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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

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China

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Background

On January 7, 2009, the Department published the Preliminary Determination of this investigation.[1] 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. We have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which also contains the Department's responses to the issues raised in the briefs. 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 and rebuttal comments from parties:

General Issues

Comment 1 Application of CVD Law to a Country the Department treats as an NME in a Parallel AD Investigation
Comment 2 Double Counting/Overlapping Remedies
Comment 3 Proposed Cutoff Date for Identifying Subsidies

Program Specific Issues

Comment 4 Certain Wire Rod Suppliers as Authorities
Comment 5 Wire Rod Provided by Private Suppliers
Comment 6 Wire Rod Provided by Trading Companies

[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.

Comment 7 Application of Adverse Facts Available for Wire Rod Production Data
Comment 8 Benchmarks for Wire Rod
Comment 9 Adding the Cost of Insurance to the Wire Rod Benchmark Value
Comment 10 Tying the Wire Rod Subsidy
Comment 11 Provision of Electricity for LTAR
Comment 12 FIE Tax Programs - Whether FIE Tax Programs are Specific

The Appendix provides several reference tables listing: (i) acronyms and abbreviations of terms; (ii) acronyms or short cites for responses and department memorandum, and (iii) short cites for court and agency decisions.

Use of Facts Otherwise Available and Adverse Facts Available

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

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.[2]

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 complete and accurate information in a timely manner."[3] 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."[4] 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."[5]

[2] See e.g., Pistachios from Iran I&D Memo, at "Analysis of Programs" and Comment 1.
[3] See Semiconductors From Taiwan - AD, 63 FR at 8932.
[4] See SAA at 870.
[5] See Rhone Poulenc, 899 F.2d at 1190.

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."[6] The Department considers information to be corroborated if it has probative value.[7] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[8]

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, where the information being used is previously calculated CVD rates, we note that because these rates were calculated in prior final CVD determinations we consider that such rates satisfy the reliability aspect of corroboration. 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.[9]

Non-Cooperative Companies

In the instant investigation, the following five companies provided no response to the Department's "quantity and value" questionnaire issued during the respondent selection process: Changzhou Yixiong Metal Products Co., Ltd.; Foshan Winleader Metal Products Co., Ltd.; Kingsun Enterprises Group Co, Ltd.; Zhongshan Iwatani Co., Ltd.; and Yuyao Hanjun Metal Work Co./Yuyao Hanjun Metal Products Co., Ltd. (collectively, "non-cooperative Q&V companies"). We attempted to solicit quantity and value information from these companies, and confirmed delivery of our questionnaires through Federal Express. In our attempt, we warned that "{f}ailure to respond to this questionnaire may result in the Department determining that your company has decided not to participate in this proceeding and that your company has not cooperated to the best of its ability. As a consequence, the Department would consider applying facts available with an adverse inference in accordance with section 776(b) of the Tariff Act of 1930." See Letters to Changzhou Yixiong Metal Products Co., Ltd., et al., from Susan H. Kuhbach, Director, AD/CVD Operations, Office 1, "Quantity and Value Questionnaire for the Countervailing Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the

[6] See SAA at 870.
[7] Id. at 870.
[8] Id. at 869.
[9] See e.g., Flowers from Mexico.

People's Republic of the PRC" (August 21, 2008). See Respondent Selection Memorandum for the details of our attempts to solicit information from the 12 producers and exporters identified in the petition.

The five non-cooperative Q&V companies withheld requested information and significantly impeded this proceeding. Specifically, by not responding to requests for information concerning the quantity and value of their sales, they impeded the Department's ability to select the most appropriate respondents in this investigation. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD rate for the non-cooperative Q&V companies on facts otherwise available.

We further determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to the Department's quantity and value questionnaires, these companies did not cooperate to the best of their ability in this investigation. Accordingly, we find that an adverse inference is warranted to ensure that the non-cooperative Q&V companies will not obtain a more favorable result than had they fully complied with our request for information.

Asber

Asber was selected as a mandatory respondent. Asber, however, did not provide the requested information that is necessary to determine a CVD rate and significantly impeded this proceeding. Specifically, Asber did not respond to the Department's October 7, 2008 CVD questionnaire. On October 23, 2008, counsel for Asber notified the Department that Asber would not participate in the investigation. Thus, pursuant to section 776(a)(2)(A) and (C) of the Act, we are basing the CVD rate for Asber on facts otherwise available.

We further determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit a response to the Department's initial questionnaire, and refusing to participate in the investigation, Asber did not cooperate to the best of its ability in this investigation. Accordingly, we find that an adverse inference is warranted to ensure that Asber will not obtain a more favorable result than had it fully complied with our request for information.

It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding. See, e.g., LWS from the PRC, and the accompanying I&D Memo at "Selection of the Adverse Facts Available." In previous CVD investigations into products from the PRC, we have adapted this practice to use the highest rate calculated for the same or similar programs in other PRC CVD investigations. Id. Consistent with the Department's recent practice, we are computing a total AFA rate for the non-cooperative companies, including Asber, generally using program-specific rates determined for the cooperating respondent or past cases. Specifically, for programs other than those involving income tax exemptions and reductions, we will apply the highest calculated rate for the identical program in this investigation if a responding company used the identical program. If there is no identical program match within the investigation, we will use 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 will apply the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperative companies. See, e.g., LWTP from the PRC I&D Memo at "Selection of the Adverse Facts Available Rate."

Further, where the GOC can demonstrate through complete, verifiable, positive evidence that non-cooperative companies (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department does not intend to include those provincial programs in determining the countervailable subsidy rate for the non-cooperative companies, including Asber. See Lawn Groomers from the PRC, and the accompanying Initiation Checklist. In this investigation, the GOC has not provided any such information. Therefore, the Department makes the adverse inference that the non-cooperative Q&V companies had facilities and/or cross-owned affiliates that received subsidies under all of the sub-national programs alleged prior to the selection of mandatory respondents. With respect to the provincial or local programs alleged after respondent selection, we only assigned adverse rates to those mandatory respondents that Petitioners alleged were located in the respective province or locality. See LWTP from the PRC I&D Memo at 2-3. Consequently, in this case, we will include the following seven new subsidy programs in the calculation of Asber's rate: "Preferential Land-Use Charges for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones," "Reduction of Land Price at the Township Level for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones," "Reduction in Urban Infrastructure Fee for Industrial Enterprises in Industrial Zones," "Income Tax Rebate for 'Superior Industrial Enterprises' in Zhongshan," "Accelerated Depreciation for New Technological Transformation Projects, 'Superior Industrial Enterprises' in Zhongshan," " Exemption from the Tax on Investments in Fixed Assets for 'Superior Industrial Enterprises' in Zhongshan'" and "Government Provision of Electricity for Less than Adequate Remuneration."

The GOC

On May 8, 2009, the Department issued a preliminary analysis of the electricity sector in the PRC. See Electricity Post-Prelim. The Department subsequently attempted to verify the information submitted by the respondent company and the GOC upon which the preliminary analysis had been based. However, actions by the GOC prevented the Department from verifying the GOC's questionnaire responses. Specifically, at the national government verification, the verifiers requested copies of the electricity price proposals of six provinces for the 2006 and 2008 price adjustments. These six provinces were Guangdong, Hubei, Shandong, Liaoning, Shanxi, and Ganshu. The verifiers requested that the proposals for Guangdong, Hubei, and Shandong be placed on record, and that the GOC allow verifiers to review the proposals for Liaoning, Shanxi, and Ganshu. The GOC allowed verifiers to review the proposals for Guangdong, Hubei, and Shandong , but refused to allow them to be put on the record. The GOC failed to provide the proposals for Liaoning, Shanxi, and Ganshu. The Department noted that proposals for Guangdong, Hubei, and Shandong were requested in the second supplemental questionnaire for electricity and should have been submitted in the GOC's questionnaire response. During verification in their provinces, Guangdong and Hubei provincial price bureaus also refused to allow the Department to take their 2006 and 2008 price proposals as exhibits.

The NDRC also failed to demonstrate how the publicly available information on coal prices and

other factors related to electricity cost are used by the agency. The NDRC failed to provide documents leading up to the 2006 final approved price adjustments. During the verification, the NDRC provided inconsistent accounts about the availability of any documents leading up to the final approved price adjustments, including statements that these documents did not exist, these documents were confidential, and that these were internal documents that were not archived. The GOC also failed to disclose in its responses that the 2008 electricity price adjustment process started from an NDRC-determined national average price adjustment, and the GOC did not provide any supporting documents for this national average price adjustment. At the verification of the Guangdong price bureau, the price bureau did not provide the exact documentation to allow the calculation of the coal price used in the 2006 price proposal. The price bureau also failed to provide supporting data for the parameters used to convert freight rate changes into corresponding coal price changes.

Section 776(a)(2)(D) of the Act states that the Department shall use the facts otherwise available in reaching a determination if an interested party provides information that cannot be verified as provided by section 782(i) of the Act. In addition, section 776(a)(2)(A) of the Act states that the Department shall use facts available when a party withholds information that has been requested by the Department. Further, section 776(b) of the Act states that if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. As summarized above and discussed more fully in the verification report, the Department was not able to verify, e.g., the GOC's questionnaire responses regarding the process for setting electricity rates and the relation of those rates to the electricity generation costs. See Electricity Verification Report. Moreover, we find that the GOC did not act to the best of its ability because it failed to provide requested documents, provided inconsistent responses, and it did not disclose in its questionnaire responses that the electricity price adjustment process started from an NDRC-determined national price adjustment. In misrepresenting this information, the GOC did not provide the Department with "full and complete answers." Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC and determine that the GOC is providing a financial contribution that is specific. See section 771(5A)(D)(iv) of the Act. See infra Comment 11.

Foreign-Invested Enterprise (FIE) Income Tax Rate Reduction and Exemption Programs

For the four income tax rate reduction or exemption programs,[10] we have applied an adverse inference that the non-cooperative Q&V companies and Asber paid no income taxes during the POI. The standard income tax rate for corporations in the PRC is 30 percent, plus a three percent provincial income tax rate. Therefore, the highest possible benefit for all income tax reduction or exemption programs combined is 33 percent, and we are applying a countervailing duty rate of 33 percent on an overall basis for these four income tax programs (i.e., these four income tax programs combined to provide a countervailable benefit of 33 percent).

[10] "Two Free, Three Half" Program; Income Tax Reductions for FIEs based on Geographic Location; Income Tax Reduction for Export-Oriented FIEs; and Local Income Tax Exemption or Reduction Program for "Productive" FIEs.

Income Tax Credits and Rebates and Accelerated Depreciation

The 33 percent AFA rate as described above does not apply to the six income tax credit and rebate or accelerated depreciation programs because such programs may not affect the tax rate and, hence, the subsidy conferred in the current year. Wire King did not use the "Income Tax Credits for Purchases of Domestically Produced Equipment by FIEs," "Income Tax Refund for Reinvestment of Profits in Export-oriented Enterprises," "Preferential Tax Subsidies for Research and Development at FIEs," "Income Tax Credits for Purchases of Domestically Produced Equipment by Domestically Owned Companies," "Income Tax Rebate for 'Superior Industrial Enterprises' in Zhongshan,"[11] or "Accelerated Depreciation for New Technological Transformation Projects 'Superior Industrial Enterprises' in Zhongshan"[12] programs, nor have we found greater than de minimis benefits for these direct tax programs in other CVD proceedings. Therefore, consistent with the Preliminary Determination, we have determined to use the highest non-de minimis rate for any indirect tax program from a PRC CVD investigation. The rate we selected is 1.51 percent, which was the rate calculated for respondent Gold East Paper (Jiangsu) Co., Ltd (GE) for the "Value-added Tax and Tariff Exemptions on Imported Equipment," program. See CFS from the PRC.

Indirect Tax and VAT/Tariff Reductions and Exemptions

For "Exemption from City Construction Tax and Education Tax for FIEs in Guangdong Province," we are assigning a rate of 0.03 percent, which is the rate determined for respondent Wire King in this investigation. For the remaining indirect tax and VAT/Tariff Reduction programs, which Wire King did not use, we are applying the 1.51 percent rate calculated from respondent GE's "Value-added Tax and Tariff Exemptions on Imported Equipment" program. See CFS from the PRC, 72 FR 60645. These remaining indirect tax and VAT/Tariff Reduction programs are: "Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax," "Exemption from Real Estate Tax and Dyke Maintaining Fee for FIEs in Guangdong Province," "Reduction in Urban Infrastructure Fee for Industrial Enterprises in Industrial Zones,"[13] "Exemption from the Tax on Investments in Fixed Assets for 'Superior Industrial Enterprises' in Zhongshan,"[14] "Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries," "VAT Rebates for FIEs Purchasing Domestically-Produced Equipment," "Import Tariff Exemption for the "Encouragement of Investment by Taiwanese Compatriots," "Import Tariff Refunds and Exemptions for FIEs in Guangdong," and "Import Tariff and VAT Refunds and Exemptions for FIEs in Zhejiang."

Loans

For the "Preferential Loans and Interest Rate Subsidies in Guangdong Province" loan program, consistent with the Preliminary Determination, we have determined to apply the highest non-de minimis subsidy rate for any loan program in a prior PRC CVD investigation. The rate was 8.31

[11] As noted above, this program is only included in Asber's AFA rate.
[12] Id.
[13] Id.
[14] Id.

percent for the "Government Policy Lending Program," from Amended LWTP from the PRC.

Grants

Wire King did not use the "Funds for 'Outward Expansion' of Industries in Guangdong Province," "Direct Grants - Guangdong," and "Grants to Promote Exports from Zhejiang Province" programs. The Department has not calculated any above de minimis rates for any of these programs in prior investigations, and, moreover, all previously calculated rates for grant programs from prior PRC CVD investigations have been de minimis. Therefore, for each of these programs, we have determined to use the highest calculated subsidy rate for any program otherwise listed, which could have been used by the non-cooperative Q&V companies or Asber. This rate was 13.36 percent for the "Government Provision of Land for Less Than Adequate Remuneration," program from LWS from the PRC and LWS from the PRC I&D Memo at 14-18.

Provision of Goods and Services at LTAR Programs

Finally, for the "Provision of Wire Rod for LTAR by the GOC" and "Government Provision of Electricity for LTAR," we are using the rate calculated for respondent Wire King. For "Land-Related Subsidies to Companies Located in Specific Regions of Guangdong," "Preferential Land-Use Charges for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones,"[15] "Reduction of Land Price at the Township Level for Newly-Established Industrial Projects in Zhongshan's Industrial Zones,"[16] and "Land-Related Subsidies to Companies Located in Specific Regions of Zhejiang," programs, we have used the highest calculated rate for a land LTAR program from a previous PRC CVD investigation. This rate was 13.36 percent for the "Government Provision of Land for Less Than Adequate Remuneration," program from LWS from the PRC. Id. For the "Provision of Nickel for Less than Adequate Remuneration by the GOC," consistent with the Preliminary Determination, we have determined to use the highest non-de minimis rate calculated for a provision of goods or services at LTAR program from which the non-cooperative respondents and Asber could have benefitted. This rate was 13.36 percent for the "Government Provision of Land for Less Than Adequate Remuneration," program from LWS from the PRC. Id.

For further explanation of the derivation of the AFA rates, see AFA Calc Memo.

With regard to the reliability aspect of corroboration, we note that these rates were calculated in recent prior final CVD determinations. Further, the calculated rates were based upon verified information about the same or similar programs. Moreover, no information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Finally, 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.

[15] As noted above, this program is only included in Asber's AFA rate.
[16] As noted above, this program is only included in Asber's AFA rate.

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. See Flowers from Mexico.

In the absence of record evidence concerning these programs due to the non-cooperative Q&V companies and Asber's decisions not to participate in the investigation, the Department has reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs of this case. For the programs for which there is no program-type match, the Department has selected the highest calculated subsidy rate for any PRC program from which the non-cooperative Q&V companies and Asber could receive a benefit to use as AFA. The relevance of these rates is that they are actual calculated CVD rates for PRC programs from which the non-cooperative Q&V companies and Asber could actually receive a benefit. Further, these rates were calculated for periods close to, and overlapping with, the POI in the instant case. Moreover, these companies' failure to respond to requests for information has "resulted in an egregious lack of evidence on the record to suggest an alternative rate." Shanghai, 360 F. Supp. 2d at 1348. Due to the lack of participation by the non-cooperative Q&V companies and Asber, and the resulting lack of record information concerning these programs the Department has corroborated the rates it selected to the extent practicable.

On this basis, we determine that the AFA countervailable subsidy rate for Asber is 170.82 percent ad valorem. We determine that the AFA countervailable subsidy rate for the non-cooperative Q&V companies is 149.91 percent ad valorem. See AFA Calc Memo.

Application of "All Others" Rate to Companies Not Selected as Mandatory Respondents

In addition to Wire King and Asber, the Department received responses to its quantity and value questionnaire from the following five companies: Hangzhou Dunli Import & Export Co., Jiangsu Weixi Group Co., Leader Metal Industry Co. Ltd., Meizhigao Co.,[17] and New King Shan, Zhuhai. See Respondent Selection Memorandum. While these five companies were not chosen as mandatory respondents, because they cooperated fully with the Department's request for quantity and value information regarding their sales, we are applying the all others rate to them.

Subsidies Valuation Information

Allocation Period

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 12 years according

[17] Meizhigao Co. reported that it did not have shipments of the subject merchandise to the United States during the POI, except for one sample sale.

to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. See U.S. Internal Revenue Service Publication 946 (2007), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods. No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if: (1) cross-ownership exists between the companies; and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard. See CVD Preamble. According to the CVD Preamble, relationships captured by the cross-ownership definition include those where

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits). . .Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[18]

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The CIT has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. See Fabrique.

For the Preliminary Determination, Wire King responded on behalf of itself, a Hong Kong-owned foreign invested enterprise. In its questionnaire responses, Wire King identified several

[18] See CVD Preamble, 63 FR at 65401.

affiliated companies and claimed that these affiliates did not produce the subject merchandise and did not provide inputs to Wire King during the POI. In the Preliminary Determination, we stated that we would seek further information from Wire King regarding certain affiliates that might provide an input to Wire King or otherwise fall within the situations described in 19 CFR 351.525(b)(6)(iii)-(v).

Based on our further analysis, we determine that these affiliates did not receive any subsidies or did not meet the conditions established in 19 CFR 351.525(b)(6)(iii)-(v) for attributing their subsidies to Wire King. See "Calculations for the Final Determination for Guangdong Wireking Housewares & Hardware Co., Ltd." dated July 20, 2009, for further discussion of these affiliates.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. **Programs Determined To Be Countervailable**

A. Income Tax Reduction for FIEs Based on Geographic Location

To promote economic development and attract foreign investment, "productive" FIEs located in coastal economic zones, special economic zones or economic and technical development zones in the PRC receive preferential tax rates of 15 percent or 24 percent, depending on the zone, under Article 7 of the *Foreign Investment Enterprise Tax Law ("FIE Tax Law").* See GQR, at Exhibit 4. This program was created June 15, 1988, pursuant to the *Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Development Zone* issued by the Ministry of Finance. See GQR, at Exhibit 11. The March 18, 1988, *Circular of State Council on Enlargement of Economic Areas* enlarged the scope of the coastal economic areas and the July 1, 1991, *FIE Tax Law* continued this policy. See GQR, at Exhibit 4.

