not allow us to identify specific NME government actions as bounties or grants."[101] 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 . . ."[102] Therefore, the primary concern about the application of the CVD law to NMEs originally articulated in the Wire Rod from Poland and Wire Rod from Czechoslovakia cases is not a significant factor with respect to the PRC's present-day economy. Thus, the Department has concluded that it is able to determine whether subsidies benefit imports from the PRC.

The U.S. Court of Appeals for the Federal Circuit (CAFC) recognized the Department's broad discretion in determining whether it can apply the CVD law to imports from an NME in Georgetown Steel v. United States.[103] 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 v. United States 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:

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[95] See CFS from the PRC IDM, at Comment 1; CWP from the PRC IDM, at Comment 1; LWRP from the PRC IDM, at Comment 1; LWS from the PRC IDM, at Comment 1; OTR Tires from the PRC IDM, at Comment A.1; LWTP from the PRC IDM, at Comment 1; CWLP from the PRC IDM, at Comment 16; CWASPP from the PRC IDM, at Comment 4; and Citric Acid from the PRC IDM, at Comment 1.
[96] See, e.g., Sections 701 and 771(5) and (5A) of the Act.
[97] See Section 701(a) of the Act.
[98] See Section 701(b) of the Act (providing the definition of "Subsidies Agreement country").
[99] See Wire Rod from Poland, 49 FR at 19374; see also Wire Rod from Czechoslovakia, 49 FR at 19370.
[100] Id.
[101] Id.
[102] See Georgetown Steel Memorandum, at 5.
[103] See Georgetown Steel v. United States, 801 F.2d at 1318.

> {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 v. United States, 801 F.2d at 1318 (emphasis added).

The GOC argues that the Georgetown Steel v. United States Court found that the CVD law cannot apply to NMEs. In making this argument, the GOC cites to select portions of the opinion and ignores the ultimate holding of the case and the Court's reliance on Chevron U.S.A. v. Natural Resources Defense Council to find the Department had reasonably interpreted the law.[104] The Georgetown Steel v. United States 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 U.S. Court of International Trade (CIT) concurred, explaining that "the Georgetown Steel v. United States 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."[105] Therefore, the Court declined to find that the Department's investigation of subsidies in the PRC was ultra vires.

The GOC's argument that Congress' failure to amend the law subsequent to Georgetown Steel v. United States demonstrates Congressional intent that the CVD law does not apply to NMEs is also legally flawed. The fact that Congress has not enacted any NME-specific provisions to the CVD law does not mean the Department does not have the legal authority to apply the law to NMEs. The Department's general grant of authority to conduct CVD investigations is sufficient.[106] Given this existing authority, no further statutory authorization is necessary. Furthermore, since the holding in Georgetown Steel v. United States, 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."[107] The PRC was designated as an NME as of the passage of this bill, as it is today. Thus, Congress

[104] Id.
[105] See GOC v. United States, 483 F.Supp. 2d at 1281 (citing Georgetown Steel v. United States, 801 F.2d at 1318).
[106] See, e.g., Section 771(5) and (5A) of the Act.
[107] See 22 U.S.C. § 6943(a)(1) (emphasis added).

not only contemplated that the Department possesses the authority to apply the CVD law to the PRC, 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 to the PRC 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."[108]

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."[109] In these statutory provisions, Congress is referring, in part, to the PRC's commitment to be bound by the SCM Agreement as well as to the specific concessions the PRC agreed to in its Accession Protocol.

The Accession Protocol allows for the application of the CVD law to the PRC, even while the PRC remains classified as an NME by the Department. 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 the PRC. 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.[110] Paragraph (d) of that same Article provides for the continuing treatment of the PRC as an NME.[111] 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 Accession Protocol contemplates the application of CVD measures to the PRC 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 the PRC.[112]

We agree with the GOC that the Accession Protocol is not part of U.S. domestic law, but paragraph 1.2 of the Accession Protocol explains that it is an integral part of the WTO agreements. The Accession Protocol, to which the PRC agreed, contemplates the application of CVD measures to the PRC and is relevant to the PRC's and our international rights and obligations. Congress thought the provisions of the Accession Protocol were important enough to direct that they be monitored and enforced.

We disagree with the GOC's contention that the Department is trying to have it both ways by finding that prices in China are sufficiently market-based such that it can measure subsidies, while at the same time finding that it cannot use prices in China to measure subsides because of

[108] See 22 U.S.C. § 6901(8).
[109] See 22 U.S.C. § 6941(5).
[110] See Accession Protocol.
[111] Id.
[112] See 22 U.S.C. § 6941(5).

the government's significant role in the market. Contrary to the GOC's argument, Georgetown Steel v. United States does not rest on the absence of market-determined prices, and the recent decision to apply the CVD law to the PRC does not rest on a finding of market-determined prices in the PRC.

In the case of the PRC's economy today, as the Georgetown Steel Memorandum makes clear, the PRC no longer has a centrally-planned economy and, as a result, the PRC no longer administratively sets most prices. As the Georgetown Steel Memorandum also makes clear, it is the absence of central planning, not undistorted prices, that makes subsidies identifiable and the CVD law applicable to the PRC.[113] The citation to the "Economist Intelligence Unit" quote, "market forces now determine the price of more than 90 percent,"[114] was meant to highlight the scope of price liberalization in the PRC. The Department used a direct quote because some analysts equate "decontrolled price" with "market-determined price," even though the Department does not. The important distinction between "decontrolled price" and "market-determined price" is clear in the Georgetown Steel Memorandum (and in the Lined Paper Memorandum), where the Department explains, "The fact that enterprises generally are free to set wages and the majority of prices does not ipso facto lead to the conclusion that wages and prices are market-based in all instances. Private enterprises and citizens in China, though generally free to pursue entrepreneurial activities, still conduct all business within the broader, distorted economic environment over which the PRC Government has not ceded fundamental control."[115]

As the Department explains in the Georgetown Steel Memorandum, extensive PRC government controls and interventions in the economy, particularly with respect to the allocation of land, labor and capital, undermine and distort the price formation process in the PRC and, therefore, make the measurement of subsidy benefits potentially problematic.[116] The problem is such that there is no basis for either outright rejection or acceptance of all of the PRC's prices or costs as CVD benchmarks because the nature, scope, and extent of government controls and interventions in relevant markets can vary tremendously from market-to-market. Some of the PRC prices or costs will be useful for benchmarking purposes, i.e., are market-determined, and some will not, and the Department will make that determination on a case-by-case basis, based on the facts and evidence on the record. Thus, because of the mixed, transitional nature of China's economy today, there is no longer any basis to conclude, from the existence of some "non-market-determined prices," that the CVD law is not applicable to the PRC.

With respect to the use of external benchmarks for measuring subsidy benefits, the PRC is not special or unique. The Department has several times in the past, in cases involving market economies, resorted to external benchmarks when facts and evidence on the record warrant it, consistent with our statute and regulations. For example, the Department found in CFS from Indonesia that Malaysian export prices provided the most appropriate bases for determining a benchmark price to use in assessing stumpage rates in Indonesia.[117] We found that these prices

[113] See Georgetown Steel Memorandum, at 5.
[114] Id., at 5.
[115] Id., at 5.
[116] See Georgetown Steel Memorandum, at 5; see also Lined Paper Memorandum, at 22.
[117] See CFS from Indonesia IDM, at "GOI's Provision of Standing Timber for LTAR" and Comments 11 and 12.

were consistent with market principles, within the meaning of 19 CFR 351.511(a)(2)(iii), and were the most appropriate basis for deriving a market-based stumpage benchmark for determining whether the Government of Indonesia provided stumpage for less than adequate remuneration. Furthermore, the Department also used an out-of-country benchmark in Softwood Lumber from Canada Investigation.[118] In the instant case, the Department has followed its established practice of using out-of-country benchmarks where actual transaction prices are significantly distorted because of government involvement in the market. Moreover, a case-by-case approach is what the PRC agreed to in its Accession Protocol,[119] which explicitly provides for use of external benchmarks, where there are special difficulties in applying standard CVD methodology.

