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MEMORANDUM TO: Carole A. Showers
Acting Deputy Assistant Secretary
for Policy and Negotiations

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 Oil Country Tubular Goods ("OCTG") from the People's Republic of China

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Background

On September 15, 2009, the Department of Commerce ("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 the PRC
Comment 2 Double Counting/Overlapping Remedies
Comment 3 Cutoff Date for Identifying Subsidies

Steel Rounds for LTAR
Comment 4 Application of AFA in Preliminary Determination
Comment 5 Application of AFA Regarding PRC Market for Steel Rounds
Comment 6 Application of AFA Regarding Respondents' Steel Rounds Suppliers

[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 42 TPCO Group Accelerated Depreciation
Comment 43 WSP Steel Rounds Data
Comment 44 WSP Loans

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.

The GOC

For this final determination, we find that the GOC has withheld information that has been requested and, therefore, that we must rely on facts available in three areas. First, with respect to the provision of steel rounds for LTAR, the GOC has not provided certain information requested in our questionnaire regarding the ultimate ownership or possible government control of the respondent's steel rounds producers. Second, also with respect to the provision of steel rounds for LTAR, the GOC has not provided requested information regarding the extent of state ownership in the industry producing steel rounds in the PRC. Finally, the GOC has not provided requested information regarding the provision of electricity for LTAR. We address each of these below.

Whether Individual Suppliers are "Government Authorities:" In the Preliminary Determination, the Department found that the GOC had failed to provide information requested in the questionnaire and, moreover, that information submitted by the petitioners showed that the GOC's ownership designations for certain steel rounds producers were incorrect.[2] Since the Preliminary Determination, the GOC has submitted some of the requested documentation. Specifically, in GOC FIS, the GOC provided the business registration forms for the suppliers of steel rounds to the respondent OCTG producers, as well as for some of the company owners of these steel rounds suppliers. The GOC also provided translated excerpts of the capital verification reports and sections of the articles of association relating to shareholder rights and voting rules. For certain steel rounds suppliers or their company owners, the GOC provided annual reports (or translated excerpts therefrom). This information generally identified the direct owners of the steel rounds suppliers during the POI and for some companies' ownership could be

[2] See Preliminary Determination, 74 FR at 47212-14

traced back several levels. For example, if the steel rounds supplier was owned by a company, the information provided by the GOC in some cases also identified the owners of that company owner and so on, back through several layers of ownership. Where companies had several owners and the articles of association were provided, the GOC's information showed the relative levels of control of the different owners.

In general, based on our review the totality of the information submitted by the GOC, the steel rounds producers can be separated into three categories. The first category comprises enterprises, for which information is on the record to indicate that they are directly or indirectly majority owned by the GOC. The second category comprises enterprises for which the GOC's information shows ownership by another company, or ownership by a combination of companies, government entities and/or individuals. The third category comprises enterprises for which the GOC's information shows ownership (directly or indirectly) entirely by individuals. See Final BPI Memo at 6-7.

With respect to the first category, we find that these enterprises are "authorities" within the meaning of section 771(5)(B) of the Act based on their majority-government ownership. (See Comment 9 for further discussion of majority-government-owned companies.) With respect to the second category, we determine that the GOC has failed to provide even the basic information requested in our 1stSQ to allow the Department to determine, as a threshold matter, the ultimate owners of these enterprises (i.e., information that traces ownership back to individual or state owners). With respect to the third category, while the GOC was able to provide information on the ultimate owners in these instances, the GOC failed to provide additional information requested in our InitQ, which the Department requires for its analysis. For example, the GOC did not provide any information about whether shareholders and members of these enterprises' boards of directors are government officials or otherwise affiliated with a government agency or other government-owned enterprises Lacking this information, we are not in a position to evaluate fully the extent to which the government might be exercising control over these producers in this manner.

Based on the GOC's failure to provide this information, we determine that the GOC has failed to act to the best of its ability and, consequently, that an adverse inference is warranted in accordance with section 776(b) of the Act. As AFA, we are treating all of the non-majority-government-owned enterprises as authorities for this final determination.

Extent of State Ownership in the PRC Steel Rounds Industry: In the Preliminary Determination, the Department found that the GOC had failed to provide information requested in the InitQ and other supplemental questionnaires about state ownership in the PRC steel rounds industry. No information in that regard has been provided since the Preliminary Determination.

Based on the GOC's failure to provide the requested information, we determine that the GOC has failed to act to the best of its ability and, consequently, an adverse inference is warranted in accordance with section 776(b) of the Act. As AFA, we are assuming that GOC owned or controlled firms dominate the steel rounds market in the PRC and that this results in a significant distortion of the prices there, with the result that use of an external benchmark is warranted.

Electricity: At the time of the Preliminary Determination, the GOC had responded that it was seeking to gather specific provincial electricity information requested by the Department in its August 11, 2009 supplemental questionnaire. The Department noted this and preliminarily determined that more information was needed before reaching a determination on this program. No further information was provided by the GOC after the Preliminary Determination.

Based on the GOC's failure to provide the requested information, we determine that the GOC has failed to act to the best of its ability and, consequently, an adverse inference is warranted in accordance with section 776(b) of the Act. As AFA, we are assuming that in providing electricity to the respondent companies, the GOC is providing a financial contribution that is specific.

Corroboration: The Department's practice when selecting information that is adverse is to ensure that the result 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] 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."[5] The Department considers information to be corroborated if it has probative value.[6] 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.[7]

To corroborate the Department's treatment of the non-government-majority-owned enterprises that produced the steel rounds purchased by the mandatory respondents as authorities and our finding that the GOC dominates the domestic market for this input, we are relying on CWLP from the PRC. In that case, the Department determined that the GOC owned or controlled the entire hot-rolled steel industry in the PRC.[8] Evidence on the record of this investigation shows that many steel producers in the PRC are integrated, producing both long products (rounds and billets) and flat products (hot-rolled steel).[9] Consequently, government ownership in the hot-rolled steel industry is a reasonable proxy for government ownership in the steel rounds and billets industry.

Regarding the GOC's provision of electricity, we are relying for corroboration purposes on the

[3] See Semiconductors From Taiwan - AD at 8932.
[4] See SAA accompanying the URAA, H. Doc. No. 316, 103d Cong., 2d Session (1994), at 870.
[5] See e.g., SAA, at 870.
[6] Id.
[7] Id. at 869.
[8] See CWLP from the PRC IDM at Comment 1.
[9] See Steel Rounds Memorandum.

Department's recent finding regarding the GOC's provision of electricity for LTAR in KASR from the PRC.[10]

WSP & TPCO

In its June 4, 2009, original questionnaire at III-6, the Department requested that respondents "report all loans to your company from state-owned commercial banks or GOC policy banks that were outstanding during the POI." For WSP, the Department reiterated this request in WSP's August 7, 2009, supplemental questionnaire at question 20. At verification, both WSP and TPCO identified certain loans that had not been included in their questionnaire responses. For WSP, certain short-term loans were inadvertently omitted from its reported loan chart.[11] For TPCO, TPCO Iron failed to report loans that had principal balances that were paid off during the POI.[12] We verified the total principal of these loans, as well as the reported information for these companies' remaining loans.[13] However, because these loans were omitted in the questionnaire responses, the Department did not have a full understanding of the loans provided to these companies and was unable to request further information, if necessary, to fully evaluate the loans in question.

Based on WSP's and TPCO's failure to report these loans, we determine that these companies failed to act to the best of their ability and, consequently, an adverse inference is warranted in accordance with section 776(b) of the Act. As AFA, we are assigning the highest rate calculated for a loan subsidy program in a PRC countervailing duty proceeding to WSP's and TPCO's unreported loans, which is 8.31 from LWTP Amended Final. This rate is being weight-averaged with the calculated rate of reported loans found countervailable under the "Policy Loans" program based on the total principal amount outstanding during the POI.

Corroboration: As noted above, the rate being assigned to these unreported loans was recently calculated in the LWTP Amended Final.

Subsidies Valuation Information

Allocation Period

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 15 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[14] 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

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[10] See KASR from the PRC IDM at 5-6 and Comment 11.
[11] See WSP Verification Report at 2.
[12] See TPCO Verification Report at 17.
[13] See WSP Verification Report at 8 and TPCO Verification Report at 17.
[14] See U.S. Internal Revenue Service Publication 946 (2008), How to Depreciate Property, at Table B-2: Table of Class Lives and Recovery Periods.

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.[15] 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.[16]

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.[17]

Our attribution analysis for each company is listed below.

Changbao Steel

Changbao responded on behalf of itself and one subsidiary, Precision, a producer of subject merchandise.[18] Based on 19 CFR 351.525(b)(vi), we determine that these companies are "cross-owned."

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[15] See CVD Preamble.
[16] See CVD Preamble, 63 FR at 65401.
[17] See Fabrique.
[18] See CQR at 3.

Changbao Steel identified several other affiliated companies, but Changbao reported, and the Department verified, that these affiliates do not produce the subject merchandise or provide inputs that are primarily dedicated to the production of subject merchandise.[19] Therefore, because these companies do not produce subject merchandise or otherwise fall within the situations described in 19 CFR 351.525(b)(6)(iii)-(v), we do not reach the issue of whether these companies and Changbao are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) and we are not including these companies in our subsidy calculations.