The Department has previously found this program to be countervailable. See CFS from the PRC, LWTP from the PRC, and OTR Tires from the PRC I&D Memo.

Wire King is located in a coastal economic development zone and was subject to the reduced income tax rate of 24 percent for the tax return filed during the POI.

Consistent with the Preliminary Determination, we find that that the reduced income tax rate paid by productive FIEs under this program confers a countervailable subsidy. The reduced rate 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 tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine that the reduction 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 Wire King's income tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the company's total sales during that period. To compute the amount of the tax savings, we compared the income tax rate Wire King would have paid in the absence of the program (30 percent) with the rate it paid (24 percent).

On this basis, we determine that Wire King received a countervailable subsidy of 0.30 percent ad valorem under this program.

B. Income Tax Reduction for Export-Oriented FIEs

Article 75(7) of the *Detailed Rules for Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* and the *FIE Tax Law* authorize export-oriented FIEs to reduce their income tax to half the national income tax rate. See GQR at 6. Export-oriented FIEs are defined as FIEs with export product sales that exceed 70 percent of their total sales value.

Wire King qualified for this benefit and paid a reduced income tax rate of 12 percent for the tax return filed during the POI. See WKQR at 10.

Consistent with the Preliminary Determination, we find that the reduction in the income tax paid by export-oriented FIEs under this program confers a countervailable subsidy. The reduction is a financial contribution in the form of revenue forgone by the government and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine that the exemption/reduction afforded by this program is contingent as a matter of law on export performance and, hence, is specific under section 771(5A)(B) of the Act.

To calculate the benefit, we treated Wire King's income tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the export sales of Wire King during that period. To compute the amount of the tax savings, we compared the rate Wire King would have paid in the absence of the program (24 percent) with the rate the company paid (12 percent). On this basis, we determine the countervailable subsidy attributable to Wire King to be 0.94 percent ad valorem under this program.

C. Local Income Tax Exemption or Reduction for "Productive" FIEs

Under Article 9 of the *FIE Tax Law*, the provincial governments have the authority to grant an exemption or reduction in local income taxes to FIEs. See GQR at 36. The GOC states that, according to the "Equity Joint Venture Tax Law," the local income tax rate is set at ten percent of the enterprise income tax rate, which was 30 percent during the POI. According to the GOC, the Guangdong People's Government published its own *Rules on Exemption and Reduction of Local Income Tax for Foreign Invested Enterprises*. Id. Under Article 5 of these rules, productive and/or export-oriented FIEs that were eligible to pay income tax at half the normal rate shall also be exempted from the local income tax during the same period.

Wire King reported being exempted from local income tax on the tax return filed during the POI. See WKQR at 15.

Consistent with the Preliminary Determination, we find that the exemption from the local income tax for FIEs under this program confers a countervailable subsidy. The exemption is a financial contribution in the form of revenue forgone by the government and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemption afforded by this program is contingent as a matter of law on export performance and, hence, is specific under section 771(5A)(B) of the Act.

To calculate the benefit, we treated Wire King's income tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the export sales of Wire King during that period. To compute the amount of the tax savings, we compared the rate Wire King would have paid in the absence of the program (three percent) with the rate the company paid (zero). On this basis, we determine the countervailable subsidy attributable to Wire King to be 0.23 percent ad valorem under this program.

D. Exemption from City Construction Tax and Education Tax for FIEs in Guangdong Province

Pursuant to the *Circular on Temporarily Not Collecting City Maintenance and Construction Tax and Education Fee Surcharge for FIEs and Foreign Enterprises* (GUOSHUIFA {1994} No.38), the local tax authorities exempt all FIEs and foreign enterprises from the city maintenance and construction tax and the education fee surcharge. See GQR, at Exhibit 23. The city maintenance and construction tax is normally seven percent of a company's VAT payable, while the education fee surcharge is normally three percent of a company's VAT payable. See GQR, at Exhibits 21 and 22; see also, G1SR at 8-9.

Wire King reported that it was exempted from the city construction tax and educational surcharges during the POI. See WKQR at 16.

Consistent with the Preliminary Determination, we find that the exemptions from the city construction tax and education surcharge under this program confer a countervailable subsidy. The exemptions are financial contributions in the form of revenue forgone by the government and provide a benefit to the recipient in the amount of the savings. See 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, FIEs and, hence, specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated Wire King's tax exemptions as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the total sales of Wire King during that period. To compute the amount of the city construction tax savings, we compared the rate Wire King would have paid in the absence of the program (seven percent of its VAT payable during the POI) with the rate the company paid (zero). See WKQR at 16. To compute the amount of the savings from the educational surcharge exemption,

we compared the rate Wire King would have paid in the absence of the program (three percent of VAT payable during the POI) with the rate the company paid (zero). Id. On this basis, we determine the countervailable subsidy attributable to Wire King to be 0.03 percent ad valorem under this program.

E. Provision of Wire Rod for Less Than Adequate Remuneration

Wire King reported that it obtained its wire rod primarily from trading companies and it provided the names of the trading companies, as well as the names of the trading companies' suppliers, and the monthly amounts purchased during the POI. In CWP from the PRC, the Department determined that when a respondent purchases an input from a trading company, a subsidy is conferred if the producer of the input is an "authority" within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input is less than adequate remuneration. See CWP Decision Memorandum at 10. Moreover, in Tires from the PRC, the Department determined that majority government ownership of a producer is sufficient to qualify it as an "authority." See Tires Decision Memorandum at 10. Based on the record in the instant investigation, we determine that certain wire rod producers that supply Wire King and that are majority-government owned are "authorities." We further determine that other wire rod producers that supply Wire King, although not majority-owned by the GOC, are nevertheless controlled by the GOC. Thus, we are also treating these companies as "authorities." As a result, we determine that wire rod supplied by these companies is a financial contribution to Wire King in the form of a governmental provision of a good and that Wire King received a subsidy to the extent that the price it paid for wire rod produced by these suppliers was LTAR.

The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in Softwood Lumber from Canada Investigation, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. See Softwood Lumber from Canada Investigation and accompanying I&D Memo at 36.

Beginning with tier one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the CVD Preamble: "Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy." See CVD Preamble. The CVD Preamble further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

The GOC has reported that SOEs accounted for approximately 46.12 percent of the wire rod

production in the PRC during the POI. The GOC further reported that 1.85 percent of wire rod producers were classified as "collectives." In the final determination of LWRP from the PRC, the Department affirmed its decision to treat collectives as government authorities.[19] Therefore, we find that the GOC has direct ownership or control of at least 47.97 percent of wire rod production. While this is not a majority of the production, the substantial market share held by the SOEs shows that the government plays a predominant role in this market. The government's predominant position is further shown by the low level of imports, which accounted for only 1.53 percent of the volume of wire rod available in the Chinese market during the POI. We further note that the GOC's reported share of 46.12 percent may understate the actual amount because of the manner in which FIE production was treated. Specifically, in reporting the share of PRC wire rod production accounted for by FIEs, the GOC defined FIEs as firms having 25 percent or more foreign investment ownership. Thus, firms with GOC majority ownership may have been reported by the GOC as FIEs.

In addition to the government's predominant role in the market, we find that the 10 percent export tariff and export licensing requirement instituted during the POI contributed to the distortion of the domestic market in the PRC for wire rod. Such export restraints can discourage exports and increase the supply of wire rod in the domestic market, with the result that domestic prices are lower than they otherwise would be.

As noted above, imports of wire rod accounted for 1.53 percent of the volume of wire rod available in the Chinese market during the POI. Because the share of imports of wire rod into the PRC is small relative to Chinese domestic production of wire rod, we are not using these import values to calculate a benchmark. This is consistent with the Department's approach in LWRP from the PRC I&D Memo at Comment 7.

Consequently, we determine that there are no tier one benchmark prices and have turned to tier two, i.e., world market prices available to purchasers in the PRC. Petitioners have put on the record data from the SBB which includes monthly prices for mesh wire rod in North America and Europe. See Exhibit 82 of Petitioners' July 31, 2008, petition. Wire King submitted monthly prices for mesh wire rod in Asia from two sources: SBB and MEPS. In researching this data, the Department also placed on the record world market prices from MEPS. See Memorandum to the File, "Information Re: World Market Prices on Record" (December 22, 2008).

We determine that data from both SBB and MEPS should be used to derive a world market price for wire rod that would be available to purchasers of wire rod in the PRC. We note that the Department has relied on pricing data from industry publications such as SBB and MEPs in recent CVD proceedings involving the PRC. See CWP from the PRC I&D Memo at 11 and LWRP from the PRC I&D Memo at 9. Also, 19 CFR 351.511(a)(2)(ii), states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, we first derived a world market SBB price by averaging the monthly prices for the North America, Europe and Asia from SSB and then

[19] See LWRP from the PRC, and accompanying Memorandum to the Final Determination, "Analysis Concerning Authorities" dated July 20, 2009 at 2.

averaged that result with the MEPS world market price.

The prices for wire rod in SBB and MEPS are expressed in USD per ST. Therefore, to determine what price would constitute adequate remuneration, we first converted the benchmark prices from U.S. dollars to RMB using USD to RMB exchange rates, as reported by the Federal Reserve Statistical Release.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we have included the freight costs that would be incurred in shipping wire rod from North America, Europe and Asia. We have also added import duties, as reported by the GOC, and the VAT applicable to imports of wire rod into the PRC.

Comparing the benchmark unit prices to the unit prices paid by Wire King for wire rod, we determine that wire rod was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. See 19 CFR 351.511(a).

Finally, with respect to specificity, the GOC has provided information on end uses for wire rod. See GQR at Exhibit 17. The GOC stated that the end uses would relate to the type of industry involved as a direct purchaser of the input. See GQR at Exhibit 33. While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. See section 771(5A)(D)(iii)(I) of the Act. See also LWRP from the PRC I&D Memo at Comment 7.

Therefore, we determine that a countervailable subsidy was conferred on Wire King through the GOC's provision of wire rod for LTAR. To calculate the subsidy, we took the difference between the delivered world market price and what Wire King paid for wire rod produced by the GOC during the POI. See 19 CFR 351.524(c). We divided this by Wire King's total sales during the POI. On this basis, we calculated a net countervailable subsidy rate of 11.76 percent ad valorem for Wire King.

The GOC and Wire King provided comments arguing that: (1) SOE producers are not authorities within the meaning of the statute; (2) the Department should not countervail wire rod provided by private suppliers; (3) the Department cannot countervail wire rod provided by trading companies; and (4) the Department's decision to use tier two benchmarks is unsupported and unlawful. Petitioners provided comments arguing that: (1) the Department should reject the reported share of SOE production of wire rod and resort to AFA; (2) the Department should not include Asia price data in the wire rod benchmark; (3) the Department should add the cost of insurance to the wire rod benchmark; and (4) that the wire rod subsidy is tied to products produced using wire rod and the Department should allocate the subsidy accordingly. We have addressed these arguments in the Department's Positions for Comments 4-10.

F. Government Provision of Electricity for Less than Adequate Remuneration[20]

For the reasons explained, supra, at "Use of Facts Otherwise Available and Adverse Facts Available," we are basing our determination regarding the government's provision of electricity programs in part on AFA. Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. In a CVD case, the Department requires information from both the government of the country whose merchandise is under the order and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. See, e.g., Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 11397, 11399 (March 7, 2006) ("Preliminary Results of CTL Plate from Korea") (unchanged in the Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 38861 (July 10, 2006) ("CTL Plate from Korea"), in which the Department relied on adverse inferences in determining that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of sections 771(5)(D)(i) and 771(5A)(D)(iii) of the Act, respectively). However, where possible, the Department will normally rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable.

Consistent with this past practice, because the GOC failed to provide information concerning the Provision of Electricity for Less than Adequate Remuneration program, the Department, as AFA, determines that the program confers a financial contribution and is specific pursuant to sections 771(5)(D) and 771(5A) of the Act, respectively.

To determine the existence and amount of any benefit from this program, we compared the rate paid by Wire King for its electricity to the highest rate charged to large industrial users in the PRC. We have selected this benchmark, based on an adverse inference because the GOC's failures at verification precluded the Department from making a more accurate assessment of what would constitute adequate remuneration for electricity within the rate category applicable to Wire King. We have relied on Wire King's reported information for this benefit calculation, however, to the extent that we have selected a benchmark rate from within the "large industrial user" category and not from within the "commercial user" category (for which there was a higher rate). Based on this comparison, we find that Wire King received a countervailable benefit.

[20] The Department initiated an investigation into several different allegations that companies located within industrial cluster zones in Shunde District pay preferential rates for electricity and that FIEs in Shunde District receive electricity discounts. The Department also pursued an analysis more generally in this investigation of the electricity rate-setting authority in the PRC and the considerations that go into setting those rates. See Electricity Post-Prelim. Consistent with our approach in relying on the facts available for determining a program rate for the four income tax rate reduction or exemption programs discussed in footnote 10 above for the non-responsive Q&V companies, for purposes of this proceeding we are collapsing all of the electricity-related programs under investigation into a single subsidy rate calculation based on the facts available.

Therefore, we determine that a countervailable subsidy was conferred on Wire King through the GOC's provision of electricity for LTAR. To calculate the benefit, we computed the amounts that Wire King would have paid for electricity at the higher rate and subtracted the amounts it actually paid during the POI. See 19 CFR 351.524(c). We divided these "savings" by the total POI sales of Wire King. On this basis, we determine the countervailable subsidy to be 0.04 percent ad valorem for Wire King.

II. Programs Determined To Be Terminated

A. Exemption from Project Consulting Fee for Export-oriented Industries

The Department has determined that this program was terminated in 1998, with no residual benefits. See CFS from the PRC and accompanying I&D Memo at "Programs Determined to be Terminated."

III. Programs Determined Not To Exist

A. Income Tax Exemption for Investment in Domestic "Technological Renovation"

In its November 20, 2008 questionnaire response, the GOC reported that the Income Tax Exemption for Investment in Domestic "Technological Renovation" program does not exist. The GOC explained that the description corresponds to the investigated program "Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment," which is listed in section III below. See GQR, at 22. We agree and determine that this program does not exist.

IV. Programs Determined To Be Not Used By Wire King or To Not Provide Benefits During the POI

A. Exemption from Land Development Fees for Enterprises Located in Industrial Cluster Zones

Under the *Circular on Printing and Distributing the Implementation Rules for the Construction of Intensive Industrial Zones* (SHUNFUBANFA{2002}No.33), the People's Government of Shunde exempted from the land development fees land users located in intensive industrial zones. See GOC NSAQR, at 2. The purpose of this program was to promote the construction of intensive industrial zones in Shunde.

Wire King and the GOC reported that although Wire King is not located in an intensive industrial zone, the Government of Shunde agreed to extend the preferential treatment to land obtained by Wire King in 2003. See WK NSAQR at 2; see also, GOC NSAQR at 2. Wire King reported that this exemption occurred only when the land was obtained and, thus, it was a one-time exemption. See WK NSAQR at 2.

Based on our calculations, the benefit for this one-time exemption from land development fees would be expensed prior to the POI, i.e., the exemption was less than 0.5 percent of the relevant

sales in the years in which the grants were approved. Therefore, any potential benefit received by Wire King would have been attributed to the year of receipt (i.e., 2003).

B. Reduction in Farmland Development Fees for Enterprises Located in Industrial Zones

According to the *Circular on Printing and Distributing the Implementation Rules for the Construction of Intensive Industrial Zones* (SHUNFUBANFA{2002}No.33), the People's Government of Shunde has the authority to reduce the farmland cultivation fees for the enterprises located in the intensive industrial zones within Shunde. See GOC NSAQR at 10. The program was created to protect the farmland.

The GOC and Wire King reported that although Wire King is not located in an intensive industrial zone, the Government of Shunde agreed to grant Wire King a reduction in the farmland cultivation fee in 2003 when Wire King purchased a parcel of land. See WK NSAQR at 2; see also, GOC NSAQR at 10. Wire King reported that this exemption occurred only when the land was obtained and, thus, it was a one-time reduction. See WK NSAQR at 2.

Based on our calculations, the benefit for this one-time exemption from farmland development fees would be expensed prior to the POI, i.e., the exemption was less than 0.5 percent of the relevant sales in the years in which the grants were approved. Therefore, any potential benefit received by Wire King would have been attributed to the year of receipt (i.e., 2003).

Based upon responses by the GOC and Wire King, we determine that Wire King did not apply for or receive benefits during the POI under the programs listed below. See GQR, G1SR, WKQR, WK1SR, WK2SR, WK NSAQR, and GOC NSAQR.

1. "Two Free, Three Half" program
2. Income tax refund for reinvestment of profits in export-oriented enterprises
3. Preferential tax subsidies for research and development by FIEs
4. Income tax credits for purchases of domestically produced equipment by FIEs
5. Income tax credits for purchases of domestically produced equipment by domestically owned companies
6. Reduction in or exemption from the fixed assets investment orientation regulatory tax
7. VAT rebates for FIEs purchasing domestically-produced equipment
8. Import tariff and VAT exemptions for FIEs and certain domestic enterprises using imported equipment in encouraged industries
9. Import tariff exemptions for the "encouragement of investment by Taiwan Compatriots"
10. Exemption from real estate tax and dyke maintenance fee for FIEs in Guangdong Province
11. Import tariff refunds and exemptions for FIEs in Guangdong Province
12. Preferential loans and interest rate subsidies in Guangdong Province
13. Direct grants in Guangdong Province
14. Funds for "outward expansion" of industries in Guangdong Province
15. Land-related subsidies to companies located in specific regions of Guangdong Province
16. Import tariff and VAT refunds and exemptions for FIEs in Zhejiang
17. Grants to promote exports from Zhejiang Province

18. Land-related subsidies to companies located in specific regions of Zhejiang
19. Provision of Nickel for Less than Adequate Remuneration by the GOC
20. Government Provision of Water for Less than Adequate Remuneration to Companies Located in Development Zones in Guangdong Province
21. Exemption from District and Township Level Highway Construction Fees for Enterprises Located in Industrial Cluster Zones
22. Exemptions from or Reductions in Educational Supplementary Fees and Embankment Defense Fees for Enterprises Located in Industrial Cluster Zones
23. Special Subsidy from the Technology Development Fund to Encourage Technology Innovation
24. Special Subsidy from the Technology Development Fund to Encourage Technology Development
25. Subsidies to Encourage Enterprises in Industrial Cluster Zones to Hire Post-Doctoral Workers
26. Land Purchase Grant Subsidy to Enterprises Located in Industrial Cluster Zones and Encouraged Enterprises
27. Exemption from Accommodating Facilities Fees for High-Tech and Large-Scale Foreign-Invested Enterprises
28. Income Tax Deduction for Technology Development Expenses of Foreign-Invested Enterprises
29. Preferential Land-Use Charges for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones
30. Reduction of Land Price at the Township Level for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones
31. Reduction in Urban Infrastructure Fee for Industrial Enterprises in Industrial Zones
32. Income Tax Rebate for "Superior Industrial Enterprises" in Zhongshan
33. Accelerated Depreciation for New Technological Transformation Projects "Superior Industrial Enterprises" in Zhongshan
34. Exemption from the Tax on Investments in Fixed Assets for "Superior Industrial Enterprises" in Zhongshan

Analysis of Comments

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

The GOC and Wire King argue that the CAFC ruled in Georgetown Steel[21] that the CVD law does not apply to NME countries under the statutory scheme created by Congress. The GOC and Wire King disagree with the Department's interpretation that Georgetown Steel simply affirmed that the Department has discretion in its application of CVD law to NME countries.[22] Moreover, the GOC questions whether the Department possesses the legal authority to conduct its re-evaluation of Georgetown Steel. According to the GOC and Wire King, the CAFC considered the statutory language, Congressional action, the presence of other provisions to address imports

[21] See Georgetown Steel; see also Potassium Chloride from the Soviet Union.
[22] See Application of CVD Law to the PRC Comment Request; see also Georgetown Steel Memorandum.

from NME countries, and the impracticability of investigating subsidies in NME countries, and concluded that the CVD law does not apply to subsidies granted to NME countries.