On the specific issue of calculation of the benchmark discount rates, refer to the Department's position at Comment 4.

Comment 2: Double Counting/Overlapping Remedies

The GOC claims that by applying the CVD law to NMEs, a situation arises where AD and CVD duties provide overlapping remedies for the same conduct. The GOC states that when a foreign government bestows a subsidy only upon exports of a good, it increases the return to the producer from export sales, thereby creating an incentive to export rather than sell domestically. According to the GOC, the United States is able to offset the effect of an export subsidy by imposing a countervailing duty in the amount of the benefit conferred by that particular subsidy. However, the GOC contends, if the export subsidy causes price discrimination between export and domestic sales, the imposition of antidumping duties in response and in addition to the countervailing duties doubles the corrective penalty for the subsidy.

The GOC explains that U.S. trade law recognizes and corrects for this particular situation. Specifically, in accordance with section 772(c)(1)(C) of the Act, the amount of any countervailing duty to offset an export subsidy is added to export price and to constructed export price for purposes of calculating the concurrent antidumping duty. The GOC states that this reduces any AD duty by the amount of the export subsidy and avoids "double counting." They argue that there is no requirement that a respondent provide case-specific evidence of double counting, and further that there is no requirement that a respondent must explain how it used the subsidy, much less demonstrate that the export subsidy resulted in a lower export price. The GOC contends that the Department adopted this analysis in Low Enriched Uranium from France, 69 FR at 46501 and 46506.

The GOC contends that, by contrast, "double counting" is not an issue in the context of domestic subsidies in market economy AD cases. The GOC states that domestic subsidies, unlike export subsidies, are market neutral and do not create price discrimination between domestic and export sales. According to the GOC, a producer would use domestic subsidies to lower prices in both its domestic and export markets. Therefore, a domestic subsidy does not affect the dumping margin because the subsidy would not be expected to cause any differential between export and

[118] See Softwood Lumber from Canada IDM, at "Provincial Stumpage Programs;" see also Softwood Lumber from Canada – Amended, 67 FR at 37075-76.
[119] See Accession Protocol, WT/L/432 at para. 15(b).

domestic prices. As such, the GOC explains, where domestic subsidies are countervailed in a market economy case, there is no "double counting" if the United States levies both AD and CVD duties on imports of the product.

The GOC states that the relationship between domestic subsidies and antidumping duties is different in the case of NMEs because, under the Department's NME methodology, normal value is not based on home market prices or home market costs of production. Instead, normal value is based on third-country surrogate values for inputs, G&A expenses, financial expenses, and profit, all of which, the GOC argues, are unaffected by any domestic subsidies in China. The GOC contends that because the surrogate values used to compute normal value are unaffected by domestic subsidies in China, the expected economic behavior resulting from those subsidies will create a dumping margin. Normal value will remain at the same level, with or without the Chinese domestic subsidies, because its value derives entirely from third-country, unsubsidized prices. However, the U.S. price is the actual price charged by the Chinese producer, and thus reflects any subsidy received by the producer. According to the GOC, regarding the AD calculation, a domestic subsidy in an NME case functions the same as an export subsidy in a market economy case.

Citing CFS from the PRC – AD and OTR Tires from the PRC Preliminary, the GOC notes that the Department ruled that no double counting had been "demonstrated," and that the Department stated that the GOC had presented no "evidence" that domestic subsidies lowered domestic and export subsidies pro rata, or that U.S. law inherently assumed this to be the case.[120] Citing LWRP from the PRC, the GOC further notes that the Department stated that the issue of double counting had to be raised in the antidumping case.[121] The GOC argues that these statements are contrary to law, mischaracterize the GOC's argument, impose false burdens of proof that do not fall upon respondents under the trade statutes, and are contradicted by the Department's analysis in Low Enriched Uranium from France.[122] The GOC claims that the issue is not whether, or to what extent, domestic subsidies actually lower prices in any market, and that there is no basis for the Department to require "evidence" to that effect. Rather, the GOC continues, the issue is that the CVD and AD statutes presume that domestic subsidies do not ordinarily create dumping margins.

However, in an NME case, the GOC argues, as explained above, that there is no basis for presuming that the domestic subsidy does not create a dumping margin. The GOC thus concludes that the statute presumes that the CVD law would not be applied to NMEs, and that it cannot be fairly applied because, conceptually, it will always lead to double-counting.

The GOC argues that the Department has taken steps to avoid duplicative remedies in the past without requiring specific "evidence," and that it has no basis for imposing any different burden in the instant investigation. The GOC claims that the Department correctly avoided double counting in ruling that section 201 duties were not import duties to be deducted from the U.S. price in AD cases, and that such a deduction would improperly collect the section 201 duties

[120] See CFS from the PRC – AD at Comment 2; see also OTR Tires from the PRC Preliminary 73 FR 9278, 9287.
[121] See LWRP from the PRC at Comment 2.
[122] See Low Enriched Uranium from France, 69 FR at 46501, 46506.

twice.[123] The GOC contends that neither the Department in its decision, nor the Federal Circuit, required anything more than a conceptual depiction of the double counting problem.

The GOC further argues that the Department has correctly avoided a double-remedy problem in rejecting the argument that CVD duties should be treated as a cost in AD cases, stating that "in the most general terms, the statute stands for the proposition that dumping margins should not be calculated so as to double-collect CVDs."[124] The GOC states that the Department addressed and resolved the issue without any particular case-specific factual "evidence" of double counting, and that it understood and applied the statutory imperative to avoid double counting.

The GOC contends that because it is not seeking an adjustment to U.S. price, normal value, or the resulting AD margin, this is not an issue to be addressed in the companion AD case. Rather, the GOC contends that the entirety of any subsidy determined to exist already is captured by the Department's NME AD methodology, and that Congress did not intend, and due process does not permit, a wholesale double remedy.

According to the GOC, the Department's basis for refusing to address the double counting issue in other China cases, i.e., that its existence had not been "demonstrated" with "evidence," is not legally valid. The GOC argues that AD and CVD investigations are investigative in nature, and the Department has not investigated this issue. In the GOC's opinion, respondents have no burden of proof to establish double counting any more than petitioners have a burden to establish the absence of double counting. The GOC argues that the Department has a duty to investigate the issue, and to identify and request evidence it needs to resolve the question. The GOC claims that in the instant investigation, and in the companion AD investigation, the Department did not investigate the issue, and did not request any information it needed to determine whether there is double counting.