In the Preliminary Determination, we stated that we were attributing the subsidies received by Changbao Steel and Precision Steel to those companies' combined sales.[20] However, we learned at verification that Changbao Steel's reported sales value reflected the sales of Changbao Steel and all of its subsidiaries.[21] As Changbao Steel is a parent company, its subsidies are properly attributed to the consolidated sales of the parent or holding company and its subsidiaries, pursuant to 19 CFR 351.525(b)(6)(iii). As Precision Steel's sales are consolidated into Changbao's sales, we are also attributing subsidies received by Precision Steel to Changbao's consolidated sales.

Jianli

Jianli responded on behalf of itself and three affiliates: Jianli Steel Tube, Jiansheng, and Jianli Industry. For the Preliminary Determination, we found Jianli, Jianli Steel Tube, Jiansheng, and Jianli Industry are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of high levels of common ownership and, pursuant to 19 CFR 351.525(b)(6)(ii), we attributed the subsidies received by Jianli, Jianli Steel Tube, or Jiansheng to the combined sales of these companies, excluding the sales between them.[22] We also preliminarily found that Jianli Industry is the holding company for Jianli and, pursuant to 19 CFR 351.525(b)(6)(iii), we attributed the subsidies received by Jianli Industry to the combined sales of the Jianli Group, excluding sales between the group companies. Id. Since the Preliminary Determination, the circumstances have not changed and we continue to attribute subsidies in this manner.

In its questionnaire response, Jianli also acknowledged that it has several other affiliated parties in addition to the three companies named above.[23] However, Jianli reported, and the Department verified, that these affiliates do not produce the subject merchandise and do not provide inputs to Jianli that are primarily dedicated to the production of subject merchandise.[24] Therefore, because these companies do not produce subject merchandise or otherwise fall within the situations outlined in 19 CFR 351.525(b)(6)(iii)-(v), we do not reach the issue of whether these companies and Jianli are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) and we are not including these companies in our subsidy calculations.

[19] See CQR at 3 and Changbao Verification Report at 3 - 4.
[20] See Preliminary Determination 74 FR at 47215.
[21] See Changbao Verification Report at 6.
[22] See Preliminary Determination 74 FR at 47214 – 5.
[23] See JQR at 5.
[24] See Jianli Verification Report at 4-5.

TPCO Group

TPCO Group filed questionnaire responses on behalf of itself and its subsidiaries TPCO Iron, Yuantong, TPCO International, and Charging. In the Preliminary Determination, we attributed subsidies received by these four subsidiaries to TPCO Group.[25] In its questionnaire responses, TPCO Group identified other affiliated companies in which TPCO Group maintained an ownership stake during the POI. No record evidence indicates that any of these companies met the conditions outlined in 19 CFR 351.525(b)(6)(ii), (iv), or (v). Therefore, we have not attributed to TPCO Group any subsidies that these affiliates received.

Regarding TPCO Group's owners, TPCO Group filed the TEDA Holding QR on behalf of its majority owner during the POI, TEDA Holding. As we explain below in Comment 40, we determine that TEDA Holding acted as a government agency during the POI. Therefore, we are not treating TEDA Holding as a parent company under 19 CFR 351.525(b)(6)(iii).

TPCO Group also filed the TPCO Holding QR on behalf of TPCO Holding, which was TPCO Group's majority owner during the period December 11, 2003, through September 8, 2004. TPCO Holding was the predecessor of TEDA Holding and performed the same functions. Similar to our finding with regard to TEDA Holding, we find that TPCO Holding acted as a government agency during the POI. Therefore, we are not treating TPCO Holding as a parent company under 19 CFR 351.525(b)(6)(iii).

WSP

WSP filed a response of behalf of itself, Fanli, and Mengfeng. For the Preliminary Determination, we attributed subsidies received by WSP and Fanli to their combined sales, excluding the sales between them, in accordance with 19 CFR 351.525(b)(6)(ii).[26] WSP's affiliate Mengfeng produces steel billets and provided a small amount of these to WSP during the POI.[27] Since the Preliminary Determination, the circumstances have not changed and we continue to attribute subsidies in this manner.

We further preliminarily determined that other affiliates reported by WSP also do not produce subject merchandise, or otherwise fall within the situations described in 19 CFR 351.525(b)(6)(iii) to (v) and excluded the companies from the calculation. Id. We verified the information provided by WSP and continue to find the companies should be excluded.[28]

Benchmarks and Discount Rates

Benchmarks for Short-Term RMB Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a

[25] See Preliminary Determination 74 FR at 47215.
[26] See Preliminary Determination 74 at 47215 – 16.
[27] See WQR at 2 and 3.
[28] See WSP Verification Report at 4-6.

comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes.[29] If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national interest rate for comparable commercial loans."[30]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons explained in CFS from the PRC IDM at Comment 10, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in Softwood Lumber from Canada, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.[31]

We are calculating the external benchmark using the regression-based methodology first developed in CFS from the PRC and more recently updated in LWTP from the PRC.[32] This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita GNIs similar to the PRC, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to the state-imposed distortions in the banking sector discussed above.

Following the methodology developed in CFS from the PRC, we first determined which countries are similar to the PRC in terms of gross national income ("GNI"), based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries as of July 2007. As explained in CFS from the PRC, this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund and they are included in that agency's international financial statistics ("IFS"). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "low middle income" by the World Bank. First, we did not include those economies that the Department considered to be non-market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a

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[29] See 19 CFR 351.505(a)(3)(i).
[30] See 19 CFR 351.505(a)(3)(ii).
[31] See Softwood Lumber from Canada IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."
[32] See CFS from the PRC IDM at Comment 10 and LWTP from the PRC IDM at 20-25.

rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.

The resulting inflation-adjusted benchmark lending rates are provided in the respondents' final calculation memoranda. See e.g., Changbao Final Calculation Memo, Jianli Final Calculation Memo, TPCO Final Calculation Memo, and WSP Final Calculation Memo. Because these are inflation-adjusted benchmarks, it is necessary to adjust the respondents' interest payments for inflation. This was done using the PRC inflation figure as reported in the IFS. Id.

Benchmarks for Long-Term Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.[33] In Citric Acid from the PRC, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.[34] Finally, because these long-term rates are net of inflation as noted above, we adjusted the PRC respondents' payments to remove inflation.

Benchmarks for Foreign Currency-Denominated Loans

For foreign currency-denominated short-term loans, the Department used as a benchmark the one-year dollar interest rates for the London Interbank Offering Rate ("LIBOR"), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating.[35] For long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government agreed to provide the subsidy.

[33] See LWRP from the PRC IDM at 8.
[34] See Citric Acid from the PRC IDM at Comment 14.
[35] See LWTP from the PRC IDM at 10.

The parties raised several additional issues regarding the benchmark and discount rate. These are addressed in Comments 22 – 27 below.

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. Policy Loans

The Department is examining whether OCTG producers receive preferential lending through state-owned commercial or policy banks. According to the allegation, preferential lending to the OCTG industry is supported by the GOC through the issuance of national and provincial five-year plans; industrial plans for the steel sector; catalogues of encouraged industries, and other government laws and regulations.

Consistent with the Preliminary Determination, we find that the GOC has a policy in place to encourage the development of OCTG production through policy lending. Therefore, the loans to OCTG producers from Policy Banks and SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.[36] We further find that the loans are de jure specific under section 771(5A)(D)(i) of the Act because of the GOC's policy, as illustrated in government plans and directives, to encourage and support the growth and development of the OCTG industry.

To calculate the benefit under the Policy Lending program, we used the benchmarks described under "Subsidies Valuation - Benchmarks and Discount Rates" above.[37] As explained under "Use of Facts Otherwise Available and Adverse Facts Available" above, the calculations for TPCO and WSP also include partial AFA.

On this basis, we find that Changbao received a countervailable subsidy of 0.30 percent ad valorem, Jianli received a countervailable subsidy of 0.01 percent ad valorem, TPCO received a countervailable subsidy of 0.93 percent ad valorem, and WSP received a countervailable subsidy of 1.53 percent ad valorem under this program.

B. Export Loans from the Export-Import Bank of China

On page 17 of the GQR, the GOC reported that the Export-Import Bank of China ("EIBC") provided TPCO with three loans that were outstanding during the POI. The GOC claimed that

[36] See section 771(5)(e)(2).
[37] See also 19 CFR 351.505(c).

two of the loans related to non-export business, and that the third loan did not relate to TPCO's production of OCTG.

Consistent with the Preliminary Determination, we find that one of the loans is a countervailable export loan from the EIBC. As a loan from a government policy bank, this loan constitutes a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act. We further determine that the export loan is specific under section 771(5A)(B) of the Act because receipt of the financing is contingent upon export. Also, we determine that the export loan confers a benefit within the meaning of section 771(5)(E)(ii) of the Act.

To calculate the benefit under this program, we compared the amount of interest paid against the export loan to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the "Benchmarks and Discount Rates" section. To calculate the net countervailable subsidy rate, we divided the benefit by TPCO's export sales value for the POI.

On this basis, we determine the net countervailable subsidy rate to be 0.08 percent ad valorem.

C. Provision of Steel Rounds for Less than Adequate Remuneration

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA for our analysis regarding the GOC's provision of steel rounds to OCTG producers. Specifically, we are treating all of the steel rounds and billets as having been provided by an "authority," within the meaning of section 771(5)(B) of the Act. Therefore, we find that the OCTG producers have received a financial contribution in the form of the provision of a good. See section 771(5) (D)(iii) of the Act.