The GOC and Wire King next describe the chronological actions, and inactions, of Congress to modify the statutory scheme of the Tariff Act of 1930. According to the GOC, Congress has reaffirmed a holistic statutory scheme[23] that unambiguously does not allow application of the CVD law to NME countries. Additionally, the GOC asserts that the courts have interpreted Congressional inaction as acquiescence to judicial or administrative interpretation of a law,[24] and that the normal rule of statutory construction includes specific intent for legislative change.[25] Wire King asserts that the CVD law's inapplicability to NMEs has been the subject of congressional attention on multiple occasions, and Congress' repeated failure to act indicates Congress' endorsement of the Georgetown Steel ruling.[26]

The GOC and Wire King note that, in their comprehensive overhauls of the U.S. AD and CVD statutes,[27] Congress elected not to materially alter the statutory provision governing the application of CVD duties. The GOC and Wire King point out that in the 1988 Trade Act, Congress considered and rejected a provision that would have granted the Department discretion to identify and measure subsidies in NME countries.[28] The GOC and Wire King also contend that subsequent amendments that introduced statutory definitions for NME countries codify Congressional understanding that the CVD law cannot apply to NMEs.[29] According to the GOC, the adoption of a definition for NME countries, accompanied by a rejection of a provision granting authority to apply CVD law to NME countries, reflect a Congressional intent to address imports from NMEs under the NME provision of the antidumping law, not the CVD law. Additional refinements to the antidumping law, which include Congressional instruction to avoid dumped or subsidized prices when valuing factors of production under the antidumping methodology, reinforce the GOC's conclusion.[30] Wire King notes that a 2006 GAO report reiterated that CVD laws do not apply to NME countries because, "{w}hen no market exists, subsidies cannot be found to distort market decisions."[31]

Wire King asserts that the CIT's decision in GOC v. United States does not change the Georgetown Steel ruling.[32] The court's decision was based solely on jurisdictional grounds, and it made no findings as to the scope of CVD law with respect to NMEs, says Wire King. In a separate case, the CIT also ruled that it was unclear whether the court in Georgetown Steel was

[23] See United States v. Cleveland Indians Baseball Co., 532 U.S. at 217.
[24] See Merrill Lynch v. Curran, 456 U.S. at 383; see also FDA v. Brown & Williamson, 529 U.S. at 132-22; Bob Jones, 461U.S. at 601.
[25] See Midatlantic Nat'l Bank, 474 U.S. at 501; Gonzalez, 126 S. Ct. at 921; Whitman, 531 U.S. at 468.
[26] See United States Trade Rights Enforcement Act, H.R. 3823, 109th Cong. (2005); see also Butterbaugh v. DOJ, 336 F.3d at 1342.
[27] See 1988 Trade Act; see also URAA.
[28] See H.R. Rep. No. 100-40, pt. 1 at 138 (1987); see also SAA, H.R. Doc. 103-316, 103d Cong., 2d Sess. (1994) at 926.
[29] See 19 U.S.C. 1677(18); see also Wire Rod from Czechoslovakia, 49 FR at 19374.
[30] See 1988 Trade Act at 590; see also China Nat'l March, 264 F. Supp. 2d at 1238.
[31] See GAO, GAO-06-608T, Challenges and Choices to Apply Countervailing Duties to China at 9 (Apr. 2006).
[32] See GOC v. United States, 483 F. Supp. 2d at 1282.

deferring to the Department or that there was only one legally valid interpretation.[33] Regardless, says Wire King, the CIT has no authority to overturn the Federal Circuit ruling established in Georgetown Steel.

Wire King asserts that even if the Department has the legal authority to apply the CVD law to the PRC, the Department's imposition of CVD duties against the PRC constitutes a retroactive amendment to a binding rule, in violation of the APA. Wire King states that the APA requires formal rulemaking to amend binding rules.[34] Wire King contends that a binding rule that the CVD law does not apply to NMEs emerged under three actions: 1) in 1984, when the Department adopted its position not to apply the CVD law to NME countries after a specific notice and comment period;[35] 2) in 1993, when the Department issued the "General Issues Appendix," which was a written statement that resolved various issues related to the CVD law;[36] and 3) in 1998, when the Department codified its position not to apply CVD law to NMEs in the preamble to its regulations.[37] Wire King notes that the Department has dismissed CVD petitions for two decades following Georgetown Steel, and has only recently abandoned this consistent practice.[38] Wire King asserts that several courts have ruled that when an agency significantly alters its established practice, it must abide by notice and comment requirements under the APA.[39] Wire King argues that calling a "rule" a "practice" or "policy" does not immunize the Department's action from APA requirements because it is the nature and effect of the action, not the labels, that govern.

Wire King contends that the Department's distinction of different types of NMEs is flawed and unsupported by law, as there is no statutory or regulatory authority permitting the Department to factually distinguish between different types of NMEs and apply CVD law to some but not others.[40] Wire King asserts that the Department has designated the PRC as an NME country, which is defined as a country in which sales do not reflect the fair value of the merchandise. Previously, states Wire King, the Department decided, and the Federal Circuit court upheld, that it was impossible to measure subsidies where the subsidies could not be separated from the amalgam of government directives and controls.[41] According to Wire King, the Department's application of CVD law to some NME countries effectively creates different types of NMEs – one type where CVD law applies and another where it does not. Wire King cites to Sulfanilic Acid from Hungary,[42] where the Department refused to apply the CVD law to Hungary in the year immediately prior to Hungary's graduation to market economy status. Wire King asserts that the Department's ruling in Sulfanilic Acid from Hungary is irreconcilable with its current position on the PRC CVD cases and it has provided no logical or legal basis for the change.

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[33] See GPX v. United States, 587 F. Supp. 2d at 1289-90.
[34] See Shinyei, 355 F.3d at 1309; see also Carlisle, 634 F. Supp. at 423.
[35] See Wire Rod from Poland, 49 FR at 19376; see also Potassium Chloride from the Soviet Union, 49 FR at 23428; see also Initiation of PRC Textile CVD Investigations, 48 FR at 46601.
[36] See Certain Steel Products from Austria, 58 FR at 37261.
[37] See CVD Preamble,63 FR at 65360.
[38] See Oscillating Fans from China, 57 FR at 24019; see also Sulfanilic Acid from Hungary, 67 FR at 60223.
[39] See Mercy Medical, 2004 WL 3541332; see also Babbitt, 238 F.3d at 630.
[40] See LWTP from the PRC I&D Memo at Comment 1.
[41] See Georgetown Steel Memorandum, at 10; see also Carbon Steel Wire Rod from Poland, 49 FR at 19375; see also Georgetown Steel, 801 F.2d at 1316; see also Lined Paper Products Memo.
[42] See Sulfanilic Acid from Hungary I&D Memo at Comment 1.

Pointing to the Department's rejection of domestic wire rod prices in the Wire Rod for Less Than Adequate Remuneration subsidy program, Wire King asserts that by adopting only external benchmarks, the Department proves the point that it cannot measure Chinese subsidies. Wire King argues that the Department fails to explain how the wire rod market is market-oriented enough for CVD law to apply, yet not enough for it to apply in all respects. Moreover, claims Wire King, the Department has already addressed the alleged problem of domestic Chinese prices of wire rod being distorted by applying a surrogate value from an economically comparable country in the NME AD investigation.

Wire King concludes that, although PRC's Accession Protocol and the SCM Agreement involve application of CVD law, they do not provide rights under the U.S. law. These international agreements are not part of U.S. law and are not self-executing, says Wire King, and they only have legal effect with Congressional implementation.[43] Wire King contends that these agreements do not provide statutory authority to apply CVD law to NMEs.

Petitioners assert that in the Preliminary Determination[44] the Department properly rejected the GOC's claims that the CVD law does not apply to the PRC.[45] Petitioners argue that, contrary to the GOC's assertion, the CAFC upheld in Georgetown Steel the Department's discretion to apply the CVD law to NME countries, but it did not find that the CVD law prohibited the application of CVD law to NME countries. Petitioners further contend that the Department's discretion to apply the CVD law to NME countries is clearly within the scope of the authority vested in the Department by Congress. They note that the CVD statute sets forth an unambiguous definition of a countervailable subsidy that makes no distinction between market and non-market economies. Finally, Petitioners point out that Congress has expressly ratified the Department's decision to apply the CVD law to the PRC in subsequent statutory enactments, including through the authorization of appropriations to the Department to apply the CVD law to the PRC.

Petitioners also reject Wire King's claims regarding the APA, note that the APA requirements do not apply "to interpretive rules, general statements of policy or rules of agency organization, procedure, or practice."[46] According to Petitioners, the Department's application of the CVD law is best characterized as a practice, rather than a rule, because the Department did not follow formal rulemaking procedures when instituting its policy. Petitioners refute Wire King's claim that, in 1984, the Department adopted a position not to apply CVD law to NMEs after a specific notice and comment period, nor did the Department satisfy the comment required in 1993 when it invited "all persons" to submit comments in the General Issues Appendix.[47] Petitioners assert that a general notice of the proposed rulemaking, which would include the information described under 5 U.S.C. 553(b)(1)-(3), accompanied by notice or opportunity for comment were not provided prior to 1984 with regards to any alleged rule that the CVD law does not apply to

[43] See Medellin v. Texas, 552 U.S. at 1356-57; see also 22 U.S.C. 6901(8); 22 U.S.C. 6941(4); Normal Trade Relations for the People's Republic of China, Pub. L. No. 106-286 (Oct. 10, 2000); H.R. Rep. No. 106-632, at 12 (2000).
[44] See Kitchen Shelving Preliminary Determination.
[45] See, e.g., Lawn Groomers from the PRC I&D Memo at 22-23; Citric Acid from the PRC I&D Memo at 27-28.
[46] See 5 U.S.C. 553(b)(3)(A).
[47] See Certain Steel Products from Austria (General Issues Appendix).

NMEs, and cases cited by GOC do not establish otherwise. Moreover, say Petitioners, the 1993 comment invitation does not alone transform the General Issues Appendix into a rule, because the presence or absence of an explicit invitation for comments is not determinative of whether the notice and comment requirements have been satisfied.[48] Petitioners further note that the Department's non-application of CVD law to NMEs does not constitute a substantive rule because it neither creates a law nor a rule of general application. Because the Department's policy of non-application of CVD law to NMEs is a practice, rather than a substantive rule, the Department may change it without the need for notice and comment period under the APA so long has it has provided a reasoned explanation for the change.[49] Petitioners maintain that because the Department has provided adequate explanation of its change in practice, it has complied with the APA.[50]

Finally, Petitioners dispute Wire King's assertion that the Department's practice regarding application of CVD law to NMEs may not be changed absent compliance with the APA notice and comment requirements, and assert that the cases cited by Wire King do not support its argument for two reasons. First, the Department has never given the CVD law a definitive interpretation that it does not apply to NMEs, but has instead chosen not to apply it to NMEs under the facts of the case. Second, the Department's application of the CVD law to an NME does not in this instance significantly revise any alleged prior interpretation because the Department has never interpreted the CVD law to never apply to any NMEs.[51]

Petitioners assert that the Department's decision to apply the CVD law to the PRC does not violate section 771(18) of the Act, because this provision does not restrict the Department's ability to measure and identify subsidies in the PRC. Petitioners say that the application of CVD law to the PRC is the product of the "inherent differences between NMEs" being applied to the definition of a countervailable subsidy set forth in the CVD law. In the context of this proceeding, the Department applied record facts to the relevant provisions of the CVD statute, finding each countervailable subsidy constituted a "financial contribution" under section 771(5)(D) of the Act, conferred a benefit under section 771(5)(E) of the Act, and was specific as defined under section 771(5A) of the Act.

Petitioners assert that Wire King is mistaken when it cites to Sulfanilic Acid from Hungary as evidence of the Department's practice to apply the CVD law only after an NME country is designated a market economy. They further note that the Department has properly determined that it need not address each instance where a prior practice was applied when changing that practice. Recognizing the inherent differences between NMEs, the Department is legally entitled to reverse its prior practice and conclude that subsidies can be measured and identified in the PRC. Thus, neither section 771(18) of the Act, nor Sulfanilic Acid from Hungary, prevents the application of CVD law to the PRC.

Petitioners rebut Wire King's claim that it is contradictory for PRC prices to be considered too distorted for benchmark use, but market-oriented enough to calculate subsidies. Petitioners

[48] See, e.g., Waste Mgmt, 869 F.2d at 1526.
[49] See Allegheny Ludlum, 122 F. Supp 2d at 1141.
[50] See Kitchen Shelving Preliminary Determination, 74 FR at 683.
[51] See, e.g., Metwest, 560 F.3d at 510.

assert that this argument is irrelevant to the Department's application of CVD law to the PRC. Petitioners further note that the Department has not relied upon either the Accession Protocol nor the SCM Agreement for its statutory authority to apply the CVD law to the PRC, but rather has referred to those documents to demonstrate that the WTO members clearly anticipated applying national CVD laws to imports from the PRC. Petitioners point out that the PRC has expressly committed to various subsidy concessions in its WTO Accession Protocol, including the disciplines established in the SCM agreement.[52] Thus, these agreements, as well as the United States' ratification of the PRC's accession through domestic legislation anticipate the Department's application of the CVD law and strengthen the Department's existing authority to apply the CVD law to the PRC.

Department's Position:

We disagree with the GOC and Wire King regarding the Department's authority to apply the CVD law to the PRC. The Department's positions on the issues raised are fully explained in CFS from the PRC, CWP from the PRC, LWRP from the PRC, LWS from the PRC, OTR Tires from the PRC, LWTP from the PRC, CWLP from the PRC, and CWASPP from the PRC.[53]

Congress granted the Department the general authority to conduct CVD investigations.[54] 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 . . . ."[55] 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.[56]

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."[57] The Department reached this conclusion, in large part, because both output and input prices were centrally administered, thereby effectively administering profits as well.[58] The Department explained that "{t}his is the background that does not allow us to identify specific NME government actions as bounties or grants."[59] 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 the PRC, the PRC Government has eliminated price controls on most

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[52] See Accession Protocol, at Arts. 10.1-10.3;15.

[53] See CFS from the PRC I&D Memo at Comment 1, CWP from the PRC I&D Memo at Comment 1, LWRP from the PRC I&D Memo at Comment 1, LWS from the PRC I&D Memo at Comment 1, OTR Tires from the PRC I&D Memo at Comment A.1, LWTP from the PRC I&D Memo at Comment 1; CWLP from the PRC I&D Memo at Comment 16; and CWASPP from the PRC I&D Memo at Comment 4.

[54] See e.g., sections 701 and 771(5) and (5A) of the Act.

[55] See section 701(a) of the Act.

[56] See also section 701(b) of the Act (providing the definition of "Subsidies Agreement country").

[57] See Wire Rod from Poland and Wire Rod from Czechoslovakia.

[58] Id.

[59] Id.

products . . . ."[60] 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 CAFC recognized the Department's broad discretion in determining whether it can apply the CVD law to imports from an NME in Georgetown Steel.[61] In doing so, the CAFC recognized that the statute does not speak to this precise issue and deferred to the Department's decision. The Georgetown Steel Court did not find that the CVD law prohibited the application of the CVD law to NMEs, but only that the Department's decision not to apply the law was reasonable based upon the language of the statute and the facts of the case. Specifically, the CAFC recognized that:

> {T}he agency administering the countervailing duty law has broad discretion in determining the existence of a "bounty" or "grant" under that law. We cannot say that the Administration's conclusion that the benefits the Soviet Union and the German Democratic Republic provided for the export of potash to the United States were not bounties or grants under section 303 was unreasonable, not in accordance with law or an abuse of discretion. See Chevron, 467 U.S. at 842-45,

See Georgetown Steel, 801 F.2d at 1318 (emphasis added).

The GOC and Wire King argue that the Georgetown Steel Court found that the CVD law cannot apply to NMEs. In making this argument, the GOC and Wire King cite to select portions of the opinion and ignore the ultimate holding of the case and the Court's reliance on Chevron to find the Department had reasonably interpreted the law.[62] The Georgetown Steel Court did not hold that the statute prohibited application of the CVD law to NMEs, nor did it hold that Congress spoke to the precise question at issue. Instead, as explained above, the Court held that the question was within the discretion of the Department.

Recently, the CIT concurred, explaining that "the Georgetown Steel court only affirmed {the Department}'s decision not to apply countervailing duty law to the NMEs in question in that particular case and recognized the continuing 'broad discretion' of the agency to determine whether to apply countervailing duty law to NMEs."[63] Therefore, the Court declined to find that the Department's investigation of subsidies in the PRC was ultra vires. Moreover, the GPX v. United States decision, cited by Wire King, was a decision based on a preliminary injunction motion and was not a final decision on whether the CVD law can be applied to a country classified as an NME, such as the PRC and, therefore, the argument is misplaced.

The GOC's and Wire King's argument that Congress' failure to amend the law subsequent to Georgetown Steel 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

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[60] See Georgetown Steel Memorandum.
[61] See Georgetown Steel, 801 F.2d at 1308.
[62] Id.
[63] See GOC v. United States (citing Georgetown Steel, 801 F.2d at 1318).

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.[64] Given this existing authority, no further statutory authorization is necessary. As the U.S. Supreme Court explained in Solid Waste, "{f}ailed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute. A bill can be proposed for any number of reasons, and it can be rejected for just as many others."[65] Furthermore, since the holding in Georgetown Steel, Congress has expressed its understanding that the Department already possesses the legal authority to apply the CVD law to NMEs on several occasions. For example, on October 10, 2000, Congress passed the PNTR Legislation. In section 413 of that law, which is now codified in 22 U.S.C. § 6943(a)(1), Congress authorized funding for the Department to monitor "compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China."[66] The PRC was designated as an NME at the time this bill was passed, as it is today. Thus, Congress 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 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."[67]

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."[68] In these statutory provisions, Congress is referring, in part, to the PRC's commitment to be bound by the SCM Agreement as well as 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.[69] Paragraph (d) of that same Article provides for the continuing treatment of the PRC as an NME.[70] 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

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[64] See, e.g., section 771(5) and (5A) of the Act.
[65] See Solid Waste, 531 U.S. at 170.
[66] See 22 U.S.C. § 6943(a)(1) (emphasis added).
[67] See 22 U.S.C. § 6901(8).
[68] See 22 U.S.C. § 6941(5).
[69] See Accession Protocol.
[70] Id.