The GOC claims that in concluding that there is no double counting, the Department has created what seems to be a rebuttable presumption that double counting does not exist, but did so without the required advance notice to parties in the instant AD and CVD investigations. The GOC further claims that the Department lacks any factual or evidentiary basis for the presumption it has created. The GOC argues that if the Department is to create a presumption, it must have a rational basis, and must be consistent with economic theory and the trade statute's structure as a whole. According to the GOC, in the instant case, the Department has presumed the converse of the expected behavior of both economic theory and its own precedent. Citing Low Enriched Uranium from France, the GOC states that "Domestic subsidies presumably lower the price of the subject merchandise both in the home and the U.S. markets . . . ."[125]

Department's Position:

The GOC has not cited to any statutory authority that would allow us to terminate this CVD investigation to avoid the alleged double counting or to make an adjustment to the CVD calculations to prevent an incidence of alleged double counting. If any adjustment to avoid a

[123] See Stainless Steel Wire Rod from Korea, 69 FR at 19153, 19161; see also Wheatland Tube Co. v. United States.
[124] See Low Enriched Uranium from France 69 FR at 46501, 46506; see also U.S. Steel Group v. United States.
[125] See Low Enriched Uranium from France, 69 FR at 46501.

double remedy is possible, it would only be in the context of an AD investigation and no party raised this claim in the companion AD investigation of lawn groomers. We note that this decision is consistent with the Department's decisions in LWRP from the PRC IDM, at Comment 2, and Citric Acid from the PRC IDM, at Comment 2.

Comment 3: Cut-off Date for Countervailing Subsidies

The GOC claims that the Department has provided no factual analysis or explanation, relating to conditions in China, which supports its selection of December 11, 2001, as the cut-off date for applying the CVD law to China. According to the GOC, the date of China's accession to the WTO Agreements relates to an external event, which does not establish the legality of applying U.S. CVD laws to China. The GOC argues that the Department should use a cut-off date of January 1, 2005, which is consistent with its analysis of the Chinese economy in 2005 in its Georgetown Steel Memorandum.

Department's Position:

Consistent with recent CVD determinations (CWP from the PRC, LWTP from the PRC, LWRP from the PRC, LWS from the PRC, OTR Tires from the PRC, and Citric Acid from the PRC),[126] we continue to find that it is appropriate and administratively desirable to identify and measure subsidies in the PRC for purposes of the CVD law, and have adopted December 11, 2001, the date on which the PRC became a member of the WTO, as that date.

We have selected this date because of the reforms in the PRC's economy in the years leading up to its WTO accession and the linkage between those reforms and the PRC's WTO membership.[127] The changes in the PRC's economy that were brought about by those reforms permit the Department to determine whether countervailable subsidies were being bestowed on Chinese producers. For example, the GOC eliminated price controls on most products; since the 1990s, the GOC has allowed the development of a private industrial sector; and in 1997, the GOC abolished the mandatory credit plan.[128] Additionally, the PRC's Accession Protocol contemplates application of the CVD law. While the Accession Protocol, itself, would not preclude application of the CVD law prior to the date of accession, the Accession Protocol's language in Article 15(b) regarding benchmarks for measuring subsidies and the PRC's assumption of obligations with respect to subsidies provide support for the notion that the PRC economy had reached the stage where subsidies and disciplines on subsidies (e.g., countervailing duties) were meaningful.

We acknowledge that there was not a single moment or single reform law that suddenly permitted us to find countervailable subsidies in the PRC. Many reforms in the PRC, such as the elimination of price controls on most products, referenced above, were put in place before the

[126] See, e.g., CWP from the PRC IDM, at Comment 2; LWRP from the PRC IDM, at Comment 4; LWTP from the PRC IDM, at Comment 2; LWS from the PRC IDM, at Comment 2; and Citric Acid from the PRC IDM, at Comment 4.
[127] See Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001).
[128] See Georgetown Steel Memorandum, at 8.

PRC acceded to the WTO.[129] However, the Department has identified certain areas such as in the credit and land markets where the PRC economy continues to exhibit non-market characteristics.[130] These examples only serve to demonstrate that economic reform is a process that occurs over time. This process can also be uneven: reforms may take hold in some sectors of the economy, or areas of the country, before others. We have rejected the approach of making specific findings for specific programs, opting instead for a uniform date of application based on the economic changes that have occurred across the entire Chinese economy. The cumulative effects of the many reforms implemented prior to the PRC's WTO accession give us confidence that by the end of 2001, subsidies in the PRC could be identified and measured.

Finally, the GOC argues that economic and market conditions prior to 2005 do not allow for the Department to identify and measure subsidies and, therefore, the adoption of a later cut-off date, i.e., January 1, 2005, the first day of the POI regarding CFS from the PRC, is appropriate.[131] We disagree with the GOC for all of the reasons stated above. The reforms in the PRC's economy were sufficient for us to identify and measure subsidies as of December 11, 2001. As we acknowledged above, economic reform is a process that occurs over time, and it may progress faster in some sectors of the economy, or areas of the country, than in others. Unquestionably, there continues to be non-market aspects of the Chinese economy even today. Nevertheless, we have concluded that the cumulative effect of the many reforms implemented prior to the PRC's WTO accession lead to economic changes allowing us to identify and to measure subsidies bestowed upon producers/exporters in the PRC after December 11, 2001.

For these reasons, and consistent with Citric Acid from the PRC, and other recent CVD investigations of imports from the PRC, the Department finds that it can determine whether the GOC has bestowed countervailable subsidies on Chinese producers from the date of the PRC's WTO accession.[132]

Comment 4: Discount Rate Used for Benefit Calculations

In the Preliminary Determination, in order to calculate the amount of benefits for a non-recurring program, the Import Tariff and VAT Exemptions for Encouraged Industries Importing Equipment for Domestic Operations program, the Department used discount rates based upon long-term interest rates calculated by converting the regression-based short- and medium-term lending rates (based on external rates) to long-term lending rates using U.S. BB-rated corporate bond rates. See Preliminary Determination, 73 FR at 70974, and Princeway Preliminary Calculation Memorandum, at 2-4. In calculating a discount rate, the Department used exactly the same methodology used to calculate short-term and long-term benchmarks in other PRC CVD investigations. Thus, while no such lending programs are under investigation in this proceeding, the GOC made the following arguments with regard to the Department's calculation and use of external "benchmarks."

[129] Id. at 5.
[130] Id. at 3.
[131] See GOC Case Brief, at 29.
[132] See, e.g., CWP from the PRC IDM, at Comment 2; LWRP from the PRC IDM, at Comment 4; LWTP from the PRC IDM, at Comment 2; LWS from the PRC IDM, at Comment 2; and Citric Acid from the PRC IDM, at Comment 4.

In the final determination, we did not use a discount rate as such a rate is no longer needed for this non-recurring program and the issue is moot.

A. Whether the Department Should Use an External Interest Rate as a Discount Rate

Citing 19 CFR 351.524(d)(3), the GOC claims that the Department's regulation on the discount rate does not authorize the Department to use an out-of-country interest rate as a discount rate in this case. The GOC argues that unless the Department provides sufficient reasons not to use the cost of long-term, fixed-rate loans of the firm in question or the average cost of long-term, fixed-rate loans in the PRC, the Department should not use external rates in determining the discount rate. The GOC argues that the Department did not provide any analysis detailing the reasons why the Department "continues to find that Chinese interest and discount rates are not reliable as benchmarks because of the pervasiveness of the GOC's intervention in the banking sector."[133]

The GOC contends that neither in the original Petition nor in the new subsidy allegations did the petitioner allege that the TBLG industry received subsidy benefits through "preferential lending" or "policy loans," and the Department did not initiate an investigation on such loans to Princeway or Superpower. Therefore, as no such loans to mandatory respondents were alleged as countervailable, the GOC argues that these loan rates should not be excluded from consideration in determining the discount rate.
Finally, the GOC states that if the Department does not use loans to Princeway as the basis for determining the discount rate, the Department should use the average cost of long-term, fixed rate loans in China as the discount rate, and should not use external benchmark in the final calculation.