To determine whether this financial contribution results in a subsidy to the OCTG producers, we followed 19 CFR 351.511(a)(2) for identifying an appropriate market-based benchmark for measuring the adequacy of the remuneration for the steel rounds and billets. The potential benchmarks listed in this regulation, in order of preference are: (1) market prices from actual transactions within the country under investigation for the government-provided good (e.g., actual sales, actual imports, or competitively run government auctions) ("tier one" benchmarks); (2) world market prices that would be available to purchasers in the country under investigation ("tier two" benchmarks); or (3) prices consistent with market principles based on an assessment by the Department of the government-set price ("tier three" benchmarks). As we explained in Softwood Lumber from Canada, 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 IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

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.

As further explained under "Use of Facts Otherwise Available and Adverse Inferences," we are relying on AFA to determine that GOC authorities play a significant role in the PRC market for steel rounds and billets and that prices for steel rounds and billets in the PRC are distorted. Consequently, we determine that the prices actually paid in the PRC for steel rounds and billets during the POI are not appropriate tier one benchmarks.

Turning to tier two benchmarks, i.e., world market prices available to purchasers in the PRC, the petitioners have put on the record data from the Steel Business Briefing ("SBB") regarding monthly export prices for billet from Latin America, Turkey, and the Black Sea/Baltic. See Petitioners' April 20, 2009, submission, "Response to the Department Questionnaire Concerning the Imposition of Countervailing Duties," at Exhibit 22, Attachments A-C. Since the Preliminary Determination, TPCO has placed additional billet pricing information on the record: 1) SBB's "Semi-Finished / Billet / East Asia import CFR" ("SBB East Asia") price series; 2) the "Semi-Finished/Far East billet (65t lots)/London Metal Exchange (LME) Cash bid settlement" price series; and 3) the "Semi-Finished/Mediterranean billet (65t lots)/London Metal Exchange (LME) Cash bid settlement" price series).[38]

Our regulations, at 19 CFR 351.511(a)(2)(ii), state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Consistent with this, we used three series of SBB pricing data from for export prices for billet from Latin America, Turkey, and the Black Sea/Baltic region. See Comment 13A for a further discussion of the prices included in the world market average.

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 averaged the delivery charges included in U.S. Steel's August 26, 2009, New Factual Information Submission at Exhibits 2 and 6-10, adjusted to exclude the "special equipment surcharge," and the freight rates provided in Jianli's Oct 5, 2009, New Factual Information Submission at Attachment 2. Regarding Jianli's freight rates, we have adjusted the monthly freight rates to include "THC" charges of $70 and customs clearance charges of $150. See Jianli NFI at Attachment 1. For the Latin America price series, we have added the average of the freight rates for shipments from Santos, Brazil, and Buenos Aires, Argentina to Shanghai. For the remaining price series, excluding the SBB East Asia series which is already inclusive of ocean freight, we have added the average of the freight rates for shipments from Odessa, Ukraine, Hamburg, Germany, and Rotterdam, Netherlands. See Comment 13D for a further discussion of the freight adjustment.

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[38] See TPCO FIS. TPCO has provided prices from the East Asia series for the entire POI, and data from the second half of the POI for the two LME pricing series.

Comparing the adjusted benchmark prices to the prices paid by the respondents for their steel rounds and billet, we determine that steel rounds and billet were provided for less than adequate remuneration and that a subsidy exists in the amount of the difference between the benchmark and what the respondents paid. See 19 CFR 351.511(a).

Finally, with respect to specificity, the GOC cited to the SBB, which identified seven industries including rebar, plain bar, merchant bar, light sections, narrow strip, wire rod, and seamless tubes as industries that use billets.[39] Therefore, we determine that this subsidy is specific because the recipients are limited in number. See section 771(5A)(D)(iii)(I) of the Act.

Based on the above, we determine that the respondent OCTG producers received a countervailable subsidy through the GOC's provision of steel rounds and billet for LTAR. To calculate the subsidy, we took the difference between the delivered world market price and what each respondent paid for steel rounds during the POI. On this basis, we find that Changbao received a countervailable subsidy of 11.68 percent ad valorem, Jianli received a countervailable subsidy of 15.48 percent ad valorem, TPCO received a countervailable subsidy of 4.48 percent ad valorem, and WSP received a countervailable subsidy of 10.97 percent ad valorem.

D. The State Key Technology Project Fund

TPCO reported that it received funds from the State Key Technology Renovation Fund in 2003. In Exhibit V-1 of the GQR, the GOC provided the notice for implementation of the fund. The notice states that the purpose of the program is to "support the technological renovation of key industries, key enterprises and key products…" The notice also states, "The enterprises shall be mainly selected from large-sized state-owned enterprises and large-sized state holding enterprises among the 512 key enterprises, 120 pilot enterprise groups and the leading enterprises of the industries."

The Department has previously found this program to be countervailable.[40]

Consistent with the Preliminary Determination, we determine that TPCO received a countervailable subsidy under the State Key Technology Renovation Fund. We find that this grant is a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant.[41] Further, we determine that the grant provided under this program is limited as a matter of law to certain enterprises; i.e., large-sized state-owned enterprises and large-sized state holding enterprises among the 512 key enterprises. Hence, we find that the subsidy is specific under section 771(5A)(D)(i) of the Act.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[42] Because the grant exceeded 0.5 percent of TPCO's sales in the year the grant was approved (i.e., 2003), we have allocated the benefit over the 15-year AUL using the discount rate

[39] See G2SR at 3 and 7.
[40] See OTR Tires from PRC, 73 FR at 40480.
[41] See 19 CFR 351.504(a).
[42] See 19 CFR 351.524(b).

described under the "Benchmarks and Discount Rates" section above. We attributed the subsidy amount for the POI to TPCO's consolidated sales.

On this basis, we determine the countervailable subsidy to be 0.01 percent ad valorem for TPCO.

E. "Two Free, Three Half" Program

Under Article 8 of the *FIE Tax Law*, an FIE that is "productive" and is scheduled to operate for more than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years.[43] The Department has previously found this program countervailable.[44]

Consistent with the Preliminary Determination, we find that the exemption or reduction of the income tax paid by productive FIEs under this program confers a countervailable subsidy. The exemption/reduction 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.[45] We also determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, i.e., "productive" FIEs and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Jianli Steel Tube and Jiansheng as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the income tax rate those companies would have paid in the absence of the program (30 percent) with the income tax rate the company actually paid (15 or 0 percent). We divided Jianli Steel Tube's and Jiansheng's tax savings received during the POI by the combined sales of Jianli, Jianli Steel Tube, and Jiansheng, minus inter-company sales during the POI.

On this basis, we determine that Jianli received a countervailable subsidy of 0.20 percent ad valorem under this program.

F. Preferential Tax Program for Foreign-Invested Enterprises Recognized as High or New Technology Enterprises

According to the *Circular of the State Council Concerning the Approval of the National Development Zones for New and High Technology Industries and the Relevant Policies and Provisions* at Article 2 and 4 of Appendix III ("Regulations on the Tax Policy for the National New and High Technology Industries Parks"), new and high technology enterprises located in new and high technology parks pay a reduced income tax rate of 15 percent.[46] The GOC noted that a similar rule is provided at Article 7.3 of the *FIE Income Tax Law* and Article 73(5) of the *Implementing Rules of the Foreign Investment Enterprise and Foreign Enterprise Income Tax Law*.[47]

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43 See GQR at Exhibit GOC-FF-3.
44 See, e.g., CFS from the PRC IDM at 11–12 and Citric Acid from the PRC IDM at 15–16.
45 See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
46 See GQR at Exhibit GOC-FF-1.
47 See GQR at 96.

Consistent with the Preliminary Determination, we find that the reduction in the income tax paid by high or new technology 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.[48] We also determine that the reduction afforded by this program is limited as a matter of law to certain enterprises, i.e., new and high technology FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. The program is also specific pursuant to 771(5A)(D)(iv) as only ratified new and high technology enterprises located in new and high technology parks approved by the State Council can pay the reduced tax rate.

To calculate the benefit for WSP, we treated the income tax savings enjoyed by the company 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 combined sales of WSP and Fanli. To compute the amount of the tax savings, we compared the rate WSP would have paid in the absence of the program (30 percent) with the rate the company paid (15 percent).

On this basis, we determine the countervailable subsidy attributable to WSP to be 1.44 percent ad valorem under this program.

G. Local Income Tax Exemption and Reduction Programs for "Productive" Foreign-Invested Enterprises

Under Article 9 of the *FIE Tax Law*, the provincial governments have the authority to exempt FIEs from the local income tax of three percent.[49] According to the *Regulations on Exemption and Reduction of Local Income Tax of FIEs in Jiangsu Province*, a "productive" FIE in Jiangsu Province may be exempted from the three percent local income tax during the "Two Free, Three Half" period. Additionally, according to Article 6, FIEs eligible for the reduced income tax rate of 15 percent can also be exempted from paying local income tax.[50] According to the *Provisional Rules on Exemption of Local Income Tax for FIEs and Foreign* Enterprises (Decree 14 of Zhejiang Government, 1991) at Article 4, productive FIES in Zhejiang Province are exempted from paying the local income tax for the first two years after their first profitable year, and pay at a reduced (half) rate for the next three consecutive years.[51] The Department has previously found this program to be countervailable.[52]

Consistent with the Preliminary Determination, we determine that the exemption from or reduction in the local income tax received by "productive" FIEs under this program confers a countervailable subsidy. The exemption or 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.[53] We also determine that the exemption or reduction afforded by this program is

[48] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[49] See GQR at Exhibit GOC-FF-3.
[50] See GQR at Exhibit GOC-HH-3.
[51] See G1SR at Exhibit GOC-SUPP-35.
[52] See, e.g., CFS from the PRC IDM at 12-13 and Citric Acid from the PRC IDM at 21.
[53] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

limited as a matter of law to certain enterprises, i.e., "productive" FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit for Jianli Steel Tube, Jiansheng, and WSP, we treated the income tax savings enjoyed by the companies as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the local income tax rate that the companies would have paid in the absence of the program (i.e., three percent) with the income tax rate the companies actually paid.