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.[71]

The GOC and Wire King fail to discuss these statutory provisions and, instead, cite to the fact that Congress has enacted revisions to the AD Law to deal with NME methodologies, including in the 1988 Trade Act, but not to the CVD law. The fact that Congress enacted specific provisions for the application of the AD law, but not the CVD law, to NMEs simply reflects that the Department was only applying the AD law to NMEs at the time rather than also applying the CVD law. As the CVD law was not being applied to NMEs at that time, there was no reason to amend the CVD law to address concerns unique to NMEs. In sum, while Congress (like the CAFC) deferred to the Department's practice, as was discussed in Georgetown Steel, of not applying the CVD law to the NMEs at issue, it did not conclude that the Department was unable to do so. To the contrary, Congress did not ratify any rule that the CVD law does not apply to NMEs because the Department never made such a rule.

We agree with the GOC that neither the SCM Agreement nor the PRC's Accession Protocol is part of U.S. domestic law. However, 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 important enough to direct that they be monitored and enforced.

We disagree with the GOC's and Wire King's contention that the Department is trying to have it both ways. The Georgetown Steel Memorandum details the Department's reasons for applying the CVD law to the PRC and the legal authority to do so. Contrary to the GOC's and Wire King's assertions, Georgetown Steel 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 market-determined prices, that makes subsidies identifiable and the CVD law applicable to the PRC.[72] The citation to the Economic Intelligence Unit quote, "market forces now determine the price of more than 90 percent,"[73] 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 the Lined Paper Products Memo), where the Department explains, "The fact that enterprises generally are free to set wages

[71] See 22 U.S.C. § 6941(5).
[72] See Georgetown Steel Memorandum at 5.
[73] Id. at 5.

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 the PRC, 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."[74]

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.[75] The problem is such that there is no basis for either outright rejection or acceptance of all 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 the PRC'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.

Wire King additionally argues that the Department cannot make a determination in this case that is different from Sulfanilic Acid from Hungary. As an initial matter, the Department has fully explained the differences between Sulfanilic Acid from Hungary and applying the CVD law to imports from the PRC.[76]

The Department's decision in Sulfanilic Acid from Hungary is not categorically applicable to all NMEs. After its initial analysis of the Soviet-styled economies in the Wire Rod investigations, the Department began a practice of not looking behind the designation of a country as an NME when determining whether to apply the CVD law to imports from that country (assuming no claim for a market-oriented industry was made).[77] Now, the Department has revisited its original decision not to apply the CVD law to NMEs and has determined that it will re-examine the economic and reform situation of the NME on a case-by-case basis to determine whether the Department can identify subsidies in that economy, much as it did in the original Wire Rod investigations.[78] However, the determination of whether the CVD law can be applied does not necessarily create different types of NMEs. It is simply recognizing the inherent differences between NMEs.

Furthermore, there is no requirement that the Department address each instance where a prior practice was applied when changing that practice. The Department is only required to provide a "reasoned analysis" for its change.[79] As explained by the U.S. Supreme Court:

> An agency is not required to establish rules of conduct to last forever, but rather must be

[74] Id. at 5.
[75] See Georgetown Steel Memorandum at 5; see also Lined Paper Products Memo at 22.
[76] See generally Georgetown Steel Memorandum.
[77] See, e.g., Sulfanilic Acid from Hungary.
[78] See, e.g., Georgetown Steel Memorandum.
[79] See, e.g., Rust v. Sullivan, 500 U.S. at 187.

> given ample latitude to adapt its rules and policies to the demands of changing circumstances.

Id., 500 U.S. at 186-87 (citations and internal quotations omitted).

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 basis for determining a benchmark price to use in assessing stumpage rates in Indonesia.[80] We found that these prices were consistent with market principles, within the meaning of 19 CFR 351.511(a)(2)(iii), and were the most appropriate basis for deriving a market-based stumpage benchmark for determining whether the Government of Indonesia provided stumpage for LTAR. Furthermore, the Department also used an out-of-country benchmark in Softwood Lumber from Canada Investigation.[81] In this case, the Department has followed its established practice of using out-of-country benchmarks where actual transaction prices are significantly distorted because of government involvement in the market. Moreover, a case-by-case approach is what the PRC agreed to in its Accession Protocol,[82] which explicitly provides for use of external benchmarks, where there are special difficulties in applying standard CVD methodology.

Comment 2 Double Counting/Overlapping Remedies

Wire King and the GOC argue that applying the NME AD methodology and the CVD law creates impermissible double remedies. Wire King asserts that courts have long held that trade law is intended to be remedial and not punitive or retaliatory.[83] Thus, Wire King asserts that the AD and CVD laws should be sufficiently transparent to provide respondents with guidance on remedial actions to ensure sales are made at fair value and without benefit of subsidies as determined by the Department.

The GOC asserts that the Department and the courts have previously surmised[84] that the broad distortion considered by the statute regarding NMEs would necessarily include any countervailable subsides present in an NME. Additionally, Wire King argues that before applying CVDs to the PRC cases, the United States researched and acknowledged that duplicative remedies would arise when the Department calculates an NME AD remedy with a CVD remedy[85] and that this should be avoided.[86] Wire King notes that the Department, in

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[80] See CFS from Indonesia I&D Memo, at "GOI's Provision of Standing Timber for LTAR," and Comments 11 and 12.

[81] See Softwood Lumber from Canada I&D Memo, at "Provincial Stumpage Programs"; see also Softwood Lumber from Canada - Amended.

[82] See Accession Protocol, WT/L/432 at para. 15.

[83] See Nucor, 414 F.3d at 1336 (citing Chaparral Steel, 901 F.2d at 1103-4 and C.J. Tower, 71 F.2d at 445.

[84] See Georgetown Steel, 801 F.2d at 1317-18.

[85] See US-China Trade, GAO at 5, 23, 27-33, 48; see also Law and Economics at 44-40.

[86] See Challenges and Choices to Apply Countervailing Duties to China, GAO at 17 ("DOC would have to adjust AD duty calculation if it applied CVD law to NME countries because of double counting"); United States Trade Rights Enforcement Act, H.R. 3283, 109th Cong. § 3(b) (2005) (directed DOC to ensure double counting did not

previous cases involving simultaneous market economy AD and CVD proceedings, acknowledged in principle and without factual demonstration that double remedies do exist and are to be avoided.[87]

Wire King notes that the Department compares normal value against export price in market economy AD calculations,[88] and it is relevant for the Department to distinguish between export subsidies and domestic subsidies in these price-to-price margin calculations. Wire King asserts that export subsidies are attributable to exports while domestic subsidies are attributable to all sales (domestic and export). The GOC notes the statute recognizes the double remedy threat where it provides for an adjustment to the export price in the AD calculation by adding the amount of any CVD export subsidies.[89] The GOC asserts that the Department explained the rationale of the statute in Carbon Steel Flat Products from Korea, 67 FR at 62125. Thus, the GOC concludes that although AD and CVD remedies are intended to address discrete problems, when both are brought to bear on the same underlying problem (such as low export price), the statute steps in to avoid a double remedy.

Wire King and the GOC note that in NME AD calculations, the Department compares U.S. export price to a normal value that is constructed using the respondent's factors of production and surrogate values from an economically comparable market economy.[90] Wire King asserts that this constructed value does not wash out both sides of the equation, in contrast to a regular market economy price-to-price calculation. The GOC further notes that the NME AD and CVD methodologies examine the issue of cost, and in both cases, market benchmarks are used. Wire King and the GOC conclude that the NME AD methodology already captures all subsidies, and application of a CVD remedy on the same products penalizes respondents for the identical subsidies already accounted for in the AD calculation.

Wire King asserts that duplicative remedies for the same conduct are not permitted under U.S. and international law, including the CVD and AD laws.[91] Wire King notes that the Department has recognized that the statute implicitly excludes AD duties from the calculation, as their deduction from U.S. price would cause distorting implications.[92] In addition, Wire King asserts that the Department[93] and Congress have long considered AD duties as special duties distinct from ordinary customs duties,[94] and Congress reiterated and reinforced this position in the SAA.[95] Wire King acknowledges that the statute and the Department's regulations do not specifically provide that double-counting should be avoided, but it asserts that the Department has consistently recognized that deducting AD duties from U.S. price is a circular calculation

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occur).

[87] See Uranium from France AD Final Results, 69 FR at 46505-06.

[88] See section 773(a) of the Act.

[89] See section 772(c)(1)(C) of the Act.

[90] See section 773(c) of the Act.

[91] See Wheatland Tube, 495 F.3d at 1358.

[92] See, e.g., Carbon Steel Flat Products from the Netherlands, 62 FR at 18486; Antifriction Bearings from France, et al, 62 FR at 54079.

[93] Id.

[94] See S. Rep. No. 67-16, at 4 (1921).

[95] See URAA, SAA, HJ.R. Doc. No. 103-316, at p. 885 (1994); H.R. Rep No. 103-826(I), at 60-61 (1994).

that would inappropriately result in double counting.[96]

Wire King argues that the Department has acknowledged, [97] with the Court's approval, that the same double counting rationale that it uses in the AD duties context is also applicable to justify exclusion of safeguard duties (Section 201 duties) even though no circular logic affects the consideration of whether to deduct Section 201 duties as it does with AD duties.[98]

Wire King asserts that while the Department has acknowledged that there is no inherent circular issue in the CVD context because the AD rate is not affected by the CVD rate, the Department and the courts have consistently determined that CVD duties should not be deducted because of the general concern over double counting and the desire to avoid remedial measures becoming punitive.[99] In addition, Wire King notes that the CIT has specifically acknowledged that it is irrelevant whether the CVD law is addressing export subsidies or non-export subsidies.[100] In cases involving CVD and NME AD investigations of Chinese merchandise, Wire King and the GOC assert that the respondents do not bear this burden of proof in order for the Department to avoid double counting as the Department has argued.[101] In any case, the GOC and Wire King assert that the burden of demonstrating a double remedy should not go beyond the conceptual overlap between NME AD methodology and CVD law.[102] Wire King asserts that the Department's methodology in NME AD cases normally seeks to avoid double-counting even without an express demonstration of actual double-counting and without specific statutory or regulatory mandate to avoid double counting. For example, Wire King explains, in calculating surrogate financial ratios, the Department seeks to avoid double-counting certain expenses that are already categorized as direct selling expenses in the Department's questionnaire.[103] Wire King argues that it is, therefore, troubling that the Department has chosen to ignore its past practice and judicial precedent regarding the double-counting of AD and CVD duties.

The GOC argues that the whole reason for the broad macro approach in NME methodology is that it was deemed impossible to disentangle and quantify market distortion. The GOC points out that because of the interrelated amalgam of government directives and controls,[104] a more precise tool to construct normal value in an NME situation would be impractical. According to the GOC, this rationale is now of limited applicability given the Department's position that real prices and costs do exist in NMEs, such as the PRC, and it can otherwise distinguish countervailable subsidies in such NMEs.[105]

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[96] See AK Steel, 988 F. Supp. at 607-08 & n.12; Hoogovens Staal, 4 F. Supp. 2d at 1220.
[97] See Hot-Rolled Steel from the Netherlands, 69 FR at 33630; SSWR from Korea, 69 FR at 19160.
[98] See Wheatland Tube, 414 F. Supp. 2d at 1284 and 1365-66.
[99] See AK Steel, 988 F. Supp. at 607-08; Hoogovens Staal, 4.F. Supp. 2d at 1220. See also Low Enriched Uranium from France, 69 FR at 46504.
[100] See U.S. Steel, 15 F. Supp. 2d at 900.
[101] See, e.g., Citric Acid from the PRC I&D Memo at Comment 2.
[102] Indeed, Wire King asserts that the Department previously has not required specific evidence of double counting beyond providing a conceptual demonstration of the problem. See Wheatland Tube Co., 495 F.3d at 1362-63. See also Low Enriched Uranium from France, 69 FR at 46505-06.
[103] See, e.g., PET Film from the PRC I&D Memo at Comment 3.
[104] See Georgetown Steel Memorandum at 9-10.
[105] Id.

The GOC argues that it is largely impossible to illustrate an overlap given the fact that there is no way to determine from surrogate financial ratios used in the NME AD case where countervailable subsidies that are offset in the NME AD normal value calculation begin or end. In short, the GOC argues, respondents have no ability to act on relevant information that is not in their possession.[106] On the other hand, the GOC asserts that the Department appears to have professed the ability to distinguish between countervailable subsidies and other market distortions found in NMEs, all of which are caught up in the NME AD normal value calculation, but the Department has never articulated how it may isolate these distinct types of distortions to avoid a double remedy.

The GOC notes that the Department has itself admitted that the "distortions" originally contemplated under NME methodology did not include distortions traditionally understood to be countervailable subsidies.[107] The GOC asserts that the complexity of the issue is of the Department's own making. The GOC argues that it may be difficult to disentangle the overlap where one remedy is formed from a crude and broad examination of the effect of market distortions and the other is derived from a more precise examination of benefit derived from countervailable subsidies, but that is not a basis to find the two remedies compatible or distinct. Thus, according to the GOC, whenever the NME methodology produces a dumping margin that would not otherwise be present if actual costs were used, it would be wrong to assume that no double remedy arises where subsidies are also found in the CVD case. The GOC asserts that the Department, therefore, should demonstrate through substantial evidence that a double remedy does not exist.

Wire King argues that the record in this case demonstrates that the Department has applied double remedies to the same wire rod factor in both the AD and CVD investigations. According to Wire King, the Department applied its normal NME methodology and disregarded the actual prices Wire King paid for its wire rod, and used prices from Indian Joint Plant Committee ("JPC") data on wire rod, which were significantly higher than Wire King's actual wire rod purchase prices. Wire King argues that in the CVD case, the Department compared Wire King's monthly average purchase prices for wire rod to a benchmark world price, in this case, monthly average prices for wire rod in various world markets (e.g., SBB North America/Europe, SBB Asia, MEPS Asia, MEPS World). Wire King asserts that these benchmark prices were significantly higher than Wire King's actual wire rod purchase prices, which resulted in an LTAR finding.

Wire King argues that the punitive nature of applying the double remedy is highlighted by the results if Wire King attempted to remedy either the AD or CVD wire rod issues. Wire King asserts that it could try to remedy the LTAR finding by attempting to purchase its wire rod at the world benchmark prices. However, Wire King argues, even if it had increased its purchase prices of wire rod to eliminate the wire rod LTAR determination, Wire King would still face the application of the substantially higher surrogate value in the AD proceeding as long as a significant portion of Wire King's wire rod purchases were sourced from PRC NME suppliers. On the other hand, Wire King asserts, in the AD investigation, it could try to remedy the need to

[106] See Rhone Poulenc, 899 F.2d at 1190-91 (finding burden of production placed on the importer to be fair where the importer "has in its possession the information capable of rebutting the agency's inference").
[107] See Georgetown Steel Memorandum, at 9-10. See also Wire Rod from Czechoslovakia, 49 FR at 19372.

apply surrogate values by purchasing wire rod from market economy suppliers using market economy currency. Wire King argues that even if it had purchased a significant portion of its wire rod from market economy sources selling at the market price available to Wire King, it would still face the application of a significantly higher benchmark price in the CVD investigation that would still result in an LTAR finding because the market price available in the PRC or Asia is significantly lower than a world market price that includes the higher market prices that can be obtained in the North American or European markets.

The GOC argues that the Department should force election of a single remedy if it continues to find duties in the AD and CVD portions of this case. The GOC asserts that this would be consistent with the equitable doctrine of election of remedies, which is intended to prevent double recoveries or redress for a single wrong.[108] According to Wire King, the Department has several options in this CVD investigation and in the parallel AD investigation to make appropriate adjustments that would avoid the punitive application of double remedies related to wire rod. Wire King argues that the Department can decide whether Wire King's wire rod purchase prices should be "remedied" by either the application of the surrogate value in the AD case, or by the application of the benchmark prices in the CVD case, but it should not do both. Alternatively, according to Wire King, the Department could direct the AD team to adjust either the normal value (wire rod surrogate value) or the U.S. price by the percentage of the wire rod LTAR finding. Wire King asserts that these methods would allow the Department to remedy and normalize Wire King's wire rod purchases to an appropriate level, and yet would avoid applying double remedies that would penalize Wire King for the same wire rod purchases by inflating Wire King's wire rod costs twice.

Petitioners argue that the application of the NME AD methodology and the CVD law does not result in impermissible duplicative remedies. Petitioners assert that the CVD law is not the proper context to bring a claim of double remedies. Petitioners note that in the CVD context specifically, the Department has rejected respondents' claims saying double remedies should be examined in an AD context.[109] Petitioners see no reason to change this long established and judicially sound precedent.

Petitioners argue that regardless of whether the Department decides to examine double remedies in the CVD context, the CVD law and the Department's AD methodology in NME cases remedy different problems. Petitioners assert that the CVD law imposes duties on imports to offset foreign government subsidies, which may be countervailable regardless of their effect on the price of merchandise sold in the home market or exported to the United States. Petitioners explain that on the other hand, AD duties are imposed to offset the extent to which foreign merchandise is sold in the U.S. at prices below its fair value. Petitioners note that by statute, AD duties are calculated in the same way regardless of whether there is a parallel CVD proceeding,

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[108] See Lumber Alliance, 30 CIT at 419, 425 F. Supp. 2d at 1321, 1351 ("Although an election of a remedy does not prevent a party from seeking redress for legally distinct statutory rights, a party may not pursue duplicative or inconsistent remedies"). See also 25 Am. Jur. 2d Election of Remedies §3 (2004); Dan B. Dobbs, Law of Remedies § 9.4 (2nd ed. 1993); 28A Corpus Juris Secundum Election of Remedies or Rights or Theories of Discovery §1 (2008) ("The purpose of the doctrine is not to prevent recourse to alternate remedies, but to prevent double recovery or redress for a single wrong.").

[109] See, e.g., LWRP I&D Memo at 19.

except where an export subsidy increases the dumping margin that otherwise would have been found without that subsidy. Petitioners assert that the Department has rejected arguments that CVDs should be deducted from U.S. prices in AD proceedings because such a deduction would increase the dumping margin above the margin that would otherwise be found.[110]

Petitioners assert that while the GOC argues that AD duties and CVDs in NME cases are addressing the same problem and are duplicative, it also admits the duties imposed in these two cases can be different. According to Petitioners, the fallacy in the GOCs argument lies in the fact that the GOC tries to dismiss the difference by calling it a function of different methodologies rather than different purposes. Petitioners assert that while the GOC is correct that the methodologies are different, the different level of duties imposed points directly to the difference in purpose. Petitioners assert that CVDs are used for the purpose of remedying domestic subsidies regardless of their effect on price, premised on the idea that the effect of a domestic subsidy is not always solely reflected in the price of one object. Petitioners note that AD duties are designed to remedy the difference between export price and normal value, and while domestic subsidies may weigh into that difference in price, the ultimate purpose of these laws is significantly different.

Petitioners assert that the Department cannot, by statute, and should not offset normal value for domestic subsidies. Petitioners assert that Wire King's arguments ignore two facts that nullify this argument. First, Petitioners note, the Department lacks the power to offset normal value for domestic subsidies because the statute and legislative history only grants it the power to do so for export subsidies. Second, according to Petitioners, Wire King's argument presumes that normal value is only affected by factor values and ignores the multitude of other ways that normal value is affected by subsidies.