Department's Position:

Based on the revised imported equipment tariff rates that the GOC and Princeway provided during verification, the benefits that Princeway received from the import tariff and VAT exemptions for imported equipment program were less than 0.5 percent of the relevant sales in every year after the 2001 cutoff date and through the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), a discount rate is no longer needed in the calculation of benefits.

B. Whether the Department Has a Basis for Treating the IMF Rates as Having Terms of Two Years or Less

The GOC argues that the Department's use of the lending rates of 30 or so lower-middle income countries from the IMF's International Financial Statistics was flawed as these lending rates are not exclusively short-term rates but contain medium-term loan rates as well. Citing Usinor Sacilor v. United States; and Inland Steel, 967 F. Supp. at 1357-58, the GOC argues that the Department has characterized the IMF lending rates as either "long-term," or a mix of long-term and short-term in these cases.

[133] See GOC Case Brief, at 31.

Citing the Department's Preliminary Determination and Princeway Calculation Memorandum, the GOC argues that the Department did not provide any evidentiary basis for determining that these loan rates correspond to loans of two years or less. The GOC contends that simply calling the rate "short-term" does not mask the fact that it is a mix of short- and long-term rates.

Department's Position:

Based on the revised imported equipment tariff rates that the GOC and Princeway provided during verification, the benefits that Princeway received from the import tariff and VAT exemptions for imported equipment program were less than 0.5 percent of the relevant sales in every year after the 2001 cutoff date and through the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), a discount rate is no longer needed in the calculation of benefits.

C. Whether to Remove Certain Countries from the IMF Data

The GOC argues that the interest rates of certain countries should be excluded from the benchmark calculation because their rates include rates for bank products other than business loans and these products are likely to have higher rates than business loans. In particular, Paraguay should be excluded because its rates include personal and development loans and Peru should be excluded because its rates include overdrafts and credit card rates.[134] The GOC argues that these products have higher rates and skew the discount rate.

Department's Position:

Based on the revised imported equipment tariff rates that the GOC and Princeway provided during verification, the benefits that Princeway received from the import tariff and VAT exemptions for imported equipment program were less than 0.5 percent of the relevant sales in every year after the 2001 cutoff date and through the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), a discount rate is no longer needed in the calculation of benefits.

D. Whether Negative Inflation Adjusted Rates Should Be Excluded

The GOC argues that the Department should not exclude negative inflation-adjusted interest rates from its calculation of the discount rate. Noting negative real interest rates in Japan and the United States, the GOC argues that these rates are market-based and are not statistical anomalies, and the Department had no legal or factual basis to exclude them from the computations.

Department's Position:

Based on the revised imported equipment tariff rates that the GOC and Princeway provided during verification, the benefits that Princeway received from the import tariff and VAT exemptions for imported equipment program were less than 0.5 percent of the relevant sales in every year after the 2001 cutoff date and through the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), a discount rate is no longer needed in the calculation of benefits.

[134] See GOC Case Brief at 35-36.

E. Whether the Regression Analysis Used to Compute a Short-Term Rate for China Is Statistically Invalid

The GOC argues the Department's use of regression analysis to determine a short-term interest rate for the PRC based on a composite government indicator (GI) factor is invalid. The GOC first notes that the Department is using interest rates from countries that are not measured on a uniform basis, corrupting the dataset, with the result that the regression analysis is not capable of predicting a particular interest rate for the PRC based on the PRC's GI factor.

The GOC further argues that the Department has yet to provide any evidence that the composite GI or any the five underlying GI factors has any correlation with interest rates. The GOC argues that the Department's analysis arbitrarily relies upon one factor, the GI, and potentially excludes other more relevant factors without evidence or analysis.[135]

The GOC points out that the Department's own regression calculation demonstrates that there is no statistically significant relationship between the average GI and the consumer price index (CPI) adjusted lending rate for the lower-middle income country population used. In the absence of any correlation between interest rates and GI factor in the countries analyzed, the GOC claims that the Department's analysis is utterly meaningless and, moreover, the regression-based benchmark for China in 2002, 2004, and 2005 is similar to the simple mean of the approximately 30 countries' rates.[136]

The GOC also argues that the benchmark has nothing to do with the economic and monetary conditions in the PRC and is not in any statistical sense a predicted interest rate for the PRC if it were a market economy. Furthermore, the benchmark is not free of government distortion. The GOC argues that the benchmark rate merely reflects the economic conditions, monetary policies, and other influences of the other countries.

Department's Position:

Based on the revised imported equipment tariff rates that the GOC and Princeway provided during verification, the benefits that Princeway received from the import tariff and VAT exemptions for imported equipment program were less than 0.5 percent of the relevant sales in every year after the 2001 cutoff date and through the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), a discount rate is no longer needed in the calculation of benefits.

F. Whether the Difference Between Long- and Short-term Interest Rates Should Be Based on BB-grade, Below Investment Grade Bonds

The GOC argues that the Department's computation of an adjustment between short- and long-term rates using U.S. dollar BB bond rates is arbitrary and inappropriate, and that the Department did not provide a reasoned explanation for its use of BB bond rates.

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[135] See GOC Case Brief, at 37, and footnote 15.

[136] See GOC Case Brief, at 38. We note that the Department's regression-based benchmark included year 2002, 2004, and 2005. The GOC included year 2002, 2004 and 2006 in its chart on page 38 of the Case Brief.

The GOC notes a Standard & Poor's (S&P's) and Fitch's BB rating is equivalent to a Moody's Ba rating, which is a below-investment grade rating and used for speculative, low grade bonds. Thus, it is an inappropriate rating to use for creditworthy companies. Citing 19 CFR 351.505(a)(3)(iii), the GOC notes that the Department's regulations require calculations for uncreditworthy companies that account for the differences in the probability of default by creditworthy and uncreditworthy companies using Moody's data. The rated bonds taken into consideration for a creditworthy company are Aaa to Baa. Thus, the GOC argues, there is no reason or basis for the Department to use a bond rate below that rating to compute its short- to long-term loan adjustment for creditworthy companies in the PRC. The GOC argues, therefore, the Department should consider using a weighted average of bonds from Aaa to Baa (or AAA to BBB- on the S&P's scale) in computing the short- to long-term adjustment for creditworthy companies.[137]

Finally, the GOC argues that the Department should not be using U.S. bond rates to compute the adjustment at all. The GOC notes that the relationship between the short- and long-term interest rates reflects factors within the United States and has no bearing on PRC interest rates. The GOC argues that the use of U.S. bond rates to compute the long-term mark-up is inconsistent with the rationale underpinning the Department's use of lower-middle income country interest rates as the starting point for its analysis. Similarly, the GOC argues that U.S. bonds have no relationship to the short-term benchmark rate computed by the Department using interest rates from lower-middle income countries, which is the rate the adjustment is applied to.

Department's Position:

Based on the revised imported equipment tariff rates that the GOC and Princeway provided during verification, the benefits that Princeway received from the import tariff and VAT exemptions for imported equipment program were less than 0.5 percent of the relevant sales in every year after the 2001 cutoff date and through the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), a discount rate is no longer needed in the calculation of benefits.