For Jianli Steel Tube and Jiansheng, we divided the companies' tax savings received during the POI by the combined sales of Jianli, Jianli Steel Tube, and Jiansheng minus inter-company sales during the POI. For WSP, we divided the company's tax savings received during the POI by the combined sales of WSP and Fanli.

On this basis, we determine that Jianli received a countervailable subsidy of 0.02 percent ad valorem and WSP received a countervailable subsidy of 0.29 percent ad valorem under this program.

H. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment

According to the *Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation Projects* (CAI SHU ZI {290} No. 290), a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. Specifically, a tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous year.[54] The Department has previously found this program countervailable.[55]

Consistent with the Preliminary Determination, we find these income tax credits for the purchase of domestically produced equipment are countervailable subsidies. The tax credits are a financial contribution in the form of revenue forgone by the government and provide a benefit to the recipients in the amount of the tax savings.[56] We further determine that these tax credits are contingent upon use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Fanli as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings by the combined total sales of WSP and Fanli, minus inter-company sales, during the POI.

On this basis, we determine that a countervailable subsidy of 0.14 percent ad valorem exists for WSP under this program.

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[54] See G2SR at 12.
[55] See, e.g., CWP from the PRC IDM at 8.
[56] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

I. Subsidies Provided in the TBNA and the Tianjin Economic and Technological Development Area

TPCO reported that it used two programs for companies in the TBNA: the Science and Technology Fund Program and the Accelerated Depreciation Program. TPCO received a grant under the Science and Technology Fund Program and paid reduced income taxes under the Accelerated Depreciation Program. TPCO also reported that it purchased land-use rights and rented land-use rights for different plots of land within the TBNA during the POI and prior to the POI.

Science and Technology Fund

The GOC's Measures for the Science and Technology Fund, which the GOC provided at Exhibit GOC-DD-4 of the GQR, describe the Fund's purpose as follows: 1) to promote the construction of the science-technology infrastructure in TBNA; 2) to enhance science-technology renovation and service abilities; 3) to improve the business environment of renovation entrepreneurship; and 4) to construct a new science-technology renovation system. On page 84 of the GQR, the GOC stated that eligibility for the program is limited to enterprises within the TBNA Administrative Committee's jurisdiction.

Consistent with the Preliminary Determination, we determine that TPCO received a countervailable subsidy during the POI under the TBNA Science and Technology Fund Program. We find that this grant is a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant.[57] We further determine that grants under this program are limited to enterprises located in a designated geographic region (i.e., the TBNA). Hence, the grants are specific under section 771(5A)(D)(iv) of the Act.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[58] Because the benefit was less than 0.5 percent of TPCO's consolidated sales during the POI, we expensed the entire amount to the POI.[59]

On this basis, we determine the countervailable subsidy to be 0.03 percent ad valorem for TPCO.

Accelerated Depreciation Program

Regarding the Accelerated Depreciation Program, the GOC circular for the program (submitted at Exhibit DD-9 of the GOC's July 21, 2009, response) stipulates that enterprises in the TBNA may shorten the depreciation period of certain fixed assets by a maximum of 40 percent of the present depreciation period. On page 91 of the response, the GOC stated that eligibility for the program is limited to enterprises within the TBNA.

Consistent with the Preliminary Determination, we determine that TPCO received a countervailable subsidy during the POI under the Accelerated Depreciation Program. The

[57] See 19 CFR 351.504(a).
[58] See 19 CFR 351.524(b).
[59] See 19 CFR 351.524(b)(2).

Accelerated Depreciation program constitutes a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act, with the benefit equaling the income tax savings.[60] The program affected TPCO's income taxes for the 2007 tax year. Thus, under the normal standard in 19 CFR 351.509(b), TPCO received a benefit from this program in 2008, when it filed its 2007 annual tax return. Further, we 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 divided the reduction in TPCO's income taxes resulting from the program by TPCO's consolidated sales, in accordance with 19 CFR 351.524(c)(1) and 19 CFR 351.525(b)(6)(iii). On this basis, we determine the countervailable subsidy to be 0.51 percent ad valorem for TPCO.

We have addressed comments from parties on the Accelerated Depreciation Program in Comment 42, below.

Land

Regarding land, TPCO and its reporting cross-owned affiliates are all located in the TBNA, and TPCO, TPCO Iron, Yuantong, and TPCO International have purchased "granted" land-use rights within the TBNA. At page 41 of the GQR, the GOC reported that TPCO obtained its land-use rights in accordance with Article 11 of Decree 21 of the Ministry of Land and Resources. Article 11, at Exhibit P-2 of the GQR, establishes provisions for the "agreement-based assignment of the right to use state-owned land." Article 11 states that the "agreement-based assignment of the right to use state-owned land" refers to the land user's right to use state-owned land for a certain period, and to the land user's payment of a fee to the state for the land-use right. TPCO and TPCO Iron purchased their land-use rights from the Dongli District Land and Resource Administration Bureau, and Yuantong purchased its land-use rights from the Tianjin Port Bonded Zone Land and Resource Administration Bureau. The party from which TPCO International purchased its land-use rights is business proprietary information; thus, we have addressed TPCO International's purchases in the TPCO Calculation Memorandum for this final determination.

The Department determined in LWS from the PRC that the provision of land-use rights constitutes the provision of a good within the meaning of section 771(5)(D)(iii) of the Act.[61] The Department also found that when the land is in an industrial park located within the seller's (e.g., county's or municipality's) jurisdiction, the provision of the land-use rights is regionally specific.[62] Id. at Comment 9. In the instant investigation, the TBNA is a designated area that includes the jurisdictions that provided land-use rights to TPCO and its cross-owned affiliates during the POI. Therefore, consistent the Preliminary Determination, we find that TPCO's purchases of granted land-use rights give rise to countervailable subsidies to the extent that the purchases conferred a benefit.

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[60] See 19 CFR 351.510(a).
[61] See LWS from the PRC IDM at Comment 8.
[62] See section 771(5A)(D)(iv) of the Act.

To determine whether TPCO received a benefit, we have analyzed potential benchmarks in accordance with 19 CFR 351.511(a). First, we look to whether there are market-determined prices within the country.[63] In LWS from the PRC, the Department determined that "Chinese land prices are distorted by the significant government role in the market" and, hence, that tier one benchmarks do not exist. Id. at Comment 10. The Department also found that the tier two benchmarks provided for in 19 CFR 351.511(a)(2)(ii) (world market prices that would be available to purchasers in the PRC) are not appropriate. Id. at 15. Therefore, the Department determined the adequacy of remuneration by reference to tier 3 in accordance with 19 CFR 351.511(a)(2)(iii), and found that the sale of land-use rights in the PRC was not consistent with market principles because of the overwhelming presence of the government in the land-use rights market and the widespread and documented deviation from the authorized methods of pricing and allocating land. Id. at Comment 10. There is no new information on the record of this investigation to warrant a change from the findings in LWS from the PRC.

For these reasons, we are not able to use Chinese or world market prices as a benchmark. Therefore, we are comparing the price that TPCO paid for its granted land-use rights with comparable market-based prices for land purchases in a country at a comparable level of economic development that is reasonably proximate to, but outside of, the PRC. Specifically, we are comparing the price TPCO paid to sales of certain industrial land in industrial estates, parks, and zones in Thailand, consistent with LWS from the PRC.

To calculate the benefit, we computed the amount that TPCO would have paid for its granted land-use rights and subtracted the amount TPCO actually paid for each purchase. For purchases in which the subsidy amount exceeded 0.5 percent of TPCO's sales in the year of purchase, we have used the discount rate described under the "Benchmarks and Discount Rates" section above to allocate the benefit over the life of the land-use rights contracts. For these purchases, we divided the amount allocated to the POI by TPCO's consolidated sales during the POI. For purchases in which the benefit was less than 0.5 percent of TPCO's consolidated sales in the year of the purchase, we have expensed the entire amount to the year in which TPCO purchased the land-use rights.[64]

On this basis, we determine the total countervailable subsidy for all of TPCO's land-use rights purchases to be 0.11 percent ad valorem during the POI.

TPCO also reported that it rented certain land parcels within the TBNA from TPCO Holding during the POI. Specifically, TPCO reported that it operates on the largest of these three parcels under a lease agreement that it signed with TPCO Holding in 2005. TPCO also stated that it will compensate TPCO Holding for the lease of two other parcels under terms that TPCO and TPCO Holding will memorialize in 2009.

As we explained above in the "Attribution of Subsidies" section, we determine that TPCO Holding was an authority within the meaning of section 771(5)(B) of the Act at the time of the lease agreement and throughout the POI. Therefore, its provision of these leased land parcels is

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63 See 19 CFR 351.511(a)(2)(i).
64 See 19 CFR 351.524(b)(2).

a financial contribution under section 771(5)(D)(iii) of the Act. Moreover, because the leased properties are all within the TBNA, the subsidy is specific under section 771(5A)(D)(iv) of the Act. Therefore, consistent with the Preliminary Determination, we determine that TPCO's lease of land under the 2005 lease gives rise to a countervailable subsidy to the extent that the lease conferred a benefit.[65]

To determine whether TPCO received a benefit, we followed the same steps outlined above for the purchase of land-use rights. Specifically, we compared the rent TPCO paid to industrial rental rates for factory space in Thailand during the POI. We are attributing the subsidy to TPCO's consolidated sales, in accordance with 19 CFR 351.525(b)(6)(iii).