Regarding the first point, Petitioners explain that the statute plainly states that the price used to establish export price in AD cases should be increased by the amount of any CVD imposed on subject merchandise only to offset an export subsidy.[111] Petitioners assert that the absence of any additional language stating the Department should offset other subsidies in other cases implies that Congress did not intend to provide any sort of offset for CVDs in NME investigations,[112] nor to add domestic subsidies to U.S. price. Indeed, according to Petitioners, the legislative history on this point is clear, given that the Senate Report accompanying the 1979 legislation stated that, "for domestic subsidies, no adjustment to U.S. price is appropriate."[113] Petitioners argue that in the face of statutory silence, a reviewing court looks first to legislative history for guidance, and in this case, the Senate Report prohibits any adjustment for domestic subsidies.

Regarding the second point, Petitioners assert that Wire King's argument wrongly dismisses the possibility that factor values can be indirectly affected by domestic subsidies. Petitioners explain that while NME subsidies may not affect the factor values used to calculate normal value, they may affect the quantity of factors consumed by the NME producer, resulting in lower normal

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[110] See Wheatland Tube, 495 F.3d at 1365 (reversing Wheatland Tube, 414 F. Supp. 2d at 1271).
[111] See section 772(c)(1)(C) of the Act.
[112] See Low Enriched Uranium from France, 69 FR at 46501; see also Ad Hoc Committee, 13 F.3d at 401-03; CWP from the PRC, 73 FR at 31966.
[113] Trade Act 1979 at 79.

values and lower dumping margins. In addition, Petitioners assert that the Department does not solely use surrogate market economy prices to value factors, but sometimes uses the prices of imported inputs. Petitioners argue that these inputs come from countries that often compete with Chinese suppliers, and it is plausible to conclude these prices are influenced by subsidies in the PRC. Finally, according to Petitioners, NME exports of subject merchandise can account for a significant share of the world market, which could be enough to influence prices in the world market and subsidies could increase output and exports from the PRC, which, in turn, could reduce prices of the goods in the world market. Petitioners explain that the lower prices would reduce profits for producers selling in these markets and would in turn reduce the profit the Department derives from their financials, which, in turn, would reduce normal value.

Petitioners also argue that the Department should not shift the burden to Petitioners to show double remedies. Petitioners assert that while Wire King lists many ways the Department protects against double counting, this just shows the strong desire by the Department to conduct a fair investigation and impose a fair remedy, and this only strengthens, not weakens, the argument that the Department desires to eliminate double counting. Petitioners also address the GOC's contentions that the Department has placed an impossible burden on respondents to demonstrate double remedies. Petitioners assert that Wire King's and the GOC's arguments ignore the fact that respondents are in possession of the data that would show the effect of domestic subsidies on prices. In addition, Petitioners point out that just because the Department acknowledges that data exists and can be recognized does not mean that the Department is in possession of this data. Petitioners assert that the Department has stated that in accordance with the Department's practice as affirmed by the CAFC, the party that is in possession of the relevant information has the burden of establishing the amount and nature of the particular adjustment."[114]

Petitioners argue that the record of this case does not establish that the Department has applied double remedies to wire rod in the AD and CVD cases. Petitioners conclude that the surrogate value used to measure dumping is unrelated to the benchmark price used by the Department to measure the benefit from the provision of wire rod for LTAR.

Department's Position

The GOC and Wire King have not cited to any statutory authority that would allow us to terminate this CVD investigation to avoid the alleged double remedy or to make an adjustment to the CVD calculations to prevent an incidence of alleged double remedy. If any adjustment to avoid a double remedy is possible, it would only be in the context of an AD investigation. We note that this position is consistent with the Department's decisions in Citric Acid from the PRC I&D Memo, at Comment 2, and Lawn Groomers from the PRC I&D Memo, at Comment 2. In the parallel AD investigation, the parties have raised double remedy arguments in their briefs. The summary of those comments and the Department's position are detailed in the final determination of the concurrent antidumping duty investigation. See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less

[114] See 19 CFR 351.401(b)(1); see also Koyo, 551 F.3d at 1286 and Zenith Electronics Corp. v. United States, 988 F.2d at 1573.

Than Fair Value (July 20, 2009), 74 FR ___ and accompanying I&D Memo at Comment 1.

Comment 3 Proposed Cutoff Date for Identifying Subsidies

Petitioners argue that the Department should not use the PRC's WTO accession date—December 11, 2001—as the date from which to identify and measure subsidies, but should instead apply the AUL regulations. Petitioners allege that 19 U.S.C. 1671(a) requires that the Department apply CVDs to subsidies granted by any country regardless of WTO membership status. Petitioners claim that by using the PRC's WTO accession date the Department is according the PRC special treatment while holding WTO members fully accountable for their subsidies. Petitioners request that the Department examine whether subsidies provided during the AUL period are countervailable under U.S. CVD law or, alternatively, whether the PRC's economy prior to December 11, 2001, is sufficiently different from a Soviet-style economy.

Petitioners allege that the Department's refusal to investigate whether subsidies provided by the Chinese government prior to December 11, 2001, are countervailable effectively establishes a fourth criterion for countervailability: Chinese subsidies must occur after December 11, 2001, to be countervailable. Petitioners argue that this new criterion is inconsistent with the definition of a subsidy under 19 U.S.C. 1677(5) and (5A).[115] Alternatively, Petitioners claim that if the Department must first examine whether changes in the Chinese economy allow for the identification and measurement of subsidies in the PRC prior to application of the CVD statute, the Department must amend its Preliminary Determination by applying the same analysis to the PRC's economy before 2001. Petitioners allege that the Preliminary Determination is inconsistent with this practice because the Department failed to examine the state of the PRC's economy before December 2001 and the date of December 11, 2001, selected by the Department does not relate to economic changes within the PRC that would make the application of the CVD law at that time reasonable. Petitioners suggest that the Department assess whether the Federal Circuit's findings in Georgetown Steel regarding the Soviet-style economies of the 1980's are applicable to the PRC's NME before December 2001, consistent with the analytical approach employed in the Georgetown Steel Memorandum. Petitioners claim that Chinese economic reforms cited by the Department in the Georgetown Steel Memorandum as relevant to the PRC's economic situation in 2005 were implemented prior to 2001. Petitioners allege that the Department's analysis of that evidence in the Georgetown Steel Memorandum and its conclusion pertain equally to the PRC before December 2001, and establishes that the CVD law may be applied to the PRC before December 2001.

Petitioners argue that the Department should measure the PRC's subsidies based on the AUL of assets in the KASR industry. Petitioners allege that the AUL is a more fitting date from which to identify and measure the PRC's subsidies because the AUL regulations account for the fact that non-recurring subsidies granted in the past can provide benefits in the future and would avoid the Department granting preferential treatment to the PRC. Petitioners allege that the Department has applied AUL regulations to countries prior to their WTO accession in the past and should do so in the present case. Petitioners claim that the Department normally allocates a nonrecurring benefit to a firm over the number of years corresponding to the AUL of renewable physical

[115] Id.

assets (12 years for the KASR industry). As a result, Petitioners request that the Department measure the PRC's subsidies from 1995. Petitioners claim that by selecting December 11, 2001, the Department is ignoring years of subsidies.

The GOC and Wire King aver that the Department should use April 9, 2007, as the cut-off date for measuring CVDs because it was only then that the Department, in the preliminary determination for CFS from the PRC and the Georgetown Steel Memorandum, declared that the CVD law was applicable to the PRC. The GOC and Wire King argue that, although the CVD law is not applicable because the Department continues to find the PRC to be an NME country, the Department's use of December 11, 2001, also conflicts with its past practice of applying CVD law only after a public finding that a country is no longer an NME. The GOC and Wire King allege that in Sulfanilic Acid from Hungary the Department said that the CVD law does not apply to a country while it is still considered an NME. The GOC and Wire King argue that in cases where the Department applies the CVD law to a country that was considered an NME there is a clear cut-off date because the Department makes a formal determination that the country is no longer considered an NME. The GOC and Wire King claim that since the Department still considers the PRC an NME there is no such date. The GOC and Wire King allege that since the closest thing to such a date is the Department's notice on April 9, 2007, that the CVD law applies to the PRC, the Department should reject Petitioners' arguments to apply an earlier cut-off date to Chinese subsidies and instead use April 9, 2007.

Alternatively, the GOC and Wire King argue that the Department should reject Petitioners' request to use an earlier date and continue to use the PRC's WTO accession date, December 11, 2001, as the cut-off date to measure subsidies. The GOC and Wire King allege that the Department has a clearly established practice of applying a single cut-off date for measuring subsidies in the PRC based on prior analyses of the reforms the PRC implemented prior to its WTO accession. The GOC points to CWP from the PRC where it claims the Department selected December 11, 2001, because of the reforms in the PRC economy leading to its WTO accession. The GOC and Wire King claim that Petitioners' argument that the Department is extending preferential treatment to non-WTO member countries is misguided; the application of the 2001 cut-off date is not based on whether the CVD law can be applied to non-WTO members but rather the Department's determination that there had been sufficient reforms by that time for it to measure subsidies. Wire King claims that since the Department has already determined that because the PRC's economy was not market-oriented enough prior to December 11, 2001, for subsidies to be measured, the AUL methodology is irrelevant to any alleged subsidies prior to that date. The GOC further contends that the Department had already concluded that it cannot make financial contribution, specificity, or benefit findings prior to December 11, 2001.

Department's Position:

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

We have selected this date because of the reforms in the PRC's economy in the years leading up to that country's WTO accession and the linkage between those reforms and the PRC's WTO membership.[116] 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.[117] Additionally, the PRC's Accession Protocol contemplates application of the CVD law. While the Accession Protocol, in itself, would not preclude application of the CVD law prior to the date of accession, the Protocol's language in Article 15(b) regarding benchmarks for measuring subsidies and the PRC's assumption of obligations with respect to subsidies provide support for the notion that the PRC economy had reached the stage where subsidies and disciplines on subsidies (e.g., countervailing duties) were meaningful.

Petitioners contend that 19 U.S.C. 1671(a) directs the Department to determine and countervail illegal subsidies without exception. This argument ignores that the imposition of CVDs requires the Department to be able to identify and to measure subsidies. The Department addressed the virtually identical concern in Wire Rod from Czechoslovakia.[118] Specifically, we examined whether "any political entity is exempted per se from the countervailing duty law" and found that none were, but then went on to address the additional question of whether the law could be applied to NME countries like Czechoslovakia. We concluded that state intervention in that economy, such as government control of prices, did "not allow us to identify specific NME government actions as bounties or grants."

The Department's analytical approach in Wire Rod from Czechoslovakia was upheld by the CAFC in Georgetown Steel.[119] The Court found that the Department had the discretion not to apply the CVD law where subsidies could not meaningfully be identified or measured. For the reasons explained above, we have determined that the economic changes that occurred leading up to and at the time of WTO accession permit us to identify or measure countervailable subsidies bestowed upon Chinese producers. In this regard, the Department is not providing the PRC with special/preferential treatment nor is the Department expanding the criteria for a subsidy beyond those found in the statute. Rather, the Department is simply acknowledging its ability to identify and measure subsidies as of December 11, 2001, based on the economic conditions in the PRC. Therefore, the Department is fully within its authority in not applying the countervailing duty law to the PRC prior to December 11, 2001.[120]

We acknowledge that there was not a single moment or single reform law that suddenly permitted us to find subsidies in the PRC. Many reforms were put in place before the PRC acceded to the WTO. On the other hand, the Department has identified certain areas such in the credit and land markets where the PRC economy continues to exhibit NME characteristics.

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[116] See WTO Working Party Report – 10/1/2001.
[117] See Georgetown Steel Memorandum.
[118] See Wire Rod from Czechoslovakia at 19371.
[119] See Georgetown Steel, 801 F.2d at 1318.
[120] Id.

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.

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

For these reasons, and consistent with CWP from the PRC and other recent the PRC CVD cases, the Department finds that it can determine whether the GOC has bestowed countervailable subsidies on Chinese producers from the date of the PRC's WTO accession.[121]

Comment 4 Certain Wire Rod Suppliers as Authorities

The GOC and Wire King contest the Department's finding that the provision of wire rod in the PRC confers a countervailable subsidy. The GOC and Wire King claim that the Department failed to address how government-owned wire rod producers in the PRC are authorities within the meaning of section 771(5)(B) of the Act or whether the government entrusted or directed the producers to provide a financial contribution under section 771(5)(B)(iii) of the Act. Both the GOC and Wire King argue that for the final determination, the Department should consider the following five factors to determine whether an entity is an authority, as it has in prior CVD determinations: 1) government ownership; 2) the government's presence on the entity's board of directors; 3) the government's control over the entity's activities; 4) the entity's pursuit of governmental policies or interests; and 5) whether the entity is created by statute.[122]

The GOC argues that SOE producers should not be considered authorities within the meaning of the statute for several reasons. *First*, the GOC argues that government ownership/control does not establish the existence of an authority for purposes of the statute. The GOC points out that in the past, the Department has concluded that entities with even 100% majority ownership should not be considered government authorities.[123] The GOC further argues that international law indicates that the real issue is not government ownership or control per se, but whether an entity exercises elements of government authority.[124]

Second, the GOC argues that government ownership of enterprises in the PRC is separate and independent of traditional government functions. The GOC contends that previous reforms have

[121] See CWP from the PRC I&D Memo at Comment 2; see also LWRP from the PRC I&D Memo at Comment 4; see LWTP from the PRC I&D Memo at Comment 2; see also LWS from the PRC I&D Memo at Comment 2.
[122] See, e.g., DRAMS from Korea I&D Memo at 16-17; Magnesium from Canada, 57 FR at 30954; Flowers from the Netherlands, 52 FR at 3310; Steel Sheet and Strip from Korea, 64 FR at 30642-43.
[123] See, DRAMS from Korea I&D Memo at 17.
[124] AB Report on DRAMS from Korea at para. 112, n. 179 (emphasis added).

established that SOEs do not exercise elements of governmental authority and, therefore, SOEs do not confer financial contributions within the meaning of the statute. Citing to the 1986 SOE Bankruptcy Law and the 1988 SOE Law, the GOC argues that SOEs have separate legal status from that of the government and that management of the enterprises' operations has been given to the enterprises' managers.[125] Furthermore, the GOC states that the 1993 Company Law established basic rights and obligations among the company, shareholders, employees, directors and managers, and contained core principles of good corporate governance.[126] The GOC points out that it also established the State-Owned Assets Supervision and Administration Commission ("SASAC") in 2003 to solidify the separation of State ownership from SOE operations.

Third, the GOC contends that steel pricing is not regulated or set by the state, but is subject to market forces under the 1998 Price Law. According to the GOC, the government sets prices only for vital or rare commodities, natural monopolies, public utilities and essential non-profit services set forth in government pricing catalogs, but not for steel.[127] The GOC further argues that the 1998 Price Law establishes autonomous enterprise operators which have the right to determine prices under market regulations.[128]

Petitioners argue that the Department should continue to find that the GOC's provision of wire rod for LTAR is a countervailable subsidy. Petitioners contend that the record demonstrates that the GOC-controlled wire rod suppliers constitute authorities that provide a financial contribution under section 771(5)(B) of the Act.

First, Petitioners argue that information on the record establishes that all of Wire King's wire rod suppliers are government-controlled and, therefore, should be considered government authorities for the final determination and no further analysis is necessary. Petitioners argue that the statute clearly defines an authority as a government of a country or any public entity within the territory of the country. Therefore, a financial contribution by either a government or a public entity that is specific and confers a benefit is considered a subsidy.

Regarding the GOC's argument that the Department should apply the five-factor test to determine whether an entity is an authority, the Petitioners argue that the CVD Preamble explains that the Department has a long-standing practice of treating most government-owned corporations as the government itself.[129] Petitioners assert that the Department has continued to apply this practice in recent cases in which the Department reiterated that it is not required to consider all factors under the five-factor test, such as in instances where the government producer provides an input. Petitioners cite Hot-Rolled Steel from India as an example in which the Department has found the five-factor test to be an inappropriate means of identifying an authority under section 771(5)(B) of the Act.

Petitioners believe that the GOC confuses the standards for finding a subsidy under the statute. Petitioners maintain that the statute does not require the Department to consider whether the

[125] SOE FIS at 3.
[126] Id. at 4.
[127] Id. at 4 and Exhibit 4.
[128] Id. at 4.
[129] See CVD Preamble, 63 FR at 65402.

entity performs a government subsidy function. According to Petitioners, the Department considers whether a private entity exercised elements of government authority only in situations where an authority "entrusts or directs a private entity to make a financial contribution" under section 771(5)(B)(iii) of the Act, which is not applicable here because this proceeding involves a direct action by a public entity. Petitioners further assert that the U.S. CIT upheld this interpretation.[130] Finally, Petitioners contest the GOC's citation to DRAMS from Korea I&D Memo, claiming that the materials pertain to the entrustment or direction by a government authority to a private entity and are, thus, relevant only in the context of indirect subsidies requiring entrustment or direction.

Second, Petitioners refute the GOC's claims that state-owned steel producers are separate and independent of the Chinese government. Petitioners argue that the Department has consistently considered state-owned steel producers as authorities within the meaning of section 771(5)(B)(i) of the Act in past cases.[131] Petitioners further argue that record evidence in this proceeding demonstrates that Chinese steel producers do not operate autonomously from the government, and the government implemented its industrial policies through SOEs, including wire rod producers.[132] Furthermore, Petitioners maintain that the Chinese government has also made clear that it intends to maintain control of the steel industry as one of its "pillar industries," in which it is heavily involved.[133]

Third, Petitioners contest the GOC's claims that steel pricing is not regulated and argue that the Chinese government directly affects wire rod prices in the PRC through its ownership and control over the wire rod industry. Citing Lawn Groomers from the PRC I&D Memo, Petitioners contend that the GOC's arguments with respect to pricing are not relevant to the question of whether the provision of wire rod provides a financial contribution within the meaning of the statute. Finally, Petitioners cite record evidence that confirms the Chinese government's ownership dominates the wire rod sector of the steel market.[134]

Department Position:

The Department considers firms that are majority-owned by the government to be "authorities" within the meaning of section 771(5)(B) of the Act. This treatment is reflected in the CVD Preamble,[135] which identifies "treating most government-owned corporations as the government itself" as a longstanding practice. It is also reflected in numerous determinations in which the Department has treated government-owned firms providing such goods and services as electricity, water, natural gas, and iron ore as authorities without any discussion of the matter or any questioning of this treatment by the parties to the proceeding.[136]

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[130] Hynix 2006, 435 F. Supp. 2d at 1294.
[131] See, e.g., Steel Sheet and Strip from Korea.
[132] See Original Petition at Exhibit CVD-12.
[133] Id. at CVD-5.
[134] Id. at CVD-5, CVD-79, and CVD-80.
[135] See CVD Preamble, 63 Fr at 65402.
[136] See, e.g., Final Magnesium from Canada at "Exemption from Payment of Water Bills; Steel Products from Argentina at Regional Tariff Zones for Natural Gas); Steel Sheet and Strip from Korea at Electricity Discounts Under the Requested Load Adjustment Program; and Hot-Rolled Steel from India at Iron Ore.

However, in certain cases, including certain instances involving firms with majority government ownership, the Department has considered additional relevant information to support its determination that firms should be treated as authorities for purposes of the countervailing duty law. Because our approach to analyzing whether a firm is an authority has become a recurring issue particularly in CVD investigations of imports from the PRC, we are taking this opportunity to clearly state our policy in this regard.