G. Whether the Adjustment for Long-term Rates Should be Additive or Multiplicative

In computing a long-term interest rate benchmark, the GOC argues that the Department's methodology of computing the ratio between the short- and long-term bonds and multiplying that ratio by the short-term interest rate benchmark is flawed. Instead, the GOC contends, the Department should compute the spread by taking the difference between the long- and short-term rates and add that spread to the short-term interest rate benchmark. The GOC argues that the Department should adopt such an adjustment, which was recently implemented in Citric Acid from the PRC.[138]

[137] See GOC's Case Brief, at 40.
[138] See Citric Acid from the PRC IDM, Comment 14.

Department's Position:

Based on the revised imported equipment tariff rates that the GOC and Princeway provided during verification, the benefits that Princeway received from the import tariff and VAT exemptions for imported equipment program were less than 0.5 percent of the relevant sales in every year after the 2001 cutoff date and through the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), a discount rate is no longer needed in the calculation of benefits.

Comment 5: Public Authority Status of Hot-Rolled Steel Producer

According to the GOC, the Department's post-preliminary subsidy findings on the provision of hot-rolled steel should be reversed because of factual and legal errors. The GOC claims that the Department simply misread and misinterpreted the GOC's responses with regard to the state ownership of HRS-Producer-X. The GOC argues that the Department's use of facts available with adverse inferences is unwarranted because the GOC provided all information that was reasonably available and cooperated with the investigation to the best of its ability. It also claims that the Department failed to analyze whether HRS-Producer-X is an "authority" within the meaning of the statute, but instead relied only on statements relating to the GOC's ownership interest using adverse facts available. Further, the Department's analysis also fails to consider the evidence on the record in this case that none of the board members of HRS-Producer-X are government officials and none of the shareholders are member of the Chinese Iron and Steel Association. Therefore, the GOC argues that the Department's conclusion that HRS-Producer-X is a state-controlled enterprise that is an "authority" should be reversed in the final determination.

Department's Position:

For this final determination, we continue to find that HRS-Producer-X is a public authority. We disagree that there is any issue of factual or textual misinterpretation involved in our analysis of this producer. The Department reviewed evidence at verification indicating that the terms of the transaction by which a local authority of the GOC had divested itself of its interest in the steel producer had not been completed, contrary to statements the GOC made in its questionnaire responses. Whether the Department sufficiently described the nature of the transaction by which the local authority had supposedly disposed of its share in the company in the post-preliminary determination is not relevant to our conclusion, largely because not all the details regarding the transaction were provided by the GOC.[139] What is relevant is that the evidence on the record indicates that the GOC had not completed the terms of that transaction, in contradiction of the GOC's statements that "all the terms of the share transfer were completed,"[140] and that there is "nothing to indicate that this company was government owned or government controlled at any time during the POI."[141]

[139] The Department believes the transaction involved a management/employee buyout, in which the company itself may have played a role as an intermediary. The GOC characterizes the transaction as a sale of equity to "other private investors."
[140] GOC's December 12, 2008 Questionnaire Response, at S2B-7.
[141] GOC's December 10, 2008 Questionnaire Response, at S2A-5 (emphasis in the original).

Moreover, we note that the difficulty in clarifying the facts regarding the nature of the transaction and the status of the GOC's involvement in the producer during the POI is the result of the GOC's own restrictions imposed on the Department's verification team. As explained in the government verification report, the team was not allowed to take the file at issue as an exhibit, take notes, or disclose details regarding the contents of the document.[142]

The GOC also argues the Department ignored information it provided indicating that the producer is a private company. Specifically, the GOC is referring to information it provided in response to Department requests regarding private shareholders and the percentage of their holdings, articles of association, amendments to those articles, and information regarding the lack of any role played by the company's board members, shareholders, and management in the GOC or the China Iron and Steel Association. It would be impossible, however, to weigh the significance of this information against the contradictory information found in the company's AIC file when that file is not on the record. In such circumstances we have no choice but to infer that the missing information, if it had been placed on the record, would lead us to conclude that the producer is a public authority.

We also disagree that the Department failed to determine that there was a lack of cooperation by the GOC, as required by section 776(b) of the Act. The GOC chose not to provide information – maintained in its own files – requested by the Department, thereby failing to act to the best of its ability. This is not a situation involving a request for information within the physical custody of a third party; it was information held by the AIC, an agency of the GOC charged with maintaining records pertaining to corporate registration and ownership, which has provided extensive documentation to the Department in this and several prior investigations.[143] This is not the situation contemplated by the CIT in Borden v. United States, cited by the GOC on page 46 of its case brief, in which the court remanded a determination of adverse facts available to the Department because there was "no evidence to support a finding that De Cecco could have provided all the information Commerce wanted in a timely manner."[144] To the contrary, the GOC clearly could have provided the information requested – in fact it did, albeit only temporarily, during verification and with restrictions, but chose not to place the information on the record. While the GOC notes several times that it did not have permission from the producer to place its file on the record, the GOC never explains why such permission would be necessary. Again, it is important to note in this regard that the information in question was in the GOC's possession, having been submitted to the local registration agency pursuant to mandatory business registration requirements, and, in fact, consisting in large part of standard forms and attachments completed by the steel producer.

Finally, the GOC argues that even assuming, arguendo, that the use of adverse facts available is justified, the Department failed properly to determine that the producer is a "public authority," an essential step in determining the existence of a financial contribution. According to the GOC, the Department's failure stems from simply equating government control in the form of

[142] GOC Verification Report, at 5.
[143] See, e.g., Laminated Woven Sacks, GOC's January 8, 2008 GOC Questionnaire Response, at 2 (providing business registration forms for all identifiable petrochemical companies supplying the respondents in that investigation).
[144] Borden, 4 F. Supp. 2d, at 1247.

ownership interest with the existence of a government authority within the meaning of the Act. Instead, the GOC continues, the Department should have applied the "five factors test," employed by the Department in other investigations for determining whether an entity is a public authority. We disagree. As noted above, the GOC cannot limit the record as it chooses and then argue that the Department has failed to take adequate consideration of the entire record. Pursuant to "the five factors test," the Department examines information relevant to, among other factors, whether there is government ownership and control, in combination. We cannot, however, evaluate the totality of the evidence when a significant portion of the necessary evidence is missing.

As such, consistent with the interim analysis, the Department has determined that, pursuant to section 776(a)(2)(D) of the Act, the use of facts available is warranted, given that the Department was unable to verify the precise relationship between HRS-Provider-X and ZMIPOAMC. Moreover, we determine that an adverse inference is appropriate under section 776(b) of the Act because the GOC has failed to act to the best of its ability to comply with the request for information.

Comment 6: Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program)

The GOC contends that the "Two Free, Three Half" program is neither geographically limited, nor limited by industry, nor contingent on exports, and therefore, cannot be found "specific" under U.S. law. The GOC stated:

> The Department's regulations expressly provide that domestic programs provided, for example, to small and medium-sized firms are not specific, 19 CFR § 351.502(e), indicating that programs limited to particular forms of enterprises or with particular types of investors are not specific. Rather, to be "specific," the program must be limited to an enterprise or industry or group of enterprises or industries. 19 U.S.C. § 1677(5A).

Consequently, the GOC disagrees with the Department's specificity decision in CFS from the PRC, in which the Department first concluded that PRC tax preferences for FIEs were specific, arguing that the presence of foreign investment is not a factor that limits the benefit to specific enterprises or industries.[145] The GOC argues that section 771(5A)(D)(i) of the Act requires a de jure specificity finding to be predicated on legislation that "expressly limits access to the subsidy to an enterprise or industry." The GOC argues that the FIE tax program is neutral as to geographic region, industry, export contingency, or use of domestic over imported goods and it should not be found countervailable.