On this basis, we determine the countervailable subsidy to be 2.55 percent ad valorem for TPCO.

J. Loan and Interest Forgiveness for SOEs

On pages 8-9 of TPCO's September 1, 2009, correction submission, TPCO reported that in 2006 and 2008 it settled claims related to loans that were part of a debt-to-equity transaction occurring in 2001. Two asset management companies held the claims against TPCO.

Consistent with the Preliminary Determination, we determine that through this settlement the GOC forgave debt owed by TPCO and, thus, provided a financial contribution to TPCO in the form of a direct transfer of funds.[66] The benefit to TPCO is the amount of the debt forgiven.[67] Additionally, we determine that this subsidy is de facto specific under section 771(5A)(D)(iii)(I) of the Act because it is limited to TPCO.

Approval for forgiveness of part of the debt occurred in 2006, and approval for forgiveness of the remainder of the debt occurred in 2008. To calculate the countervailable subsidy for the debt forgiveness approved in each year, we used our standard methodology for non-recurring benefits.[68] Because the amount of the 2006 portion of the debt forgiveness exceeded 0.5 percent of TPCO's sales in 2006, we have allocated the benefit over the 15-year AUL using the discount rate described under the "Benchmarks and Discount Rates" section above. We attributed the subsidy amount for the POI to TPCO's consolidated sales. For the debt forgiveness approved in 2008, the benefit was less than 0.5 percent of TPCO's consolidated sales during the POI. Thus, we have expensed the entire amount to the POI.[69]

On this basis, we determine the countervailable subsidy to be 0.14 percent ad valorem for TPCO.

K. Provision of Electricity For Less Than Adequate Remuneration

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Facts Available" section above, we are basing our determination regarding the government's provision

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[65] See also OTR Tires from the PRC IDM at Comment F.12
[66] See section 771(5)(D)(i) of the Act.
[67] See 19 CFR 351.508(a).
[68] See 19 CFR 351.524(b).
[69] See 19 CFR 351.524(b)(2).

of electricity in part on AFA.

In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation 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.[70] 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 practice, the Department finds that the GOC's provision of electricity confers a financial contribution, under section 771(5)(D)(iii), and is specific, under section 771(5A). To determine the existence and amount of any benefit from this program, we relied on the companies' reported information on the amounts of electricity they purchased and the amounts they paid for electricity during the POI. We compared the rates paid by Changbao, TPCO, WSP and Jianli for their electricity to the highest rates that they would have paid in the PRC during the POI. Specifically, we have selected the highest rates for "large industrial users" for the peak, valley and normal ranges. This benchmark reflects the adverse inference we have drawn as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.

On this basis, we determine the countervailable subsidy to be 0.48 percent ad valorem for Changbao, 0.07 percent ad valorem for Jianli, 1.53 percent ad valorem, for TPCO, and 0.24 percent ad valorem for WSP.

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.[71]

III. Programs Determined To Be Not Used or To Not Provide Benefits During the POI

A. Export Loans to Jianli

At verification we requested loan contracts covering all of Jianli's loans in the POI. Based upon our examination of these loans, we find that certain of Jianli's loans are export loans provided by

[70] See, e.g., 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 (unchanged in Final Results).
[71] See CFS from the PRC IDM at 16.

SOCBs or government policy banks, rather than loans pursuant to the "Policy Lending" program described above.[72]

Based on our analysis, any benefit to Jianli under this program would be less than 0.005 percent ad valorem. As such, consistent with our past practice, we would not include this program in our countervailing duty rate.[73] Therefore, without prejudice to whether this is a countervailable subsidy, we determine that WSP received no benefit from this program during the POI.

B. Sub-central Government Programs to Promote Famous Export Brands and China World Top Brands

TPCO reported that it received a grant under this program in 2007. On page 50 of the TQR, TPCO stated that the program relates to TPCO's trademark and does not relate to any specific merchandise.

We determine that the total amount of the grant was less than 0.5 percent of TPCO's consolidated sales in 2007. Thus, without prejudice to whether this is a countervailable subsidy, any benefit from this program would be allocated to 2007 pursuant to 19 CFR 351.524(b)(2). As a result, we determine that TPCO received no benefit from this program during the POI.

C. Jiangsu Province Famous Brands

WSP reported that it received a grant under this program.[74] The GOC also provided information on the program.[75] At verification, we learned that Fanli also received a grant under this program during the POI.[76]

Based on our analysis, any benefit to WSP under this program would be less than 0.005 percent ad valorem. As such, consistent with our past practice, we would not include this program in our countervailing duty rate.[77] Therefore, without prejudice to whether this is a countervailable subsidy, we determine that WSP received no benefit from this program during the POI.

D. Changbao Steel Other Program

Among the subsidies reported and verified by the Department, Changbao Steel received assistance under a program that the Department has previously countervailed.[78] As the information is business proprietary, please see Changbao Final Calculation Memo for a full discussion.

[72] For further discussion, see Jianli Verification Report at 9-10.
[73] See, e.g., CFS from the PRC IDM at 15.
[74] See WQR at 26 and W1SR at 24-25.
[75] See G1SR at 39-45.
[76] See WSP Verification Report at 2.
[77] See, e.g., CFS from the PRC IDM at 15.
[78] See Changbao Verification Report at 2-3.

Based on our analysis, any potential benefit to Changbao Steel would be expensed in the year received pursuant to 19 CFR 351.524(b)(2)under this program is less than 0.005 percent ad valorem. As such, consistent with our past practice, we would not include this program in our preliminary net countervailing duty rate.[79] Therefore, without prejudice to whether this is a countervailable subsidy, we determine that Changbao Steel received no benefit from this program during the POI.

E. Export Incentive Payments Characterized as "VAT Rebates"

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted "exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption."[80]

To determine whether the GOC provided a benefit under this program, we compared the VAT exemption upon export to the VAT levied with respect to the production and distribution of like products when sold for domestic consumption. On page 39 of the GQR, the GOC reported that the VAT levied on OCTG sales in the domestic market (17 percent) exceeded the amount of VAT exempted upon the export of OCTG (13 percent). Thus, consistent with the Preliminary Determination, we determine that the VAT exempted upon the export of OCTG does not confer a countervailable benefit. We have addressed comments by parties on this issue in Comment 33, below.

Based upon responses by the GOC, Changbao, TPCO, WSP, and Jianli, we further determine that the above companies did not apply for or receive benefits during the POI under the programs listed below.

A. Preferential Loan Programs

1. Treasury Bond Loans to Northeast
2. Preferential Loans for State-Owned Enterprises
3. Preferential Loans for Key Projects and Technologies
4. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program

B. Equity Programs

1. Debt-to-Equity Swap for Pangang
2. Equity Infusions
3. Exemptions for SOEs From Distributing Dividends to the State

[79] See, e.g., e.g., CFS from the PRC IDM at 15.
[80] See 19 CFR 351.517(a); see also 19 CFR 351.102 (for a definition of "indirect tax").

C. Tax Benefit Programs

1. Preferential Income Tax Policy for Enterprises in the Northeast Region
2. Forgiveness of Tax Arrears For Enterprises in the Old Industrial Bases of Northeast China

D. Tariff and Indirect Tax Programs

1. Stamp Exemption on Share Transfers Under Non-Tradable Share Reform
2. Value Added Tax ("VAT") and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund

E. Land Grants and Discounts

1. Provision of Land Use Rights for Less Than Adequate Remuneration to Huludao
2. Provision of Land to SOEs for Less Than Adequate Remuneration

F. Provision of Inputs for Less than Adequate Remuneration

1. Provision of Hot-Rolled Steel (flat products) for Less than Adequate Remuneration
2. Provision of Coking Coal for Less than Adequate Remuneration

G. Grant Programs

1. Foreign Trade Development Fund (Northeast Revitalization Program)
2. Export Assistance Grants
3. Program to Rebate Antidumping Fees
4. Subsidies for Development of Famous Export Brands and China World Top Brands
5. Grants to Loss-Making SOEs
6. Export Interest Subsidies

H. Other Regional Programs

1. Five Points, One Line Program
2. High-Tech Industrial Development Zones

I. Subsidies for Foreign-Invested Enterprises

1. Reduced Income Tax Rates for Export-Oriented FIEs

IV. Program Determined Not Countervailable

Provision of Low-cost Coke through the Imposition of Export Restraints

Consistent with the Preliminary Determination, we find the program is not countervailable. For a further discussion of this issue, see Comment 32.