One of the earliest instances in which the Department was faced with the issue of whether a business (as opposed to a ministry or policy bank) should be treated as a government entity was in a 1987 investigation of fresh cut flowers from the Netherlands.[137] Specifically, in that investigation, we considered whether Gasunie, a firm that was fifty percent owned by the government, was conferring a subsidy through its provision of natural gas to the flowers growers. Because the government did not have a controlling interest in Gasunie, the Department looked to other indicators and determined that the government provided subsidies through Gasunie. In some subsequent cases, where it was unclear whether a firm was an authority based on ownership information alone, the Department examined broadly similar indicators as in the flowers case, namely: 1) government ownership; 2) the government's presence on the entity's board of directors; 3) the government's control over the entity's activities; 4) the entity's pursuit of governmental policies or interests; and 5) whether the entity is created by statute.

Commerce does not analyze each of these "five factors" for every firm in every case, however. In most instances, majority government ownership alone indicates that a firm is an authority. Indeed, a careful examination of the five factors reveals that when a government is the majority owner of a firm, factors one through four are largely redundant. If the government owns a majority of the firm's shares, then the government would normally appoint a majority of the members of the firm's board of directors who, in turn, would select the firm's managers, giving the government control over the entity's activities.

It has been argued that government-owned firms may act in a commercial manner. We do not dispute this. Indeed, the Department's own regulations recognize this in the case of government-owned banks by stating that loans from government-owned banks may serve as benchmarks in determining whether loans given under government programs confer a benefit. However, this line of argument conflates the issues of the "financial contribution" being provided by an authority and "benefit." If firms with majority government ownership provide loans or goods or services at commercial prices, i.e., act in a commercial manner, then the borrower or purchaser of the good or service receives no benefit. Nonetheless, the loans or good or service is still being provided by an authority and, thus, constitutes a financial contribution within the meaning of the Act.

For the reasons given above, it normally is not necessary for the Department to apply the five factor analysis in situations where the provider of the financial contribution is majority government owned. This does not preclude parties from arguing that firms with majority government ownership are not authorities, but to succeed in such an argument a party must demonstrate that majority ownership does not result in control of the firm. Such situations may

[137] See Flowers from Netherlands.

exist, but they are rare. Where majority ownership does not exist, the Department will consider all relevant information regarding the control of the firm, including, where appropriate and necessary, some or all of the five factors discussed above, in determining whether the firm should be treated as an authority.

In this investigation, the GOC holds a majority ownership position in certain of the wire rod producers that supply Wire King. Consistent with the policy explained above, we are treating these producers as "authorities" and, hence, the wire rod they provide to Wire King confers a countervailable subsidy to the extent that it is sold for LTAR and is specific.[138]

Comment 5 Wire Rod Provided by Private Suppliers

The GOC and Wire King argue that ownership information placed on the record[139] and confirmed at verification shows that Wire King sources wire rod from certain private suppliers, including producers with less than 50 percent government ownership. Consistent with CWLP from the PRC, the GOC and Wire King claim that the Department should not countervail wire rod supplied by these sources.

Department's Position:

Our analysis of these suppliers is necessarily described in our Authorities Memorandum because the identity of these suppliers is proprietary. We have concluded that certain suppliers with some, but less than majority ownership by the government, should be treated as "authorities" where the GOC controls the company.

Comment 6 Wire Rod Provided by Privately-Held Trading Companies

The GOC and Wire King argue that the Department's decision in the Preliminary Determination to countervail purchases of wire rod from private trading companies based on the percentage of wire rod produced by SOE producers is not consistent with the statute. Wire King argues that in prior CVD cases the Department has found that Chinese respondents received no countervailable subsidy when the purchases were from private input producers or from market economy trading companies.[140] The GOC and Wire King assert that the Department's approach in the Preliminary Determination is inconsistent with the statute. Therefore, both the GOC and Wire King argue that the Department should exclude purchases of wire rod from private trading companies from its subsidy calculation for the final determination.

Both the GOC and Wire King argue that the statute clearly dictates that the Department must find a financial contribution and benefit to the respondent end user for a subsidy to exist. Citing 19 CFR 351.511(b) and (c), the GOC claims that it is insufficient to find a financial contribution only to an unrelated trading company and then a benefit to the end user, particularly where the benefit is expensed at the time of receipt, as in the case of the provision of wire rod.

[138] See Memorandum Accompanying the Final Determination, "Analysis Concerning Authorities" dated July 20, 2009 ("Authorities Memorandum").
[139] See GOC's April 8, 2009, Third Supplemental Response at 4.
[140] See, CWP from the PRC I&D Memo at Comment 7; and CTV Receivers from PRC I&D Memo at Comment 8.

The GOC contends that, instead, the Department has made a legal error in finding an upstream subsidy where none was alleged or investigated. The GOC claims that no findings have been made by the Department that trading companies received both a financial contribution and benefit by means of their purchase of wire rod from SOE wire rod producers. Absent such findings, according to the GOC, no upstream subsidy analysis can take place.

The GOC argues that, in the absence of an upstream analysis, the Department must demonstrate how the trading company itself provided a financial contribution and benefit to the end user through the sale of wire rod to the end user. The GOC posits that this requires, at the outset, a finding that the trading companies are "authorities" within the meaning of the statute, or were otherwise "entrusted or directed" by the government to provide financial contribution. The GOC further argues that it makes no difference whether the price paid by the end user is below the Department's selected benchmark, as the legal element of financial contribution has never been established.

Petitioners argue that the Department should continue to countervail wire rod purchased through trading companies. Petitioners assert that the Department's treatment of wire rod purchased through trading companies is consistent with section 771(5)(D) of the Act. Petitioners claim that the statute does not dictate that a financial contribution may not pass through an intermediary or must be received directly by the end user, as the GOC contends. With respect to benefit, Petitioners argue that section 771(5)(E) of the Act states that so long as an authority provides a financial contribution, and a benefit is conferred on the recipient, a countervailable subsidy may be found to exist.

Citing CWP from PRC I&D Memo, Petitioners also assert that the Department's methodology is not unique to this case, as alleged by the GOC. Petitioners claim that in that case, the Department found that a financial contribution by a government agency through a trading company is countervailable.

Department's Position:

As in the Preliminary Determination, we continue to find countervailable purchases of wire rod from privately-owned trading companies that purchase wire rod from state-owned producers/suppliers. The statute does not require that the Department find both a financial contribution and benefit to the respondent end user for a subsidy to exist. Instead, at section 771(5)(B) of the Act, a subsidy is deemed to exist when there is a financial contribution "to a person" and a "benefit is thereby conferred." Consistent with CWP from the PRC,[141] LWRP from the PRC[142] and Tires from the PRC,[143] we find that the GOC's financial contribution (provision of a good) is made to the trading company suppliers that purchase the wire rod, while all or some portion of the benefit is conferred on Wire King through its purchases of wire rod from the trading company suppliers.

[141] See CWP from the PRC Decision Memo at 10 and Comment 7.
[142] See LWRP from the PRC Decision Memo at 8.
[143] See Tires from the PRC at 10 and Comment D.4.

We disagree with the GOC that the Department has or is required to conduct an upstream analysis in this situation. Moreover, we disagree that the Department is required to identify or quantify the amount of any benefit to the trading company. If the Department had first determined the difference between the benchmark and the price paid by the trading companies to the GOC suppliers for wire rod, and then also determined the difference between the benchmark and the price paid by Wire King to the trading companies (i.e., the amount of subsidy passed through to Wire King), we would find the same resulting benefit to the respondent company.

Comment 7 Application of Adverse Facts Available for Wire Rod Production Data

Petitioners contend that the Department should reject the wire rod ownership percentage and production data reported by the Chinese government, and apply AFA in determining the level of government ownership in the wire rod industry. According to Petitioners, the GOC provided misleading information or withheld responsive information in responding to the Department regarding the level of state ownership in the PRC's wire rod industry. Additionally, in Petitioners' view, the GOC failed to report production information on a producer-specific basis and refused to allow verification of the wire rod production data. Petitioners allege that the GOC's reporting in this investigation is similar to its reporting in the CWP from the PRC and CWLP from the PRC investigations, where the Department concluded that the GOC misrepresented information and, consequently, applied AFA. Petitioners continue by describing several alleged flaws in the GOC's reported data. First, they claim that the GOC used a flawed classification methodology for determining which companies should be treated as SOEs. Second, they contend that the GOC did not rely on its normal ownership classifications and instead developed a special methodology for responding to the Department's questionnaires. Third, according to Petitioners, the GOC's response did not include GOC-controlled entities that have less than majority government ownership, indirect government ownership, or situations where the company was owned by multiple government entities. Petitioners conclude by urging the Department to apply AFA consistent with the methodology used in CWP from the PRC.

The GOC disagrees with Petitioners' assertion that it failed to act to the best of its ability at verification. The GOC argues that, contrary to Petitioners' claims, the level of examination conducted by the GOC was as comprehensive as practically possible. The GOC points out that it took steps to generate a list, collect ownership information and to classify 499 individual wire rod producers, and more entities that were owners of these producers. Based on this information, the GOC asserts that the Department found no discrepancies during its verification at local SAIC offices or the SSB.

The GOC dismisses Petitioners' comments on the GOC's ownership reporting methodology. *First*, contrary to Petitioners' claims, the GOC asserts that the GOC's approach to classifying SOEs was not arbitrary or aberrant, but was based on the Department's own practice of treating a government majority interest as conferring authority status under the statute.[144]

Second, to the extent the GOC disregarded SAIC or SSB ownership classifications, the GOC maintains that this was not an attempt to manipulate the data as Petitioners argue, but to ensure accuracy under the Department's ownership standard. The GOC points out that when it initially

[144] See, e.g., OTR Tires from the PRC I&D Memo at 10.

reported SOE production, the data was based on the SAIC classifications. However, in an effort to ensure that SOE status was not being under-reported rather than over-reported, the GOC claims that it examined ownership more thoroughly, particularly with respect to joint stock companies and limited liability companies and, therefore, moved away from the SAIC classifications.[145] The GOC also points out that a comparison of the initial SOE output information provided by the GOC in its initial questionnaire response against the revised output information shows a negligible difference, less than 500,000 tons out of over 80 million tons of total production.[146]

Third, the GOC asserts that Petitioners' claims that the GOC sought to under-report the extent of government ownership by failing to report production where government ownership was exercised through a foreign entity, by failing to account for government ownership past the immediate level, and by failing to account for instances where government ownership was effective through more than one agency, are simply wrong. According to the GOC, it was careful to examine ownership past the immediate level, even to the extent of examining ownership by foreign entities.[147] The GOC contends that Department verifiers also confirmed at the local government verification, the GOC's efforts to examine ownership past the immediate level, requesting information on the owners of wire rod producers to confirm their status.[148]

Finally, regarding Petitioners' claims that the application of AFA over the lack of Department access to the individual output results of wire rod producers, the GOC argues that the restrictions placed on access to individual output statistics should have no bearing on the final determination. The GOC contends that the Department was granted and conducted a very complete review of the process by which individual production data was extracted from the SSB database and aggregated into publicly useable form,[149] even to the extent of seeing some of the individual data records from the extraction.[150] According to the GOC, Department verifiers witnessed every step in the process, which was reproduced for their full review. They were also allowed to perform various checks on the data and the completeness of the producers listed. The GOC maintains that there were no discrepancies found in the methodology and there is no basis to conclude that the data extraction was inaccurate.

Department's Position:

Petitioners have likened the GOC's reporting in this investigation with that in CWP from the PRC and CWLP the PRC, where we determined the level of government ownership in the PRC hot rolled steel industry based on AFA. We disagree with Petitioners' characterization. In CWP from the PRC, the Department learned at verification that the GOC had misrepresented the source of the ownership classifications and that the classifications were based on the companies' own assessments of their ownership status. In contrast, the GOC in this investigation clearly explained the source of the ownership classifications[151] and the Department selected numerous companies and verified that their ownership was correctly reported.[152] In CWLP from the PRC,

[145] See GOC3SQR at 30.
[146] See GQR at 26 and Verification Exhibit 1.
[147] See GOC3SQR at 30.
[148] See Provincial Verification Report, at 4-5.
[149] See Electricity Verification Report, at 19-22.
[150] Id. at 20.
[151] See GOC April 8, 2009 SQR at 32
[152] See Provincial Verification Report at 2-5.

the Department applied AFA in determining the ownership of the companies that supplied steel inputs to the responding pipe producers because the government failed to provide capital verification reports and articles of association for those companies. In this investigation, in the context of determining whether the GOC was the predominant supplier of wire rod in the PRC, we did not request either capital verification reports or articles of association. Instead, we relied on ownership information derived from various business registration documents which, as noted above, we verified at local SAIC branches. Therefore, the circumstances in this investigation are wholly different from those in CWP from the PRC and CWLP from the PRC. Moreover, we disagree with Petitioners' contention that the GOC failed to report production information by producer and refused to allow verification of that information. Producer-specific information was not specifically sought by the Department and, hence, we did not attempt to verify it. Therefore, while we acknowledge that the submitted data regarding the level of government ownership in the PRC's wire rod industry may not be perfect, we find no basis to conclude that the GOC failed to cooperate by not acting to the best of its ability.

We also note that in the preliminary and final determinations we have found that the GOC is the predominant supplier of wire rod in the PRC using the GOC's data (albeit recognizing that the reported amount may understate the GOC's share). In light of this, Petitioners' suggestion that we adversely assume that virtually all wire rod in the PRC is produced by SOEs would not result in a different outcome in this case, as our calculation methodology would not change.

Comment 8 Benchmarks for Wire Rod

Petitioners assert that because a market price cannot be identified in the PRC, the Department's regulations stipulate that the adequacy of remuneration is to be measured by comparing the government-offered price to a tier two price, where it is reasonable to conclude that such a price would be available to purchasers in the country in question. See 19 CFR 351.511(a)(2)(ii). Petitioners assert that the Department should only include in its tier two calculation prices for wire rod as reported by the SBB for the United States and Europe and by MEPS (International) Limited for the world. Petitioners contend that the Department should discard MEPS' Asia wire rod price and the SBB "East Asia Import" wire rod price because these values are distorted.

According to Petitioners, the MEPS Asia price is an average from four Asian countries: the PRC, South Korea, Japan, and Taiwan. Moreover, the South Korean wire rod market is dominated by imports of wire rod from the PRC, as these account for 31.5 percent of all wire rod products produced in South Korea during the POI. This circumstance applies equally to the "East Asia Import" prices reported in the SBB. Because both publications' prices include Chinese-produced wire rod, both are distorted by the GOC's overwhelming involvement in the Chinese wire rod market and should be rejected by the Department.

Wire King and the GOC assert that the Department's rejection of a tier one benchmark for valuing the adequacy of remuneration is contrary to law, as the Department's own regulations state a preference for comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question.[153] See 19 U.S.C.

[153] See Softwood Lumber from Canada Investigation I&D Memo; see also CVD Preamble, 63 FR at 65377.

1677(5)(E)(iv); see 19 CFR 351.511(a)(2)(i). Moreover, Wire King contends that a NAFTA panel has supported a preference for using a tier one price.[154] Wire King asserts that the Department should continue its practice of conducting an adequate remuneration analysis on a case-by-case basis, and it should consider the actual nature and structure of the market to determine whether the GOC's involvement distorts prices.[155] The GOC contends that before it rejects in-country benchmark prices, the Department must determine that these non-affiliated firms' prices are distorted by alleged GOC control of the SOE firms. Moreover, the GOC claims that the Department must also conclude that the impact results in a downward distortion of private firm prices.

Wire King and the GOC assert that, in the instant investigation, the majority of the wire rod suppliers are private entities, and the record evidence does not support the Department's rejection of tier one prices. Wire King and the GOC note that the Department verified that SOEs account for 46.12[156] percent of wire rod production, but presented no evidence that percentage influenced domestic market prices. Moreover, Wire King claims that the GOC's automatic import licensing system does not control wire rod prices because it does not restrict import quantity and value. The GOC argues that widely accepted economic principles on pricing spillover reject the notion of pricing effects, given the specifics of this case.[157]

Noting that there are hundreds of non-affiliated, private wire rod producers within the PRC, the GOC argues that economic theory supports a conclusion that wire rod pricing decisions within the PRC are driven by competitive market principles. Moreover, the GOC argues, the Department has failed to address the fact that the PRC imports and exports sizeable amounts of wire rod, and the Department has not explained how export tariffs and licensing are an indication of government involvement or distortion in the wire rod market. Finally, the GOC asserts that the Department classified certain wire rod suppliers that have only minority government ownership as SOEs, thus, overstating the amount of wire rod provided by SOEs.

The GOC rebuts Petitioners' arguments that the MEPS Asia and SSB "East Asia Import" wire rod prices are distorted, noting that this claim is contrary to the assumptions that the Department is prepared to apply with respect to the effect of domestic subsidies on export prices.[158] The GOC asserts that East Asia import prices are more consistent with the statute relating to provision of goods for LTAR, which places a premium on prevailing market conditions, including "price, quality, availability, marketability, transportation, and other conditions of purchase or sale."[159] The GOC claims that the WTO Appellate Body instructs the Department to adhere to these factors in finding a rational surrogate benchmark.[160]

Wire King rebuts Petitioners' arguments that PRC-produced wire rod exports to Asian countries

[154] See Certain Softwood Lumber Products from Canada, NAFTA USA-CDA-2002-1904-03 at 23.
[155] See CVD Preamble, 63 FR at 65378; see also Wire Rod from Trinidad and Tobago I&D Memo at Comment 6; see also 19 U.S.C. 1677(5)(E); see also Lined Paper from Indonesia I&D Memo at 6.
[156] See GOC Verification Exhibit 1.
[157] See, e.g., Modern Industrial Organization; Theory of Industrial Economics; Industrial Economics.
[158] See, e.g., OTR Tires from the PRC I&D Memo at 13-14.
[159] See 19 U.S.C. 1677(5)(E)(iv).
[160] See AB Report on Softwood Lumber, at paras. 102-106.

are distortive, noting that Petitioners have failed to establish that these exports are in quantities large enough to lead to significant pricing impact. Wire King notes that the PRC also exports to Europe and North America in significant quantities and, yet, Petitioners do not argue that the North American and European market prices are distorted. Wire King contends that excluding Asian prices from the averaged benchmark is unlawful, and would be in violation of the requirements set forth in 19 CFR 351.511(a)(2)(ii). Wire King asserts that Petitioners' proposal to use only the higher North American and European market prices highlight the punitive nature of the Department's wire rod methodology, because Wire King would not be able to access a North American or European market price as Wire King is not in the North American or European market. Thus, Wire King could do nothing to avoid an LTAR finding.

Wire King further contends that, if the Department chooses to use a tier two price, it should not include wire rod prices from America and Europe in its calculation. Citing 19 CFR 351.511(a)(2)(ii), Wire King notes that the Department uses a world market price where it is reasonable to conclude that such a price would be available to purchasers in the country in question, and may rely on such prices to the extent practicable, making due allowance for factors affecting comparability. Wire King asserts that, in past cases, the Department has not averaged all available prices, resorting instead to a regional price that is actually available to the respondent.[161] Furthermore, says Wire King, the Department has in past cases used actual import transactions in the PRC and world prices it deemed to be equivalent to actual import transactions, while reiterating its policy to follow a case-by-case approach in selecting appropriate benchmarks on the basis of the facts on the record.[162]

Wire King claims that the Department's inclusion of American and European wire rod prices creates an average price that would never be available to purchasers in the PRC, because commercial purchasers obtain wire rod prices based on the region from which they order. According to Wire King, the Department's regulations require that a world market price be available to purchasers in the country in question.[163] Wire King argues that this fictional average price makes any comparability to market principles meaningless. Instead of using average prices from various regions, Wire King requests that the Department use the publicly available price for wire rod in Asia as the benchmark, because it most accurately reflects the price that would be available to purchasers in the PRC.