The GOC also argues that the "Two Free, Three Half" program was terminated when the new PRC corporate tax law became effective on January 1, 2008.[146] The GOC further argues that even though the new tax law provides continued benefits for enterprises that were under the "Two Free, Three Half" program, tax year 2006 was the last year for which Superpower could

[145] See GOC's Case Brief, at 52.
[146] See GOC October 8, 2008 Questionnaire Response, at I-10 and I-11; see also Exhibit O-II.A.3.

obtain any benefit under this program.[147] Therefore, the GOC contends, the cash deposit rate established for Superpower for this program should be set to zero, pursuant to 19 CFR 351.526.

Department's Position:

We recently addressed these same arguments in Citric Acid from the PRC.[148] As noted in that case, we disagree with the GOC's argument that enterprises with foreign investment cannot be considered a limited group of enterprises within the meaning of section 771(5A)(D)(i) of the Act. The tax benefits in question are, as a matter of law, expressly given to foreign-invested companies while domestic companies are precluded from using the tax reductions and exemptions. Moreover, although the GOC seeks to liken foreign-invested companies to small- and medium-sized businesses, we disagree with the analogy. In promulgating 19 CFR 351.502(e), the Department was continuing a longstanding practice of not finding a subsidy de jure or de facto specific because the subsidy was limited to small or small- and medium-sized firms. The Department had no such practice with respect to foreign-invested firms and no rule was promulgated with respect to such firms.

To the extent that the GOC is arguing that the Department cannot find specificity based on the form of a corporation, we have not done so for the reasons explained in CFS from the PRC, in which we stated that:

> FIEs can take many forms: equity joint ventures, contractual joint ventures, and wholly owned foreign enterprises. Of these, the latter two forms may choose to incorporate or not. Thus, contrary to the GOC's claim, it is not the corporate form that makes these firms eligible for the tax breaks in question, it is the fact that they have foreign investment (at least 25 percent in the case of an equity joint venture and 100 percent in the case of a wholly foreign owned enterprise). This restriction makes these tax subsidies specific as a matter of law under section 771(5A)(D)(i) of the Act.[149]

With regard to the GOC's claim that this program has been terminated, the GOC was not able to confirm that Princeway would not receive continued benefits under the new PRC corporate tax law beyond the termination date. Even assuming benefits to the two cooperating respondents under this program have been exhausted, residual benefits exist for other users, as the GOC concludes[150]. Consequently, the termination of this program does not meet the standard for making an adjustment to the deposit rate, because "residual benefits may continue to be bestowed under the terminated program." See 19 CFR 351.526(d)(1) (emphasis added).

[147] Id. at I-17; see also, Superpower October 8, 2008 Questionnaire Response, at 17.
[148] See Citric Acid from the PRC IDM, Comment 16, 17.
[149] See CFS from the PRC IDM, at Comment 14.
[150] See GOC's Case Brief, at 53.

Comment 7: Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export Oriented Enterprise

According to the GOC, the Department erred in making its preliminary determination that Superpower received refunds that conferred a countervailable subsidy. The GOC claims it is not Superpower but its foreign investor who received such refunds. Without conducting an analysis of whether the benefit passed from its foreign investor to Superpower, the GOC argues that the Department should have not made such finding.

The GOC also claims that the Department erred in determining that one of the refunds that Superpower's foreign investor received (the refund of 2005 taxes) was an export subsidy, and thus improperly used the export volume as the denominator for the computation of the subsidy rate. Specifically, they argue that all foreign investors of FIEs in China were qualified to receive at least 40 percent refunds of the income tax paid for the reinvested profit, which is not contingent on export performance. As such, they claim that only part of the benefit from this refund is contingent upon export. The GOC argues that to calculate the benefit from the 2005 refund, the Department should divide 40 percent of the refund by totals sales during the POI and the other 60 percent by export sales.

In addition, the GOC argues that according to the new corporate income tax law of China, no residual benefit will continue to be conferred to Superpower's foreign investor, thus satisfying the statutory requirements for a "program-wide change." Therefore, they argue that the Department should set a zero cash deposit rate for Superpower under this program.

Department's Position:

The Department determines no change to our preliminary determination regarding this program is necessary. Although Article 10 of the FIE tax law in effect during the POI states that the investor is the recipient of the benefits under this program, the narrative portion of the GOC's questionnaire response, as well as record information regarding how the program is actually implemented, indicates otherwise. For example, in its initial questionnaire response, the GOC stated "{t}he FIE, not the investor, applies for and receives the refund, of income taxes paid by the FIE, which it then may pay to the investor."[151] This explanation is consistent with what was found at verification, during which the team reviewed applications filed by Superpower itself, not the investor, and checks received by Superpower itself, not the investor.[152] Moreover, despite how the program might work in general or in theory, business-proprietary information gathered at verification indicates that Superpower was clearly the beneficiary of these refunds in this particular case.[153]

The Department also finds no reason to revise the benefit calculations. The evidence of the record supports the fact that, at the point of bestowal, the benefit from the payment Superpower received as an EOE was tied to exportation. Superpower received one reimbursement check for

[151] GOC's October 8, 2008 Questionnaire Response, at I-20 (emphasis added).
[152] See, e.g., Superpower Verification Report, at 10.
[153] See Superpower Final Analysis Memo.

100 percent of the taxes it had paid on profits made when it enjoyed EOE status.[154] The payment was not parsed into a 40 percent amount for FIE status and an extra 60 percent for EOE status. Likewise, the FIE tax law provides a separate provision stating that for EOEs the reimbursement shall be 100 percent, not an "extra" or "additional" 60 percent.[155] Thus, the Department determines that it is appropriate to view the entire amount of the reimbursement as an export subsidy.

Finally, the Department disagrees that a program-wide change is appropriate. In our view, the GOC misinterprets our regulations in this regard by implying that our analysis should be concerned solely with whether Superpower could receive any additional benefits. In fact, the relevant question is whether any producer or exporter of lawn groomers might have received additional benefits under this program after our preliminary determination (i.e., the beginning of the first review period).[156] According to our regulations: "The Secretary will not adjust the cash deposit rate . . . if {t}he Secretary determines that residual benefits may continue to be bestowed under the terminated program . . . ,"[157] and "{f}or purposes of this section, 'program-wide change' means a change that: (1) Is not limited to an individual firm or firms . . . ."[158]

At verification, however, the GOC was unable to demonstrate that there could be no residual benefits:

> We asked whether the GOC could demonstrate when the last rebate had actually been disbursed under the reinvestment program (i.e., when had the last check been issued). The Beijing {tax} officials stated there was no way to make such a demonstration. (We had previously asked {tax} officials in Jiashan whether there was a database maintained for such disbursements. The local officials stated there was not an electronic database, but there might be a paper log. They stated, however, that given the log would involve the confidential information of many companies not involved in the investigation, they could not provide us with the log.)[159]

Because the GOC was not able to establish at verification when the last benefits under this program were disbursed, the Department cannot determine whether producers or exporters of subject merchandise continued to receive benefits under this program after our preliminary determination.

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[154] See Superpower's October 8, 2008 Questionnaire Response, at Exhibits 9C and 9D.
[155] See Rules for the Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises (Promulgated on Order [1991] No. 85 of the State Council on June 30, 1991), at Article 81.
[156] This interpretation of our regulations is consistent with recent decisions in Citric Acid and Comment 6, above.
[157] 19 CFR 351.526(d)(1) (emphasis added).
[158] 19 CFR 351.526(b).
[159] GOC Verification Report, at 11.