Analysis of Comments

Comment 1 Application of CVD Law to the PRC

Jianli argues that by initiating CVD investigations against the PRC at the same time that the PRC continues to be treated as an NME country for purposes of the AD law, the Department has violated the clear statutory intent behind the Act. Jianli contends that the Department should, therefore, revoke all PRC CVD cases thus far initiated. The GOC asserts the Department lacks the authority, both under U.S. domestic law and the WTO Agreements, to conduct a CVD investigation on a country treated as an NME for AD purposes

Jianli asserts that when analyzing the structure and context of the Act, Congressional intent is clear that CVD law does not apply to NME countries. Jianli notes that in the Preliminary Determination, the Department based its application of the CVD law to imports from the PRC on CFS from the PRC and its related Georgetown Steel Memorandum, which ultimately concluded that sections 771(5) and (5A) of the Act provided the Department with the discretion to apply CVD law to NME countries. Jianli explains that the Department erroneously found that the Act did not prohibit it from applying CVDs to NMEs, and thereby left it to the Department's discretion. Jianli asserts that the exclusion of the term "non-market economy" from sections 701 and 771(5) and (5A) of the Act, combined with its inclusion in other sections, demonstrates the clear intent of Congress that the Department does not have the authority to apply CVD law to NMEs. Citing Chevron at 843 and Bell Atlantic at 1047, Jianli argues that to ascertain whether Congress intended to prevent the application of CVD law to the PRC, the Department must employ the traditional tools of statutory construction[81], including an examination of the statute's text, legislative history, and structure.[82] According to Jianli, if, after such a statutory analysis, Congressional intent is unclear, the Department may use its discretion in determining the meaning of that intent; however if the intention is clear, then in accordance with Chevron, that intention is the law and must be given effect.[83]

Jianli continues that the statutory analysis begins with the plain meaning of a statute under sections 701, 731, 751, and 771 of the Act. Jianli notes that these sections include relevant provisions of the AD and CVD laws. Jianli asserts that the analysis of the plain meaning of the statute involves more than simply the meaning of the specific language or lack thereof, as statutory language is often clarified by considering not only the particular statutory language at

[81] See Chevron at 843.
[82] See Bell Atlantic at 1047.
[83] See Chevron at 843 n.9.

issue, but also the structure of the section in which the key language is found, the design of the statute as a whole, and its object.[84]

Jianli asserts that where, on examination of the language itself, the specific context in which that language is used, and the broader context of the statute as a whole, the statutory language is plain and unambiguous, further inquiry is not required. Moreover, Jianli argues that according to well-established canon of statutory interpretation, the use of different words or terms within a statute demonstrates that Congress intended to convey a different meaning for those words. Jianli asserts, as provisions of the CVD law cannot be wholly segregated from those of the AD law (and vice versa), and were implemented as such in the Department's regulations, the meaning of a particular provision cannot be viewed in the vacuum of only that discipline (AD or CVD), but must be interpreted within the larger context of both the AD and CVD laws. Jianli argues that the Department's limitation of its discussion to sections 701 and 771(5) and (5A) of the Act, is inappropriate. Jianli notes that the Department has explained that section 701 of the Act does not contain a reference to NMEs but rather is a general grant of authority to conduct CVD investigations, and, thus, demonstrates that the Department is free to apply, or not apply, CVD law to NMEs.[85] Jianli notes, however, when compared with the very same section for AD proceedings, section 731 of the Act, that section also does not contain any references to NMEs and, yet, the Department must apply the AD law to NMEs. Thus, Jianli avers, the Department's claim for support of its discretion by citing to section 701 of the Act is inapposite. If it exists, according to Jianli, this mandate must stem from section 771 of the Act, which sets forth the special rules and definitions that are applicable to the conduct of both CVD and AD duty proceedings. Jianli goes on to note that while section 771(5) and(5A) of the Act do not contain a reference to NMEs, that term is used notably elsewhere in the section in reference to AD proceedings, and not CVD proceedings. Jianli notes that at section 771(18) of the Act, the statute defines and provides the analysis for determining whether a country is an NME. According to Jianli, this provision clearly demonstrates the intention that only AD proceedings apply to NMEs, and in setting forth the NME analysis, this section states that any NME determination made by the administering authority, shall not be subject to judicial review in any investigation conducted under subtitle B (section 731 of the Act). Jianli argues that this means Congress expressly limited any judicial review of NME status determinations to AD investigations, because CVDs do not apply to NMEs, and it is unreasonable to believe that Congress would have limited judicial review of a non-market designation in one type of investigation, but not the very same designation in another. Jianli notes an NME country is referenced in section 773 of the Act for instructions on the calculation of normal value for AD investigations for such designated countries, but is not referenced anywhere in the instructions on the calculation of subsidies for CVD investigations. Jianli argues that NME countries' conspicuous absence from portions dealing with the calculation of CVDs is telling,[86] and if Congress had intended to make the section applicable to CVD investigations, even in the Department's discretion, Congress would have at least included an express reference to investigations involving products from NME countries in at least one of the numerous sections on CVDs. Jianli argues that absent new legislation, the Department did not have the discretion to initiate this or any other CVD investigation against the PRC.

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84 See, e.g., Alaka at 104.
85 See CFS from the PRC IDM at Comment 1.
86 See McCarthy at 656.

Jianli argues that contrary to the Department's references in CFS from the PRC, the CIT in GOC v. United States did not affirm the Department's proposed procedure of applying CVD law to NME countries nor agree with the Department's reasoning in CFS from the PRC. According to Jianli, in that case, the CIT ruled solely that it did not have jurisdiction to decide the merits of the case, and any statements regarding the substantive merits of the case are pure dicta – a court without jurisdiction cannot render precedential opinions on the merits,[87] and the CIT has repeatedly rejected attempts to support such dicta.[88] Therefore, Jianli avers, the Department cannot legitimately reference GOC v. United States for any purpose other than its jurisdictional finding.

Jianli argues that the CAFC's statutory interpretation in Georgetown Steel and subsequent Congressional legislative history confirm that CVD law does not apply to NMEs, and it precluded the Department from applying CVD measures to NMEs. The GOC notes that in Georgetown Steel, the CAFC ruled that under the statutory scheme that Congress created to address unfair imports, the CVD law does not apply to NMEs.[89] The GOC states the CAFC also made clear that its conclusion in that case was based on the purpose of the countervailing duty law, the nature of NMEs, and actions Congress has taken in other statutes to specifically address the question of exports from those economies.[90] Jianli notes that in Georgetown Steel, the CAFC addressed the very issue presented here – whether section 303 of the Act (which is virtually identical to the current amended Act) allowed the application of CVDs to NME countries. Jianli argues that while the Department views this decision narrowly as only going to its discretion, a plain reading of the court's findings demonstrates the contrary, namely, that Congress unambiguously did not intend CVD laws to apply to NMEs.[91] The GOC and Jianli note that for two decades following Georgetown Steel, the Department consistently dismissed CVD petitions involving NME countries based on the CAFC's statutory interpretation,[92] repeatedly reasoning that Congress could not have intended to apply the CVD law to NME economies. The GOC argues that in GPX the CIT found while the Department may have the authority to apply the CVD law to NME products, Georgetown Steel explained that, at least with respect to the old-style NME countries, the AD statute was intended to cover the ground.[93] Jianli contends that the Department cannot now completely reverse that conclusion without any explanation of how the Department's new practice of recognizing the inherent differences between NMEs[94] satisfies this mandate that the CVD law does not apply to any NMEs. Jianli argues that Congress, in adopting the URAA, expressly accepted this long-standing interpretation of Congressional intent, and the Supreme Court has held that Congress is presumed to be aware of an administrative interpretation of a statute and is deemed to have adopted that interpretation when it reenacts a statute without modification.[95] Jianli claims there can be no dispute that Congress was well aware of the finding in Georgetown Steel, because prior to the enactment of the URAA,

[87] See Steel Co. at 94-95.
[88] See American Spring at 75.
[89] See Georgetown Steel at 1318.
[90] Id. at 1314.
[91] Id. at 1314 and 1318.
[92] See Lug Nuts from China; Oscillating Fans from China; Certain Steel Products from Austria (General Issues Appendix); SAA, pt. 1 (1994); CVD Regulations; Sulfanilic Acid from Hungary.
[93] See GPX at 12.
[94] See CFS from the PRC IDM at Comment 3.
[95] See Merrill Lynch v. Curran at 383, n. 66

Congress enacted the Omnibus Trade and Competitiveness Act of 1988. Jianli claims that this law was the first opportunity for Congress to alter the finding in Georgetown Steel, and it expressly refused to do so. Jianli claims the refusal to amend the CVD law is evident in a rejected section of that law.[96] According to Jianli, this statement shows the House Ways and Means Committee recognized that the Department did not have discretion to apply CVD law to NMEs. Jianli also notes Congress directly referenced the holding in Georgetown Steel that the CVD law does not apply to NME countries, and definitively did not characterize the holding in that case as providing the Department with the discretion to apply CVD law to NMEs. Jianli concludes that this does not merely represent Congressional inaction as the Department referred to it in CFS from the PRC IDM at Comment 1, but rather constitutes legislative history of the Omnibus Trade and Competitiveness Act of 1988 and the Congressional reaction to Georgetown Steel. Jianli notes that Congress also failed to amend the CVD laws in 1994, in enacting the URAA, and repealing section 303 of the Act.

Jianli asserts that the Department's previous interpretation of the current CVD law in Sulfanilic Acid from Hungary affirms Jianli's view, as this case occurred after the enactment of the new iterations of the CVD law. Jianli notes than in Sulfanilic Acid from Hungary, the Department determined that it could not apply CVD law to Hungary when it was designated as an NME, and the Department made this decision categorically as applicable to all NMEs without analyzing any of the inherent differences between NMEs. Jianli asserts that in the year prior to graduating to market economy status, Hungary was most certainly at the same economic level as the PRC is currently. Jianli argues that in the Department has now impermissibly interpreted the very same statute to conclude that CVD law can apply to some NMEs. Jianli asserts the application of the CVD law to the PRC is also contradicted by the Department's continued failure to accord even one PRC industry involved in an AD investigation market-oriented industry status, or to accord any individual PRC respondent market economy status.