Petitioners rebut Wire King's contention that the Department's benchmark calculation methodology creates an artificial price that would never be available to purchasers in the PRC, and assert that Wire King fails to understand that the prices used in the calculation represent a range of available prices. Petitioners argue that the average price is, therefore, more representative of prices available to wire rod purchasers throughout the PRC than the single price proposed by Wire King. Petitioners also rebut Wire King's assertion that North American or European prices are unavailable to purchasers in the PRC. According to Petitioners, these prices would be available, as neither of North America nor Europe imposes export restraints on wire rod. Moreover, purchasers in North America and Europe import substantial quantities of wire

[161] See, e.g., Lined Paper from Indonesia; see also Hot-Rolled Steel from India, 73 FR at 79797; see also Softwood Lumber Products from Canada Determinations, 66 FR 49195-96.
[162] See CWP from the PRC I&D Memo at Comment 7; see also LWPR from the PRC, I&D Memo at Comment 1.
[163] See 19 CFR 351.511(a)(2)(ii).

rod from the PRC, say Petitioners, and Wire King fails to identify the impediments that bar importers in the PRC from importing North American or Europe wire rod. Thus, note Petitioners, North American and European prices for wire rod are consistent with the requirement under 19 CFR 351.511(a)(2)(ii).

Further, Petitioners contend that substantial record evidence exists to support rejecting internal prices in the PRC as possible benchmarks. Petitioners say that the GOC's involvement through its ownership of wire rod producers, ownership of raw material and input suppliers to wire rod producers, and governmental policies and measures, such as export restraints, show that the GOC plays a predominant role in the PRC's wire rod market. Petitioners contend that, consistent with the Department's regulations and its past practice, the Department should determine that the use of a domestic benchmark is inappropriate in cases like this, where the government provider constitutes a majority, or in certain circumstances, a substantial portion of the market.[164] Moreover, say Petitioners, the Department's selection of a tier two benchmark is even more appropriate in light of the fact the GOC's ownership in the wire rod industry is higher than the 46 percent figure claimed by the GOC. Petitioners add that the GOC's export restriction increases the availability of wire rod in the PRC and result in lower prices to downstream domestic consumers. Thus, argue Petitioners, the Department should affirm its finding in the Preliminary Determination, that wire rod transaction prices in the PRC are distorted and that a market-determined benchmark should be used to measure whether Wire King purchased GOC-produced wire rod for LTAR.

Department's Position:

As discussed, supra, at "Programs Determined To Be Countervailable - Provision of Wire Rod for Less Than Adequate Remuneration," the GOC has reported that SOEs accounted for approximately 46.12 percent of the wire rod production in the PRC during the POI. Moreover, at the government verification of the instant investigation, the Department was informed by officials at the National Bureau of Statistics that any company with a minimum of 25 percent foreign invested ownership could be classified as an FIE.[165] Therefore, it is possible that some companies that were classified as FIEs by the GOC could be majority owned or controlled by the government with the result that the 47.97 percent figure may understate the actual amount. While this is not a majority of the production, the substantial market share held by the SOEs is evidence of the predominant role that the government plays in this market.

In addition to the government's ownership share of the market, we find that the 10 percent export tariff and export licensing requirement instituted during the POI is further evidence of the GOC's predominant role and contributed to the distortion of the domestic market in the PRC for wire rod.[166] Such export restraints can discourage exports and increase the supply of wire rod in the domestic market, with the result that domestic prices are lower than they otherwise would be. Moreover, the very low share of the domestic market that is supplied by imports is further

[164] See CVD Preamble, 63 FR at 65377.
[165] See Electricity Verification Report, at 22.
[166] In their case brief, Wire King references import restrictions, however, we note that the facts relevant to this issue are export restrictions and licenses, as described by the GOCin its November 20, 2009, Questionnaire Response, at 30.

evidence that the government plays a predominant role through its involvement in the market.

The GOC asserts that the large number of non-affiliated wire rod producers ensures little to no scope for strategic interaction among the firms, and that the competitive nature of these firms means their pricing decisions are driven by their costs and not by the strategic influence of the GOC's alleged control of other firms. In making this argument, the GOC fails to realize that the Department's position is not driven by a finding of collusion between private and state-owned wire rod producers. Rather, because of its substantial market presence, the GOC becomes a price leader, with which private firms are forced to compete. Private wire rod suppliers are essentially competing, not with other private producers, but with GOC-controlled entities. We note that the GOC did not support its argument with record evidence of pricing differences SOEs and non-SOEs.

The GOC's arguments concerning "textbook" economic theory are not clearly applicable. These arguments, which discount the market effects of individual producers when an industry exceeds 10 to 12 producers, and which highlight the roles of "maverick" firms, do not apply to a market where government owns substantial market share, such as the wire rod market in the PRC. These market behavior assumptions are only valid when profit maximization is the goal for all producers. Because profit maximization may not be the sole objective of a government-owned firm, these economic theories are not necessarily applicable.

Therefore, consistent with the Lumber from Canada Investigation, we are following our established practice of using out-of-country benchmarks where actual transaction prices are significantly distorted because of the predominant role of the government in the market. Wire King's reference to Certain Lined Paper Products from Indonesia as support for its argument that the Department should rely on regional Asian prices of wire rod to calculate a benchmark is misguided. In that case, we specifically noted that the Department had insufficient evidence of world market prices and, consequently, we were unable to conduct our analysis under tier two of the regulations.[167] Wire King's reference to Certain Hot-Rolled Carbon Steel Flat Products from India appears to be similarly misplaced, as the Department limited the values in the tier two benchmark calculation because the record evidence of that case suggested this treatment was appropriate. In the instant investigation, there is no record evidence to conclude that world prices should be excluded from the Department's accepted methodology for calculating a tier two benchmark. Thus, consistent with 19 CFR 351.511(a)(2)(ii) we are relying on a calculated world average price (tier two) for the wire rod price benchmark.

We also disagree with Petitioners' arguments that the Department should exclude Asian wire rod prices from the benchmark calculation. Assuming the prices of PRC wide rod exports are distorted, Petitioners have failed to establish that the volume of exports is large enough to have an impact on the Asian wire rod average price. We also disagree with Wire King's and the GOC's arguments that the Department should exclude prices from Europe and North America from the benchmark calculation. There is no record information to suggest wire rod is not traded between Europe, North America, and Asia. As Petitioners noted, the Department's benchmark calculation methodology represents a range of available prices to wire rod producers throughout

[167] See Certain Lined Paper Products from Indonesia I&D Memo, at 6.

the PRC, and not necessarily the one price available to Wire King.

Comment 9 Adding the Cost of Insurance to the Wire Rod Benchmark Value

Petitioners argue that for the final determination, the Department should revise its calculation of the market-determined benchmark price for wire rod to account for the cost of insurance. Petitioners contend that doing so will ensure that the benchmark price accurately reflects the price the firm would pay if it imported wire rod, consistent with the 19 CFR 351.511(a)(2)(iv) and past practice.[168]

Petitioners explain that the GOC instructs the PRC customs authorities to assess a transportation-related charge of three percent on import transactions that do not include the cost of insurance.[169] Accordingly, because an importer of wire rod into the PRC would be required by the GOC to pay a charge of three percent of the cost of goods plus freight, Petitioners argue that the Department should accordingly re-calculate the wire rod benchmark used at the Preliminary Determination to reflect the cost of insurance. Petitioners suggest that the cost of insurance of three percent be multiplied by the sum of the benchmark price and international freight.

Wire King contests Petitioners' argument that the world benchmark price used for wire rod in the Preliminary Determination should be inflated by adding an amount for insurance. Wire King agrees with Petitioners' argument that the world benchmark price should include an adjustment for delivery charges, citing 19 CFR 351.511(a)(2)(iv). However, Wire King argues that Petitioners failed to cite to any cases in which the Department has included insurance charges in the world benchmark price. Wire King notes that, to the contrary, in CWLP from the PRC I&D Memo, OTR Tires from the PRC I&D Memo, LWS from the PRC I&D Memo, Light-Walled Rectangular Pipe I&D Memo, and LWRP from the PRC I&D Memo, the Department did not adjust the benchmark for insurance charges.

Wire King disagrees with Petitioners' assertion that the PRC's Customs Valuation Rules establish that an importer of wire rod would pay insurance charges if it imported wire rod. To the contrary, Wire King argues that Article 39 of the PRC Customs Valuation Rules recognizes that imported goods do not necessarily incur insurance charges. Wire King claims that PRC customs authorities may use this provision to: 1) increase the transaction value of the imported goods and, thereby, their dutiable value; or 2) calculate a CIF value for import statistical purposes. Finally, Wire King notes that Petitioners have failed to provide evidence on the record of this proceeding that a Chinese importer of wire rod would incur insurance charges on imports of wire rod.

Department's Position:

[168] See, e.g., CWLP from the PRC I&D Memo at 20, 49; CWP from the PRC I&D Memo, at 12, 66, and Comment 7; OTR Tires from the PRC I&D Memo at Comment 7; LWS from the PRC I&D Memo at Comment 17; Hot-Rolled Steel from India I&D Memo at Comments 5 and 15; and LWRP from the PRC I&D Memo at Comment 7.

[169] See Article 38 and 39 of China's "Rules Regarding the Determination on Customs Value of Imported and Exported Goods" ("China Customs Valuation Rules") submitted as Exhibit 2 of the Petitioners' April 29, 2009, Letter.

We disagree with Petitioners. There is insufficient evidence on the record to warrant a change to the benchmark for wire rod to reflect the cost of insurance. Petitioners argue that the PRC customs authorities require an importer of wire rod to pay insurance charges. However, the evidence cited by Petitioners only establishes that the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data. While the Department will consider in future determinations the propriety of including insurance as a delivery charge, the record of this investigation does not support such an adjustment.

Comment 10 Tying the Wire Rod Subsidy

Petitioners claim that the Department incorrectly allocated the benefit from the subsidy for purchases of wire rod for LTAR by using Wire King's total sales as the sales denominator. Petitioners argue that the Department should use only the value of wire rod-containing products that Wire King sold during the POI as the denominator. Citing 19 CFR 351.525(a), Petitioners note that the Department attributes a subsidy to a particular product when the subsidy is "tied" to the production of that product. Petitioners claim that record evidence establishes that the GOC controls the wire rod industry in the PRC to support downstream producers that consume wire rod. Thus, Petitioners argue, the Department should tie the benefit from Wire King's purchases of preferentially-priced wire rod only to products made with wire rod.

Furthermore, Petitioners claim that Wire King withheld information regarding its consumption of wire rod during the POI. Thus, Petitioners contend that the Department should apply AFA to calculate the wire rod subsidy.

Citing CORE Korea[170] and Pasta from Italy,[171] Wire King responds that the Department's tying practice relates to tying subsidies to subject products or non-subject products. Noting that subject merchandise was only a fraction of all the products that it produced from wire rod, Wire King contends that the Department cannot attribute the subsidy for wire rod purchases to only subject or non-subject products. Wire King claims that further adjustments are necessary to isolate the wire rod LTAR subsidy only to subject merchandise, which Wire King claims would be inconsistent with the Department's tying practice. Finally, regarding Petitioners' request to use AFA to calculate the wire rod subsidy, Wire King asserts that the Department never asked Wire King to provide its sales value of merchandise produced during the POI using wire rod.

Department's Position

We disagree with Petitioners. On page 23 of their case brief, Petitioners state, "The Department's practice is to 'tie' a subsidy to products that the subsidy is meant to benefit at the point of bestowal." The CVD Preamble states,

> Our tying rules are an attempt at a simple, rational set of guidelines for reasonably attributing the benefit from a subsidy based on the stated purpose of the subsidy or the

[170] See CORE Korea I&D Memo at Comment 1.
[171] See Pasta from Italy I&D Memo, at Comment 3.

purpose we evince from record evidence *at the time of bestowal*.[172]

The times of bestowal for the wire rod subsidy are the points in time when Wire King purchased SOE-produced wire rod during the POI. On page 23 of their case brief, Petitioners identified "wire-rod-containing products" as the "specific product" [173] that benefits from the wire rod subsidy at the time of bestowal. Petitioners' classification, however, simply groups together different products that use a common material input. The classification does not identify a product that the GOC intended to benefit at the time of bestowal of the wire rod subsidy.

Information on Wire King's product line from the Wire King Verification Report[174] demonstrates that the GOC could not have intended to benefit specific Wire King products at the time of bestowal of the wire rod subsidy. In the Wire King Verification Report, we noted that Wire King's product catalogs included approximately 600 individual products. [175] Second, we noted that certain models of Wire King's products included wire rod, while other models under the same product description did not include any wire rod.[176] Finally, we noted that wire rod was only a small material component of some products, while other products were made entirely of wire rod.[177] Given the breadth of Wire King's product line, Wire King's use of wire rod only in certain models of products, and the wide variance of Wire King's use of wire rod in its products, we do not find that the GOC intended to benefit specific Wire King products at the time of bestowal of the wire rod subsidy.

Petitioners also contend that the Department should apply AFA in calculating Wire King's wire rod subsidy because Wire King withheld information on its sales of products containing wire rod. In a supplemental questionnaire dated March 17, 2009, we asked Wire King to divide its reported sales between sales of merchandise produced using wire rod and merchandise produced without wire rod. Wire King responded that it could not divide the sales total because it did not maintain records for merchandise produced from a specific input.[178] During the Wire King verification, we examined Wire King's sales records to confirm that Wire King could not have reported separate sales totals. We found that Wire King did not maintain sales records that would have allowed the company to report separate sales totals.[179] Thus, we find that Wire King acted to the best of its ability, and we find no basis to apply AFA to Wire King's calculated wire rod subsidy.

Comment 11 Provision of Electricity for Less than Adequate Remuneration

The GOC contends that the Department should sustain its post-preliminary results on electricity, which concluded that the provision of electricity in the PRC does not confer countervailable

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[172] See CVD Preamble, 63 FR at 65403 (emphasis added).
[173] See id., 63 FR at 65400 ("a subsidy provided by a government for a specific product is attributed only to sales of that product for which the subsidy was provided (and any downstream products produced from that product), as it reduces the costs of a firm's sales of those products.").
[174] See Wire King Verification Report.
[175] See id. at 4.
[176] See id.
[177] See id.
[178] See Apr. 3 Wire King Letter at 2.
[179] See Wire King Verification Report at 3-4.

subsidies, whether examined in terms of national price setting authority exercised by the NDRC or provincial authority as exercised by provincial price bureaus.[180] The GOC asserts that the Department verified the price adjustment process, including the pricing dialogue between the NDRC and provincial price authorities, as well as the price increase implementations.[181] The GOC notes that the Department verifiers did not find any information to suggest that the provincial price setting process operated on anything but an objective and neutral basis. Moreover, the Department verified that within the provinces, with few exceptions, there are no preferences based on industry, region, or enterprise. The GOC notes that the Department verified that Wire King was charged electricity rates consistent with its classification within the corresponding Guangdong Province rate schedule.

At meetings with NDRC officials, the Department verifiers confirmed that electricity prices in the PRC are cost based, and that coal is the most import factor because of the predominance of coal-fired plants. The GOC notes that the price of coal is unregulated and easily susceptible to public examination. The GOC concludes that there is no basis to find the provision of electricity in this case to be specific within the meaning of the statute, thus, the Department should conclude that the provision of electricity in the PRC does not confer countervailable benefits.

Department's Position:

We disagree with the GOC. As discussed, supra, at "Use of Facts Otherwise Available and Adverse Facts Available," we were unable to affirm our post-preliminary determination on the GOC's role in setting electricity prices in the PRC. As noted above and detailed in the verification report, the rate setting process of electricity in the PRC was not verified because, inter alia, the GOC did not provide appropriate documentation. Moreover, we find that the GOC did not act to the best of its ability by failing to properly disclose the fact that the electricity rate adjustment process originates at the NDRC. In misrepresenting this information, the GOC did not provide the Department with "full and complete answers." Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC, and have found that the provision of electricity in the PRC confers a countervailable subsidy.

Comment 12 FIE Tax Programs - Whether FIE Tax Programs are Specific

The GOC and Wire King argue that FIE tax programs are not de jure specific and, therefore, not countervailable. The GOC and Wire King contend that 19 U.S.C. 1677(5A) requires a subsidy to be limited to an enterprise or industry or a group of enterprises or industries in order to be specific and that FIE tax programs are not limited in that manner. Wire King argues that FIE programs are merely generally applicable tax policies with numerous enterprises and industries as beneficiaries. The GOC and Wire King argue that FIEs are a distinct corporate form and, as such, have a different tax liability—like the difference in tax treatment between a partnership and a corporation—than other corporate forms. Wire King also contends that foreign investment is

[180] See Electricity Post-Prelim at 10-11.
[181] See Electricity Verification Report at 10-11 and 16-17.

not a limitation to participation but rather an "eligibility requirement." Wire King alleges that a distinction was made in the Department's CVD Final Rule and by the Federal Circuit between limitation to a certain enterprise, industry or group of industries with common characteristics such as foreign investment. Wire King argues that since there are no limits on the number, form of enterprise, or type of industry, the programs are not specific under the statute. The GOC and Wire King allege that, because subsidies limited to small- and medium-sized firms are not specific under 19 CFR 351.502(e), programs limited to particular forms of enterprises or other types of investors are similarly not de jure specific. Wire King alleges that that the fact that FIE tax programs have been countervailed in diverse industries (such as paper, pipe, citric acid, magnet, and lawn groomers) indicates they are not de jure specific.

Wire King also argues that FIE programs are not de facto specific. Wire King alleges that for a subsidy to be de facto specific there must be (1) a limited number of recipients, (2) certain enterprises or industries must be predominant users or beneficiaries of the subsidy, and (3) the authority must have discretion to favor certain enterprises or industries over others. Wire King argues that FIEs are not de facto specific because they operate in nearly every economic sector, no group or category is predominant, no industry or enterprise receives disproportionately large benefits, and the designation process does not show preference for any industry or enterprise.

Petitioners argue that the FIE tax programs are de jure specific under the statute and that the Department should continue to countervail these programs consistent with its past practice. Petitioners aver that the Department has consistently found that the fact that these firms have foreign investment is what makes them eligible for the tax breaks, making them specific as a matter of law. Petitioners further allege that the statute requires the Department to find specificity where such subsidies are expressly limited to an enterprise or industry. Petitioners argue that the FIE tax programs are specific because they are based on the companies' level of foreign ownership. Petitioners allege that this makes them limited to particular enterprises rather than generally available. Petitioners aver that, as a result, the Department should continue to find the benefits received by Wire King under these programs during the POI countervailable.

Department's Position:

We disagree with the GOC and Wire King's assertion that enterprises with foreign investment cannot be considered a limited group of enterprises or industries 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 only to these foreign-invested companies while domestic companies are precluded from using the tax reductions and exemptions. Moreover, although the GOC and Wire King seek 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 them.