Comment 8: Import Tariff and VAT Exemptions for Encouraged Industries Importing Equipment for Domestic Operations

The GOC contends that the Department should use the revised amounts of exempted duties and VAT that the GOC provided during verification,[160] which was also presented by Princeway as a minor correction at Princeway's verification.[161]

Department's Position:

We agree with the GOC. For the final determination, we will use the revised chart provided by Princeway of import duty and VAT exemption rates for imported equipment in the calculation of Princeway's benefits under this program.

Comment 9: Export Incentive Payments Characterized as "VAT Rebates"

In our interim analysis, we stated: "{T}he structure of the VAT export rebate system during the POI met the standard for non-countervailability in accordance with 19 CFR 351.517. However, in a future proceeding, we may consider whether it is appropriate to more fully examine these aspects of the PRC's VAT system to determine whether they may give rise to countervailable subsidies."

In response, the GOC argued that once the Department has made a finding that the VAT rebates provided by the GOC are not excessive, the requirements of 19 CFR 351.517(a) are met and the Department is required to determine that the VAT rebate is not a countervailable subsidy. They agreed with the Department's determination in the interim analysis to this effect and argued that the Department's finding is consistent with the Department's regulations, as well as with the SCM Agreement, Article (h) of Annex I. However, they argue that "{t}here is no basis under the WTO or under U.S. law for the Department to 'evaluate the PRC's VAT system outside the framework of 19 CFR 351.517,' as suggested in the Department's Post-Preliminary Determination."

Department's Position:

We maintain our position from the interim analysis with regard to this program. As noted in the interim analysis, notwithstanding the Department's preliminary findings, the Department continues to have several concerns with certain aspects of the PRC's VAT export rebate system. For example, while the rebate system does not favor export sales relative to domestic sales – in terms of VAT incidence – it does appear to favor some exporters over others. Further, these VAT rebate rates vary by product and between export and domestic sales. This raises serious concerns that these variable rebate rates are used as a policy tool for promoting the exports of certain enterprises or industries, in a manner that may not be trade-neutral. As such, in future proceedings the Department may consider whether it is appropriate to more fully examine these aspects of the PRC's VAT system to determine whether they give rise to countervailable subsidies.

[160] See GOC Verification Report, at 12 and Dongguan, Guangdong Province Verification Exhibit 1.
[161] See Princeway Verification Report, at 7 and Verification Exhibit 8.

Comment 10: Amortization of Startup Costs in the PRC Tax Law

According to the GOC, the Department should find the amortization of start-up costs in the tax law program non-countervailable in the final determination. Specifically, the GOC argues that sufficient information was provided to the Department to demonstrate that the two provisions governing the amortization of startup costs for FIEs and non-FIE enterprises were integrally linked, and thus applied to both FIEs and non-FIEs equally. Accordingly, they argue that the Department should find that this program is not specific, and therefore, not countervailable. Further, they argue that there is no need for the Department to continue its inquiry into this program in any further review.

Department's Position:

We maintain our position from the interim analysis and intend to defer a complete investigation of the amortization of start-up costs until the first administrative review, if a countervailing duty order is issued and such a review is requested, pursuant to 19 CFR 351.311. As noted in the interim analysis, before making a determination with regard to this program the Department would need to request and verify additional information regarding which specific expenses constitute startup costs, how the GOC monitors compliance with the provisions, and whether there exists any explicit official link between the FIE and domestic versions of this provision. Because the Department is deferring its determination with regard to this program, we do not believe it is necessary to address the GOC's arguments regarding specificity.

Comment 11: Calculation of the All Others Rate

The GOC claims that in the Department's Post-Preliminary Determination, the Department listed an "all others rate" for each of the additional programs for which the Department has made a post-preliminary countervailable subsidy finding. According to the GOC, the Department's listing of the all others rate makes it appear that the Department will include in the all others rate the entire subsidy rate found for one of the two mandatory respondents. The GOC argues that the statute requires that the Department, in the calculation of the all others rate, calculate a weighted average of the countervailable subsidy rates established for individually investigated respondents, and only exclude any zero rates, de minimis rates, and any rates determined entirely on the basis of facts available. The GOC contends that when the Department calculates the all others rate for the final determination, it should use its standard methodology of averaging the subsidy rates for the mandatory respondents.

Department's Position:

Sections 703(d) and 705(c)(5)(A) of the Act state that, for companies not investigated, we will determine an all others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States. However, the all others rate may not include zero and de minimis rates, or any rates based solely on the facts available. In this investigation, only Superpower's rate meets the criteria for the all

others rate. Therefore, for the final determination, and consistent with the Preliminary Determination,[162] we have assigned Superpower's rate to all other producers/exporters.

Comment 12: Whether to Clarify the Scope Language for Hitches

Petitioner requested that the Department address the scope issue raised by Brinly-Hardy Company, a domestic producer of the subject merchandise, and clarify the scope language concerning the definition of hitches as Brinly-Hardy Company previously requested.[163] Petitioner provided the following language to the scope language to clarify the description of a "hitch."

> 1) a hitch, defined as a complete hitch assembly comprising of at least the following two major hitch components, tubing and a hitch plate regardless of the absence of minor components such as pin or fasteners. Individual hitch component parts, such as tubing, hitch plates, pins or fasteners are not covered by the scope.

No other party commented.

Department's Position:

We agree with Petitioner and Brinly-Hardy Company that a clarification to the scope language concerning the definition of hitch is needed.[164] For the final determination, we have included the language as suggested by Petitioner in the language of the scope. For a complete listing of the final scope for this investigation, please see the accompanying Federal Register notice.

[162] See Preliminary Determination, 73 FR at 70980.
[163] See Antidumping Preliminary Determination, 74 FR at 4931.
[164] See Brinly-Hardy Company's December 30, 2008 Submission; see also Petitioner's January 12, 2009 Submission.

VII. Recommendation

Based on the results of verification and our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish this final determination in the Federal Register.

Agree_____ Disagree_____

_____
Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

_____
(Date)

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Full Name or Term
The Act	Tariff Act of 1930, as amended
AD	Antidumping Duty
AFA	Adverse Facts Available
AIC	Administration of Industry and Commerce
AUL	Average Useful Life
BPI	Business Proprietary Information
CAFC	U.S. Court of Appeals for the Federal Circuit
CFR	Code of Federal Regulations
CIT	U.S. Court of International Trade
CPI	Consumer Price Index
CRU	The Department's Central Records Unit (Room 1117 in the HCHB Building)
CVD	Countervailing Duty
Department	Department of Commerce
EOE	Export-oriented enterprise
FIE	Foreign-invested enterprise
GI	Governance Indicator
GNI	Gross National Income
GOC	Government of the People's Republic of China
IDM	Issues and Decision Memorandum
IMF	International Monetary Fund
Lawn groomers	Certain tow-behind lawn groomers and certain parts thereof from the People's Republic of China
LTAR	Less than Adequate Remuneration
NME	Non-market Economy
Petitioner	Agri-Fab, Inc.
PNTR	Permanent Normal Trade Relations
POI	Period of Investigation (i.e., calendar year 2007)
PRC	People's Republic of China
Princeway	Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited
RMB	Renminbi
SAA	Statement of Administrative Action
SEZ	Special Economic Zone
SOE	State-Owned Enterprise
Superpower	Jiashan Superpower Tools Co., Ltd.
S&P	Standard and Poor's
VAT	Value Added Tax
WTO	World Trade Organization
ZMIPOAMC	Zhangjiagang Municipal Industrial Public-Owned Asset Management Co., Ltd.