The GOC argues the key programs at issue in this investigation demonstrate the difficulties inherent in simultaneous application of the CVD and AD NME laws. The GOC notes that for lending, land, and steel round programs, the Department concluded that it could not measure the purported subsidy through an examination of the relevant marketplace in the PRC. In each case, the Department relied on benchmarks from other countries. The GOC argues that the Department's preliminary findings are entirely consistent with a key consideration underlying its 20-year long practice of not applying the CVD law to NMEs. The GOC notes that in one of the underlying investigations at issue in Georgetown Steel, the Department found that NME resources are not allocated by a market, but by central planning, and, thus, it is meaningless to look for misallocation of resources caused by subsidies. Also, the GOC notes that in the NME system, the government does not interfere in the market process, but supplants it, and this led the Department to conclude that subsidies have no meaning outside the context of a market economy.[97] The GOC argues that the Department's findings in the Preliminary Determination are inconsistent with the Department's assessment in the Georgetown Steel Memorandum of the PRC's status as a transitioning NME. The GOC asserts that in the Georgetown Steel Memorandum, the Department found the PRC had enacted significant and sustained economic

[96] Jianli specifically cites to section 157 of H.R. 3. See H.R. Rep. No. 100-40, pt. 1, at 138 (1987).
[97] See Wire Rod from Poland at 19375.

reforms enabling the PRC's economy to advance beyond a Soviet-style command economy, such that the Department could now determine the transfer of a specific financial contribution and benefit from the government to producers in the PRC. The GOC insists the Department's pervasive use of benchmarks from outside the PRC demonstrates the Department has found limited practical distinctions between the PRC and other AD NMEs. The GOC asserts U.S. law does not recognize different types of NMEs such that the Department may apply different rules to different types of NMEs, and if the PRC market is sufficiently liberalized to permit application of CVD laws, then it is also liberalized to permit market economy calculations in the parallel AD case.

Jianli and the GOC assert that the Department's application of the CVD law to PRC imports violates APA rulemaking procedures.[98] Jianli and the GOC explain that whenever the Department makes a new rule (or gives its regulations a definitive interpretation) or changes a previous rule (or changes its interpretation), it must comply with the APA's notice-and-comment procedures.[99] Jianli explains that an agency issues a public notice of the proposed change in rule in the FR to give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments, and, after the consideration of these comments, incorporates in the rules adopted a concise general statement of their basis and purpose.[100] The GOC notes that an agency creates a rule when it issues a statement interpreting and answering a legal question following a notice-and-comment period.[101] Jianli and the GOC assert that the initiation of a CVD case against the PRC, an NME, is a substantial revision of the Department's previous rule of not applying CVDs to NMEs, and doing so prior to the completion of the appropriate procedures constitutes a retroactive revision of a binding rule and, hence, violates the APA.

Jianli notes that the APA defines a rule at 5 U.S.C. § 551(4). Jianli asserts that the Department's long-standing statutory interpretation that CVD law does not apply to NMEs, satisfies this requirement as a rule rather than a policy or practice. Jianli asserts that in <u>Alaska Hunters</u> at 1031, the court found an FAA interpretation followed for almost thirty years, and affirmed in agency adjudication, constituted an authoritative interpretation that could not be altered without notice or comment rulemaking. The GOC and Jianli assert the Department issued statements of legal interpretation regarding the imposition of CVDs against NMEs following a notice and comment period no fewer than three times in the past twenty years. The GOC and Jianli note that: 1) the Department adopted its position not to apply CVD law to NMEs in 1984 after a specific notice-and-comment period;[102] 2) the Department affirmed its 1984 decision not to apply the CVD law to NMEs in the 1993 <u>Certain Steel Products from Austria (General Issues Appendix)</u>, which was a formal written statement that resolved various issues in the Department's interpretation of U.S. CVD law;[103] and 3) the Department again confirmed it did not intend to impose CVDs on NMEs when it promulgated its regulations in 1998.[104] For the last

[98] <u>See</u> 5 U.S.C. § 553(c).
[99] <u>See</u> <u>Shinyei</u> at 1309.
[100] <u>See</u> 5 U.S.C. § 553(b), (c).
[101] <u>Id</u>.
[102] <u>See</u>, <u>e.g.</u>, <u>Textiles</u> at 46601 and <u>Wire Rod from Poland</u> at 19376.
[103] <u>See</u> <u>Certain Steel Products from Austria</u> at 37261.
[104] <u>See</u> <u>CVD Regulations</u> at 65360.

item, Jianli notes in the final CVD Regulations, the Department decided to codify a final rule on the concept of benefit, and in its definitive interpretation of that term, the Department explained that: "it is important to note here our practice of not applying the CVD law to non-market economies. The CAFC upheld this practice in Georgetown Steel. We intend to continue to follow this practice."[105] Jianli also notes that in the Preamble to CVD Regulations, the Department asserted it would not apply the subsidy law to NME countries and would not examine subsidy allegations made against an NME country, and it noted that 19 CFR 351.505 (regarding benefits) is not applicable to NMEs. Jianli asserts that the Department did not follow APA procedures in reversing its long-standing position concerning the application of CVDs to NME countries. Jianli notes that while the Department issued a notice to the public on December 15, 2006,[106] almost one month after the CFS from the PRC petition was filed on November 20, 2006, it never addressed the comments made by the parties before making its preliminary and final decisions. Jianli concludes that because of the Department's failure to follow the required procedures, its actions in initiating this and various other CVD investigations on PRC products are unlawful, and such initiations should be revoked.

Maverick and U.S. Steel argue that neither domestic law nor WTO agreements prevent application of the U.S. CVD law to the PRC. Maverick and U.S. Steel note that the Department has routinely concluded that Georgetown Steel does not bar application of the CVD law to the PRC.[107] Maverick asserts that after evaluating the reasonableness of benefits provided by the Soviet Union and the German Democratic Republic for the export of potash, the CAFC concluded that Congress had not defined the terms bounty or grant as used in section 303.[108] Maverick explains that at as result of the ambiguity, the CAFC was unable to answer the question of whether that section applies to NMEs by reference to its language.[109] Maverick asserts that without evidence of clear Congressional intent or that Congress had addressed this issue, the CAFC deferred to the Department's determination that a bounty or grant within the meaning of the CVD law cannot be found in an NME,[110] but did not state that the Department's interpretation was the only permissible one.

U.S. Steel asserts that Jianli's argument, that because NMEs are referred to in other provisions of the Act governing AD proceedings must mean Congress did not intend the CVD laws (which don't mention NMEs) would cover NMEs, is absurd. U.S. Steel asserts Congress long ago made clear it intended NMEs to be treated differently in AD context, but that there is no basis for concluding Congress intended NMEs be treated differently in the CVD context.

Maverick notes that the Department's conclusion that a bounty or grant cannot be found in an NME in investigations preceding Georgetown Steel was based on the economic realities of these Soviet-bloc economies,[111] and by recognizing the factual distinction between the PRC's current economy and the Soviet-bloc economies, the Department appropriately arrived at a different

[105] Id.
[106] See Application of CVD Law.
[107] See, e.g., CFS from the PRC IDM at Comment 1 and LWS from the PRC IDM at Comment 1.
[108] See Georgetown Steel at 1314.
[109] Id.
[110] See CFS from the PRC IDM at Comment 1.
[111] Id. at 27.

conclusion in CFS from the PRC. Maverick asserts that in the case, the Department recognized that, in contrast to the Soviet-style economies, the PRC's modern economy is more flexible and consists of market mechanisms operating with government forces. Therefore, Maverick explains, the Department concluded that application of the CVD law to the PRC is appropriate, given the presence of limited market forces in the PRC.

U.S. Steel asserts that the Department has considered and rejected Jianli's arguments regarding Sulfanilic Acid from Hungary. In CWP from the PRC, the Department explained that there is no requirement for the Department to address each instance where a prior practice was applied when changing practice.

Maverick and U.S. Steel assert that GPX does not prevent the Department's application of the CVD law to the PRC. U.S. Steel notes that the GPX decision is not a final judgment, and Maverick contends this decision is flawed. Maverick argues that the CIT properly determined that the Department is not barred from applying the CVD law to the PRC, but it erred in determining the Department must adopt further policies and procedures for its NME AD and CVD methodologies to avoid double counting. Maverick asserts that the CIT ignored the fact that the AD and CVD law are separate regimes that provide separate remedies for distinct unfair trade practices, and subsidies under the CVD law may be countervailable regardless of whether they have any effect on the price of the merchandise sold in the U.S. or the home market. Maverick notes that, with one exception, AD duties are calculated in the same way regardless of whether there is a parallel CVD proceeding.[112] Maverick explains the only adjustment in concurrent AD and CVD investigations is provided under section 772(c)(1)(C) of the Act, which states the Department shall adjust export price to offset an export subsidy. Maverick notes that any offset for domestic subsidies is absent. Moreover, Maverick contends that in the GPX decision, the CIT relied on a faulty presumption that the AD law embodies the presumption that domestic subsidies automatically lower export prices pro-rata (while having no effect upon normal value, as determined in NME proceedings).[113] Maverick also contends that the final results of this investigation are an improper forum for resolving the issues raised in GPX, and these issues will likely be litigated into the foreseeable future. Moreover, Maverick and U.S. Steel stress, the CIT never concluded that the Department could not apply CVD remedies where it also uses an NME AD methodology. According to Maverick, the CIT essentially acknowledged the Department's authority to apply CVD remedies in these situations by noting the Department could apply CVD remedies where it uses NME methodology provided the Department adopts appropriate policies and procedures to address them.