To the extent that the GOC and Wire King are arguing that the Department cannot find specificity based on the form of a corporation, we have not done so as explained in CFS from the

PRC.[182]

Although we are finding de jure specificity and, consequently, do not reach the issues related to de facto specificity, we note that only one of the tax programs was found specific on the grounds that it was limited to FIEs, "the Exemption from Cit Construction and Education Tax for FIEs in Guangdong Province."No information was placed on the record relating to usage of this program.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these recommendations are accepted, we will publish the final determination in the Federal Register.

AGREE ____ DISAGREE ____

_____
Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

_____
(Date)

[182] See CFS from the PRC IDM at Comment 14.

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
APA	Administrative Procedures Act
Asber	Asber Enterprise Co.
AUL	Average useful life
BPI	Business proprietary information
CAFC	Court of Appeals for the Federal Circuit
CFR	Code of Federal Regulations
CIT	Court of International Trade
CRU	The Department's Central Records Unit (Room 1117 in the HCHB Building)
CVD	Countervailing Duty
Department	Department of Commerce
FIE	Foreign-Invested Enterprise
GOC	Government of the People's Republic of China
IDM	Issues and Decision Memorandum
LMI	Lower-middle income
LTAR	Less than adequate remuneration
MEPS	Exhibit 82 of Petitioners' July 31, 2008, petition MEPS International Ltd.
NDRC	National Development and Reform Commission
NME	Non-market economy
Petitioners	Nashville Wire Products., Inc., SSW Holding Company, Inc., United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union ("USW"), and the International Association of Machinists and Aerospace Workers ("IAMAW"), District Lodge 6 (Clinton, IA)
PNTR	Permanent Normal Trade Relations
POI	Period of Investigation
PRC	People's Republic of China
RMB	Renminbi
SAA	Statement of Administrative Action
SBB	Steel Business Briefing

SAIC	State Administration of Industry and Commerce
SOE	State-Owned Enterprise
ST	Short ton
USD	U.S. Dollars
VAT	Value Added Tax
Wire King	Guangdong Wireking Housewares and Hardware Co., Ltd.
WTO	World Trade Organization

II. RESPONSES AND DEPARTMENT MEMORANDA

Short Cite	Full Name
	GOC
GQR	GOC's Original Questionnaire Response (Nov. 20, 2008)
G1SR	GOC's First Supplemental Response (Dec. 12, 2008)
G2SR	GOC's Second Supplemental Response (Dec. 17, 2008)
G3SR	GOC's Third Supplemental Response (Apr. 8, 2009)
G3SRADD	GOC's Additional Information Regarding the GOC's Third Supplemental Response (Apr. 30, 2009)
GNSAR	GOC's Response to New Subsidy Allegations (Dec. 9, 2008)
GOC's CB	GOC's Case Brief (June 26, 2009)
GOC's RB	GOC's Rebuttal Brief (July 1, 2009)
GOC Verification Exhibit 1	GOC Verification Exhibit 1
SOE FIS	GOC Factual Information Submission on SOEs (March 31, 2009)
	Petitioners
Petition	Original Petition (July 31, 2008)
Petitioners' NSAs	
Petitioners' Letter	Petitioners' Letter (April 29, 2009)
Petitioners' CB	Petitioners' Case Brief (June 26, 2009)
Petitioners' RB	Petitioners' Rebuttal Brief (July 1, 2009)
	Wireking
WKQR	Wireking's Original Questionnaire Response (Nov. 20, 2008)
WK1SR	Wireking's First Supplemental Response (Dec. 12, 2008)
WK2SR	Wireking's Second Supplemental Response (Dec. 17, 2008)
WK3SR	Wireking's Third Supplemental Response (Jan. 22, 2009)

WKNSAR	Wireking's Response to New Subsidy Allegations (Dec. 9, 2008)
Wire King's CB	Wireking's Case Brief (June 26, 2009)
Wire King's RB	Wireking's Rebuttal Brief (July 1, 2009)
April 3 Wire King Letter	Letter from Wireking to the Department, entitled "Guangdong Wireking Housewares and Hardware Co., Ltd." (Apr. 3, 2009)
Department	
NSA Initiation Memo	Memorandum to Susan Kuhbach, Senior Director, Office 1, entitled "Analysis of Petitioners' New Subsidy Allegations" (September 12, 2008)
Wire King Verification Report	Memorandum from Shane Subler and Scott Holland, International Trade Compliance Analysts, to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, entitled "Verification Report: Guangdong Wireking Housewares and Hardware Co., Ltd." (June 19, 2009)
Electricity Verification Report	Electricity Verification Report
Electricity Post-Prelim	Memorandum from Albert Hsu, Gregory Campbell, Richard Herring, and Mar Xu to Ron Lorentzen, entitled "Preliminary Findings Regarding Electricity Pricing in China: Kitchen Appliance Shelving and Racks from the People's Republic of China" (May 8, 2009).
AFA Calc Memo	Memorandum to the File, "Adverse Facts Available Rate" (July 20, 2009)
Wire King Preliminary Calc Memo	Memorandum to The File, entitled "Preliminary Determination Calculation Memorandum for Guangdong Wireking Co., Ltd." (, 2008)
Wire King Post-Preliminary Calc Memo	Memorandum to The File, entitled "Post-Preliminary Analysis Calculation Memorandum for TTCA Co., Ltd." (March 4, 2008)
Wire King Final Calc Memo	Memorandum to The File, entitled "Final Determination Calculation Memorandum for TTCA Co., Ltd." (April 6, 2009)
Local Government Verification Report	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, entitled "Verification Report of the Foshan Municipal Government, Shunde District Government and the Guangdong Provincial Government of the People's Republic of China" (June 19, 2009)

National Government Verification Report	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, entitled "The People's Republic of China National Government Verification Report" (January 22, 2009)
Post-Preliminary Analysis	Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, entitled "Post-Preliminary Findings for the New Subsidy Allegations" (March 4, 2009)
Preliminary BPI Memo	Memorandum to The File entitled "BPI Memo for Government Policy Lending" (September 12, 2008)
Final BPI Memo	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, entitled "Business Proprietary Information Memorandum for the Final Determination" (April 6, 2009)
ITA Policy Bulletin No. 05.1	ITA Policy Bulletin No. 05.1 (April 5, 2005) (bulletin stating NME presumption of state control and specifying requirements to rebut presumption.)
Georgetown Steel Memorandum	Memorandum from Shana Lee-Alaia and Lawrence Norton to David M. Spooner, Assistant Secretary of Commerce, Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China – Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy (March 29, 2007)*
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)*

* on file in the Department's Central Records Unit (Room 1117 in the HCHB Building)

III. LITIGATION TABLE

Short Cite	Cases
Ad Hoc Committee v. U.S.	Ad Hoc Committee v. United States, 13 F.3d 398 (Fed. Cir. 1993)
AK Steel	AK Steel Corp. v. United States, 988 F. Supp. 594 (Dec. 1, 1997)
Allegheny Ludlum	Allegheny Ludlum Corp. v. United States, 112 F. Supp.2d 1141 (CIT 2000)
Babbitt	Shell Offshore, Inc. v. Babbitt, 238 F.3d 622 (5th Cir. 2001)
Bob Jones	Bob Jones University v. United States, 461 U.S. 574 (1983)
Butterbaugh v. DOJ	Butterbaugh v. Department of Justice, 336 F.3d 1332 (Fed. Cir. 2003)
Canadian Lumber Trade Alliance	Canadian Lumber Trade Alliance v. United States, 425 F. Supp. 2d 1321, 30 CIT 391 (CIT 2006)
Carlisle	Carlisle Tire & Rubber Co. v. United States, 634 F.Supp. 419 (CIT 1986)
Certain Softwood Lumber Products from Canada	In the matter of Certain Softwood Lumber Products from Canada, NAFTA USA-CDA-2002-1904-03 (June 7, 2004)
Waste Mgmt	Chem. Waste Mgmt., Inc. v. EPA, 869 F.2d 1526 (D.C. Cir. 1989)
Chaparral Steel	Chaparral Steel Co. v. United States, 901 F.2d 1097 (Fed. Cir. 1990)
Chevron	Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)
China Nat'l March.	China Nat'l March. v. United States, 264 F. Supp. 2d 1229 (CIT 2003)
C.J. Tower	C.J. Tower and Sons v. United States, 71 F.2d 438 (CCPA 1934)
Fabrique	Fabrique de Fer de Charleroi, S.A. v. United States, 166 F. Supp. 2d. 593 (CIT 2001)
FDA v. Brown & Williamson	FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120 (2000)
Georgetown Steel	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)

Gonzalez	Gonzalez v. Oregon, 126 S.Ct. 904 (2006)
GPX v. United States	GPX International Tire Corporation v. United States, F.Supp.2d, 2008 WL 4899523 (CIT 2008).
Hoogovens Staal	Hoogovens Staal BV v. United States, 4 F. Supp. 2d 1220 (Mar. 13, 1998)
Hynix	Hynix Semiconductor Inc. v. United States, 391 F. Supp. 2d 1337 (CIT 2005)
Koyo Seiko	Koyo Seiko Co. v. United States, 551 F.3d 1286 (Fed. Cir. 2008)
Medellin v. Texas	Medellin v. Texas, 128 S. Ct. 1346 (2008)
Mercy Medical	Mercy Medical Skilled Nursing Facility v. Thompson, 2004 WL 3541332 (2004)
Merrill Lynch v. Curran	Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran, 456 U.S. 353 (1982)
Metwest	Metwest, Inc. v. Secretary of Labor, 560 F.3d 506 (D.C. Cir. 2009)
Midatlantic Nat'l Bank	Midatlantic Nat'l Bank v. New Jersey Dep't of Envtl. Prot., 474 U.S. 494 (1986)
Nucor	Nucor v. United States, 414 F.3d 1331 (Fed. Cir. 2005)
Rhone Poulenc	Rhone Poulenc, Inc. v. United States, 899 F.2d 1185 (Fed. Cir. 1990)
Rhone Poulenc CIT 1996	Rhone-Poulenc, Inc. v. United States, 927 F. Supp. 451 (CIT 1996)
Rust v. Sullivan	Rust v. Sullivan, 500 U.S. 173 (1991)
Shanghai	Shanghai Taoen Int'l Trading Co. v. United States, 360 F. Supp. 2d 1339 (CIT 2005)
Shinyei	Shinyei Corp. of Am. v. United States, 355 F.3d 1297 (Fed. Cir. 2004)
Solid Waste	Solid Waste Agency of Northern Cook Cty. v. U.S. Army Corps of Enigneers, 531 U.S. 159 (2001)
U.S. Steel	U.S. Steel Group v. United States, 15 F. Supp. 2d 900 (CIT 1998)
U.S. v. Cleveland Indians	United States v. Cleveland Indians Baseball Co., 532 U.S. 200 (2001)
Wheatland Tube	Wheatland Tube Co. v. United States, 495 F.3d 1355 (Fed. Cir. 2007)
Whitman	Whitman v. Am. Trucking Ass'ns, Inc., 531 U.S. 468 (2001)
Zenith	Zenith Electronics Corp. v. United States, 988 F.2d 1573 (Fed. Cir. 1993)

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 Determinations
	Antifriction Bearings – France, Germany, Italy, Japan, Romania, Singapore, Sweden, United Kingdom
Antifriction Bearings	Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom, 62 FR 54043 (Oct. 17, 1997)
	CVD Preamble
CVD Preamble	Countervailing Duties; Final Rule, 63 FR 65348, 65357 (November 25, 1998)
	CVD Regulations
CVD Regulations	Countervailing Duty Regulations, 63 FR 65377 (Nov. 25, 1998)
	Certain Softwood Lumber - Canada
Softwood Lumber from Canada	Certain Softwood Lumber Products from Canada: Preliminary Results and Partial Rescission of Countervailing Duty Expedited Reviews, 68 FR 65879 (November 24, 2003)
	Certain CTV Receivers – PRC
CTV Receivers from PRC	Notice of Final Determination of Sales at Less than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China, 74 FR 20594 (April 16, 2004)
	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)
	Carbon Steel Wire Rod – Trinidad and Tobago
Wire Rod from Trinidad and Tobago	Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, 67 FR 55810 (Aug. 30, 2002)
	Circular Welded Carbon Quality Steel Pipe – PRC
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)

	Circular Welded Carbon Quality Steel Line Pipe – PRC
CWLP from the PRC	Circular Welded Carbon Quality Steel Line Pipe: Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 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)
	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 (Apr. 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)
	Cold-Rolled Carbon Steel Flat Products – Argentina
Cold-Rolled Steel from Argentina	Cold-Rolled Carbon Steel Flat Products from Argentina: Final Results of Countervailing Duty Administrative Review, 62 FR 52975 (Oct. 10, 1997)
	Cold-Rolled Carbon Steel Flat Products – Netherlands
Cold-Rolled Steel from Netherlands	Cold-Rolled Carbon Steel Flat Products from the Netherlands, 62 FR 18476 (Apr. 15, 1997)
	Corrosion-Resistant Carbon Steel Flat Products – Korea
CORE Korea	Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (Jan. 15, 2009)
	Cut-to-Length Carbon-Quality Steel Plate – Korea
CTL Plate from Korea	Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 11397, 11399 (March 7, 2006) (Preliminary Results of CTL Plate from Korea) (unchanged in the Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 38861 (July 10, 2006)
	Dynamic Random Access Memory Semiconductors – Korea
DRAMS from Korea	Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003)
	Fresh Cut Flowers - Mexico
Flowers from Mexico	Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996)

	Fresh Cut Flowers - Netherlands
Flowers from Netherlands	Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from the Netherlands, 52 FR 3301 (Feb. 3, 1987)
	Hot-Rolled Carbon Steel Flat Products – India
Hot-Rolled Steel from India	Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review
	Kitchen Appliance Shelving & Racks – PRC
KASR Preliminary Determination	Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Determination, 74 FR 683 (Jan. 7, 2009)
	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)
	Light-walled Rectangular Pipe and Tube – PRC
LWRP from the PRC	Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008)
	Lightweight Thermal Paper – PRC
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)
	Lined Paper – Indonesia
Lined Paper from Indonesia	Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia, 71 FR 47174 (Aug. 16, 2006)
	Magnesium from Canada
Magnesium from Canada	Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada, 57 FR 30946 (July 13, 1992)
	Off-Road Tires - PRC
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)

	Oscillating Fans - PRC
Oscillating Fans from China	Oscillating and Ceiling Fans from the People's Republic of China: Final Negative Countervailing Duty Determinations, 57 FR 24,018 (June 5, 1992)
	Pasta – Italy
Pasta from Italy	Certain Pasta from Italy: Final Results of the Tenth (2005) Countervailing Duty Administrative Review, 73 FR 7251 (Feb. 7, 2008)
	Potassium Chloride – Soviet Union
Potassium Chloride from the Soviet Union	Potassium Chloride from the Soviet Union: Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition, 49 FR 23428 (June 6, 1984)
	In-shell Roasted Pistachios - Iran
Pistachios from the Islamic Republic of Iran	Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review, 71 FR 66165 (November 13, 2006)
	Polyethylene Terephthalate Film, Sheet, and Strip - China
PET Film from China	Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (Sept. 24, 2008)
	Pure Magnesium and Alloy Magnesium - Canada
Magnesium from Canada	Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada, 57 FR 30946 (July 13, 1992)
	Softwood Lumber Products – Canada
Softwood Lumber from Canada	Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002)
Softwood Lumber from Canada Preliminary Determinations	Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada, 66 FR 43186 (Aug. 17, 2001).
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)

	Static Random Access Memory Semiconductors - Taiwan
Semiconductors From Taiwan - AD	Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909 (February 23, 1998)
	Stainless Steel Wire Rod – Korea
SSWR from Korea	Stainless Steel Wire Rod from the Republic of Korea: Final Results of Administrative Antidumping Review, 69 FR 19153 (April 12, 2004)
	Certain Steel Products from Austria
Certain Steel Products from Austria	Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217 (July 9, 1993)
Certain Steel Products from Austria (General Issues Appendix)	General Issues Appendix in Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria (General Issues Appendix), 58 FR 37217 (July 9, 1993)
	Steel Sheet and Strip - Korea
Steel Sheet and Strip from Korea	Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30636 (June 8, 1999)
	Sulfanilic Acid – Hungary
Sulfanilic Acid from Hungary	Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary, 67 FR 60223 (September 25, 2002)
	Tow-Behind Lawn Groomers and Certain Parts Thereof - PRC
Lawn Groomers from the PRC	Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation, 73 FR 42324 (July 21, 2008)
	Uranium - France
Uranium from France AD Final Results	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) (found at www.wto.org)
Am.Jur.: Remedies	25 Am.Jur. 2d, Election of Remedies, § 3 (2004)
APA	Administrative Procedures Act, 5 USC section 500 et seq.
Application of CVD Law to the PRC Comment Request	Application of the Countervailing Duty Law to Imports from the People's Republic of China: Request for Comment, 71 FR 75507 (Dec. 15, 2006)
AB Report on DRAMS from Korea	United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea, Report of the Appellate Body, WT/DS296/AB/R (June 27, 2005)
CJS: Remedies	28A Corpus Juris Secundum, Election of Remedies or Rights or Theories of Discovery, § 1 (2008)
Dobbs: Remedies	Dan B. Dobbs, Law of Remedies, § 9.4 (2nd ed. 1993)
GAO Report: Challenges	United States Government Accountability Office, Challenges and Choices to Apply Countervailing Duties to China, GAO-06-608T (Apr. 2006)
GAO Report: U.S.-China Trade	United States Government Accountability Office, U.S.-China Trade: Commerce Faces Practical and Legal Challenges in Applying Countervailing Duties, GAO-05-474 (June 2005)
Industrial Economics	Stephen Martin, Industrial Economics (2d ed. 1988)
Initiation of PRC Textile CVD Investigations	Initiation of Countervailing Duty Investigations: Textiles, Apparel, and Related Products from the People's Republic of China, 48 FR 46600 (Oct. 13, 1983)
Law & Econ. of Simultaneous CVD & AD Proceedings	The Law and Econommics of Simultaneous Countervailing Duty and Anti-dumping Proceedings, Brian D. Kellu, 3 Global Trade and Customs Journal, Issue 1 at 41 (2008)
Modern Industrial Organization	Dennis W. Carleton & Jeffrey M. Perloff, Modern Industrial Organization (2d ed. 2004)
Normal Trade Relations with the PRC	Normal Trade Relations with the People's Republic of China, Pub. L. No. 106-286 (Oct. 10, 2000); H.R. Rep. No. 106-632 (2000)
Omnibus Trade and Competitiveness Act of 1988	Omnibus Trade and Competitiveness Act of 1988, Pub.L.No. 100-418, 102 Stat. 1007
SAA	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994)

SCM Agreement	Agreement on Subsidies and Countervailing Measures, April, 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts 264 (1994)
AB Report on Softwood Lumber	United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada, Report of the Appellate body, WT/DS257/AB/R, adopted Feb. 17 2004
Theory of Industrial Economics	Clement G. Krouse, Theory of Industrial Economics (1990)
Trade Act 1979	Trade Agreements Act of 1979, Pub. L. No. 96-39, 93 Stat. 182
Trade Act of 1988 Conference Report	Trade Act of 1988, H.R. Conf. Rep. No. 100-576 (1988)
TRE Act	United States Trade Rights Enforcement Act, H.R. 3823, 109th Cong. (2005).

URAA	Uruguay Round Agreements Act, Pub L. No. 103-465, 108 Stat. 4809 (1994)
WTO Working Party Report – 10/1/2001	Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001), available at http://www.wto.org