II. RESPONDENT SUBMISSIONS AND DEPARTMENT MEMORANDA

Short Cite	Full Name
GOC	
GOC Case Brief	Letter to the Secretary of Commerce, "Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Case Brief" (May 20, 2009)
Petitioner	
Petition	Letter to the Secretary of Commerce, "Petition for the Imposition of Countervailing Duties: Certain Tow Behind Lawn Groomers and Parts Thereof from the People's Republic of China" (June 24, 2008)
Department	
Georgetown Steel Memorandum	Memorandum to David M. Spooner, Assistant Secretary of Commerce, "Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China – Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy" (March 29, 2007)
GOC Verification Report	Memorandum to The File, "Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China (GOC)" (February 27, 2009)
Lined Paper Memorandum	Memorandum to David M. Spooner, Assistant Secretary for Import Administration, "Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China's Status as a Non-Market Economy" (August 30, 2006)
Phone Calls with GOC Counsel Memorandum	Memorandum to The File, "December 22, 23, and 24, 2008 Phone Calls with Counsel for the Government of the People's Republic of China (GOC) Regarding Verification" (December 30, 2008)
Post-Preliminary Determination	Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, "Countervailing Duty Investigation of Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China, Post-Preliminary Determination" (May 13, 2009)

Princeway Preliminary Calculation Memorandum	Memorandum to The File, "Preliminary Calculation Memorandum for Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited" (November 17, 2008)
Princeway Calculation Memorandum	Memorandum to The File, "Final Calculation Memorandum for Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited" (June 12, 2009)
Princeway Verification Report	Memorandum to Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, "Verification of the Questionnaire Responses Submitted by Princeway Furniture (Dong Guan) Co., Ltd., & Princeway Limited" (February 27, 2009)
Superpower Calculation Memorandum	Memorandum to The File, "Calculations for the Final Determination: Jiashan Superpower Tools Co., Ltd." (June 12, 2009)
Superpower Verification Report	Memorandum to Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, "Verification of the Questionnaire Responses Submitted by Jiashan Superpower Tools Co., Ltd." (February 27, 2009)

III. LITIGATION TABLE

Short Cite	Case Name
Borden v. United States	Borden, Inc. v. United States, 4 F. Supp. 2d 1221 (CIT 1998)
Chevron U.S.A. v. Natural Resources Defense Council	Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-45, 104 S.Ct. 2778 (1984)
Georgetown Steel v. United States	Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986)
GOC v. United States	Gov't of the People's Republic of China v. United States, 483 F. Supp. 2d 1274 (CIT 2007)
Usinor Sacilor v. United States	Usinor Sacilor v. United States, 893 F. Supp. 1112 (CIT 1995), rev'd in part, 215 F.3d 1350 (Fed. Cir. 1999)
U.S. Steel Group v. United States	U.S. Steel Group v. United States, 15 F.Supp. 2d 900 (CIT 1998)
Rhone Poulenc v. United States	Rhone Poulenc, Inc. v. United States, 899 F.2d 1185 (Fed. Cir. 1990)
Wheatland Tube v. United States	Wheatland Tube Co. v. United States, 495 F.3d 1355 (Fed. Cir. 2007)

IV. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

Note: if "certain" is in the title of the case, it has been excluded from the title listing.

Short Cite	Administrative Case Determination
	CVD Preamble
CVD Preamble	Countervailing Duties; Final Rule, 63 FR 65348 (November 25, 1998)
	Carbon Steel Wire Rod – Czechoslovakia
Wire Rod from Czechoslovakia	Carbon Steel Wire Rod from Czechoslovakia: Final Negative Countervailing Duty Determination, 49 FR 19370 (May 7, 1984)
	Carbon Steel Wire Rod – Poland
Wire Rod from Poland	Carbon Steel Wire Rod from Poland: Final Negative Countervailing Duty Determination, 49 FR 19374 (May 7, 1984)
	Circular Welded Austenitic Stainless Pressure Pipe -PRC
CWASPP from the PRC Preliminary Determination	Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 73 FR 39657 (July 10, 2008)
CWASPP from the PRC	Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 74 FR 4936 (January 28, 2009)
	Circular Welded Carbon Quality Steel Pipe – PRC
CWLP from the PRC	Circular Welded Carbon Quality Steel Line Pipe: Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008)
CWP from the PRC	Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008)

	Citric Acid and Certain Citrate Salts – PRC
Citric Acid from the PRC	Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 16836 (April 13, 2009)
	Coated Free Sheet Paper – Indonesia
CFS from Indonesia	Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination, 72 FR 60642 (October 25, 2007)
	Coated Free Sheet Paper – PRC
CFS from the PRC	Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007)
CFS from the PRC – AD	Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007)
	Flowers – Mexico
Flowers from Mexico	Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996)
	Laminated Woven Sacks – PRC
LWS from the PRC	Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008)
	Lawn Groomers – PRC
Preliminary Determination	Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 73 FR 70971 (November 24, 2008)
Antidumping Preliminary Determination	Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 74 FR 4929 (January 28, 2009)

	Light-Walled Rectangular Pipe and Tube – PRC
LWRP from the PRC Preliminary	Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 72 FR 67703 (November 30, 2007)
LWRP from the PRC	Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008)
	Lightweight Thermal Paper – PRC
LWTP from the PRC	Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008)
LWTP from the PRC - Amended Final	Lightweight Thermal Paper from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 73 FR 70959 (November 24, 2008)
	Off-Road Tires – PRC
OTR Tires from the PRC Preliminary	Certain New Pneumatic Off-The-Road Tires From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 9278 (February 20, 2008)
OTR Tires from the PRC	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 13850 (March 14, 2008)
	Sodium Nitrite – PRC
Sodium Nitrite from the PRC	Sodium Nitrite From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 38981 (July 8, 2008)

	Softwood Lumber Products – Canada
Softwood Lumber from Canada Investigation	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 from Canada – Amended	Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada, 67 FR 36070 (May 22, 2002)
Softwood Lumber From Canada 1st AR and Rescission of Certain Company-Specific Reviews	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)
	Stainless Steel Wire Rod – Korea
Stainless Steel Wire Rod from Korea	Stainless Steel Wire Rod from the Republic of Korea: Final Results of Administrative Antidumping Review, 69 FR 19153 (April 12, 2004)
	Uranium - France
Low Enriched Uranium from France	Notice of Final Results of First Antidumping Administrative Review: Low Enriched Uranium From France, 69 FR 46501 (August 3, 2004)

V. MISCELLANEOUS TABLE (REGULATORY, STATUTORY, ARTICLES, ETC.)

Short Cite	Full Name
Accession Protocol	Protocol on the Accession of the People's Republic of China to the World Trade Organization, WT/L/432, art. 15(b) (November 23, 2001) (available at www.wto.org)
FIE Tax Law	Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (April 9, 1991) (provided in the GOC's October 8, 2008 Submission, at Exhibit O-II.A.1)
FIE Tax Rules	Rules for the Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises (Promulgated on Order [1991] No. 85 of the State Council on June 30, 1991) (provided in the GOC's October 8, 2008 Submission, at Exhibit O-II.A.2)
SCM Agreement	Agreement on Subsidies and Countervailing Measures, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts 264 (1994)