Maverick contends that that the GOC failed to support its argument that the Department lacks authority under the WTO agreements to apply U.S. CVD law to an NME. Maverick asserts that the PRC's December 11, 2001, accession to the WTO supports the Department's application of the CVD law to a non-market based country such as the PRC, and ample evidence indicates WTO agreements do not prohibit the Department from this application as well. Maverick argues that since its accession, the PRC has been subject to the SCM Agreement. Maverick notes this agreement supports applying the CVD law to the PRC, allowing WTO members to apply CVDs

[112] Id. at Comment 1.
[113] See GPX at 19.

to the PRC notwithstanding its lack of a market based economy,[114] and by agreeing to this agreement, the PRC agreed to be subjected to the CVD laws of other WTO members.

Maverick asserts Article 15(b) of the Accession Protocol states that proceedings under Part V of the SCM Agreement (relating to CVDs) are applicable to the PRC. Moreover, Maverick explains, this provision authorizes WTO members to use methodologies for identifying and measuring subsidy benefits which take into account the possibility that prevailing terms and conditions in the PRC may not always be available as appropriate benchmarks. Maverick argues that under the Accession Protocol, the PRC agreed to several subsidy concessions: 1) notify the WTO of any subsidy it grants as defined in the SCM Agreement; 2) subsidies given to state-owned enterprises will be treated as specific and actionable; and 3) remove all subsidies from programs within the scope of Article 4 of the SCM Agreement (this includes subsidies contingent on export programs and the use of domestic goods). Maverick notes that nothing in the WTO agreements states that it unlawful to conduct a CVD investigation of a country that is considered an NME for AD purposes.

Maverick argues the APA does not bar the application of the CVD law to the PRC. Maverick notes the Department has made explicit that it has never promulgated a rule pursuant to the APA regarding the application of the CVD law to NMEs.[115] Maverick and U.S. Steel note that APA's notice-and-comment requirements are inapplicable to interpretive rules, general statements of policy or procedure, or practice, and, therefore, the argument that the Department cannot apply the CVD law to NMEs without engaging in the APA's notice-and-comment rulemaking is erroneous. Maverick insists the Department did not adopt a general prohibition against applying the CVD law to NMEs in 1984. As the Department explained in CFS from the PRC, in the wire rod cases that preceded Georgetown Steel, the Department examined whether the CVD law could be applied to Soviet-bloc economies and concluded that it could not based on the state of those economies at the time. Maverick and U.S. Steel assert that the Department did not create a blanket rule against ever applying U.S. CVD law to NMEs, rather its prior position was a practice, not a binding rule under the APA.[116] In addition, Maverick argues that the Certain Steel Products from Austria (General Issues Appendix) does not constitute a rule, as it merely acknowledged the Department's practice regarding the non-application of the CVD law to NMEs. U.S. Steel notes that the Department explained in CWP from the PRC, the Supreme Court has affirmed that an agency has broad discretion to determine whether notice-and-comment rulemaking or case-by-case adjudication is more appropriate for changing a policy or practice.

TMK IPSCO, et. al. note that the court in Georgetown Steel sustained the Department's refusal to apply the CVD law in the circumstances of that case but did not overrule the statute, simply finding an agency cannot apply a law where it is impossible to do so. TMK IPSCO, et. al. assert that in CFS from the PRC, the Department determined it was now possible to measure subsidies in the PRC, a unique economy, which was different from the socialist economies at issue in Georgetown Steel.

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114 See SCM Agreement at Article IV.
115 See CFS from the PRC IDM at Comment 2.
116 See, e.g., CWP from the PRC IDM at Comment 1.

Department's Position

We disagree with the GOC and Jianli 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 multiple cases. [117]

Congress granted the Department the general authority to conduct CVD investigations.[118] 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 . . . ."[119] 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.[120]

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."[121] The Department reached this conclusion, in large part, because both output and input prices were centrally administered, thereby effectively administering profits as well.[122] The Department explained that "{t}his is the background that does not allow us to identify specific NME government actions as bounties or grants."[123] 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 products . . . ."[124] 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.[125] The issue in Georgetown Steel was whether the Department could apply CVDs (irrespective of whether any AD duties were also imposed) to potash from the USSR and the German Democratic Republic and carbon steel wire

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[117] See CFS from the PRC IDM at Comment 1; see also CWP from the PRC IDM at Comment 1; see also LWRP from the PRC IDM at Comment 1; see also LWS from the PRC IDM at Comment 1; see also OTR Tires from the PRC IDM at Comment A.1; see also LWTP from the PRC IDM at Comment 1; see also CWLP from the PRC IDM at Comment 16; see also CWASPP from the PRC IDM at Comment 4; see also KASR from the PRC IDM at Comment 1.

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

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

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

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

[122] Id.

[123] Id.

[124] See Georgetown Steel Memorandum.

[125] See Georgetown Steel at 1308.

rod from Czechoslovakia and Poland. The Department determined that those economies, which all operated under the same, highly rigid Soviet system, were so monolithic as to render nonsensical the very concept of a government transferring a benefit to an independent producer or exporter. The Department therefore concluded that it could not apply the U.S. CVD law to these exports, because it could not determine whether that government had bestowed a subsidy (then called a "bounty or grant") upon them.[126] While the Department did not explicitly limit its decision to the specific facts of the Soviet Bloc in the mid-1980s, its conclusion was based on those facts. The CAFC accepted the Department's logic, agreeing that, "Even if one were to label these incentives as a "subsidy," in the loosest sense of the term, the governments of those nonmarket economies would in effect be subsidizing themselves."[127] Noting the "broad discretion" due the Department in determining what constituted a subsidy, the Court then deferred to the Department's judgment on the question.[128] Thus, Georgetown Steel did not hold that the Department was free not to apply the CVD law to exports from NME countries, where it was possible to do so. The Federal Circuit simply deferred to the Department's determination that it was unable to apply the CVD law to exports from Soviet Bloc countries in the mid-1980s.

The Georgetown Steel Court did not find that the CVD law prohibited the application of the CVD law to all NMEs for all time, 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. Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-45, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984).[129]

The GOC and Jianli argue that the Georgetown Steel Court found that the CVD law cannot apply to NMEs. In making this argument, the respondents 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.[130] 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.

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126 See, e.g., Wire Rod from Czechoslovakia.
127 Georgetown Steel, supra, at 1316.
128 Specifically, the Federal Circuit stated that: "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.
129 See Georgetown Steel at 1318 (emphasis added).
130 Id.

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."[131] Therefore, the Court declined to find that the Department's investigation of subsidies in the PRC was ultra vires.

The GOC's and Jianli'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 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.[132] 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."[133] 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."[134] 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."[135]

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."[136] 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.

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131 See GOC v. United States (citing Georgetown Steel at 1318).
132 See, e.g., section 771(5) and (5A) of the Act.
133 See Solid Waste, 531 U.S. at 170.
134 See 22 U.S.C. § 6943(a)(1) (emphasis added).
135 See 22 U.S.C. § 6901(8).
136 See 22 U.S.C. § 6941(5).

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.[137] Paragraph (d) of that same Article provides for the continuing treatment of the PRC as an NME.[138] There is no limitation on the application of Article 15(b) with respect to Article 15(d), thus indicating it became applicable at the time the Accession Protocol entered into effect. Although WTO agreements such as the Accession Protocol do not grant direct rights under U.S. law, the Accession Protocol contemplates the application of CVD measures to the PRC as one of the possible existing trade remedies available under U.S. law. Therefore, Congress' directive that the "United States Government must effectively monitor and enforce its rights under the agreements on the accession of the People's Republic of China to the WTO," contemplates the application of the CVD law to the PRC.[139] 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, 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.

The GOC and Jianli fail to discuss these statutory provisions and, instead, cite to the fact that Congress did not amend the CVD law in the Omnibus Trade and Competitiveness Act of 1988. As the CVD law was not being applied to NMEs at that time, there was no reason to amend the CVD law to address concerns unique to NMEs. Further, we are not persuaded by Jianli's arguments that sections 731 or 771 of the Act, or the Act as a whole, demonstrates that Congress did not intend the CVD law to apply to NMEs. The fact that the Act does not allow for judicial review of NME designations in AD proceedings, but is silent on this point with respect to CVD proceedings, does not overcome the language of section 701 of the Act and of 22 U.S.C. § 6943(a)(1). Moreover, the CAFC has explained that "congressional inaction is perhaps the weakest of all tools for ascertaining legislative intent, and courts are loath to presume congressional endorsement unless the issue plainly has been the subject of congressional attention." Butterbaugh at 1342. Again, and contrary to Jianli's argument, the Act's reference to NMEs with respect to AD proceedings is a weak basis for implying that the CVD law does not apply to NMEs. In sum, Congress has never precluded the Department from applying the CVD law to NMEs. 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 disagree with the GOC's and Jianli's contention that the application of the CVD law to the PRC constitutes a retroactive amendment to a binding rule that requires a formal rulemaking. An agency has broad discretion to determine whether notice-and-comment rulemaking or case-by-case adjudication is the more appropriate procedure for changing a policy or a practice.[140] Here,

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137 See Accession Protocol.
138 Id.
139 See 22 U.S.C. § 6941(5).
140 See, e.g., Chenery Corp. at 202-03 ("the choice made between proceeding by general rule or by individual, ad

the decision of whether a subsidy can be calculated in an NME hinges on the facts of the case, and should be made exercising the Department's "informed discretion."[141] The CIT recently agreed, stating that:

> While Commerce acknowledges that it has a policy or practice of not applying countervailing duty law to NMEs, see, e.g., Request for Comment, Commerce has not promulgated a regulation confirming that it will not apply countervailing duty law to NMEs. In the absence of a rule, Commerce need not follow the notice-and-comment obligations found in the APA, 5 U.S.C. § 553, and instead may change its policy by "ad hoc litigation." See Chenery Corp., 332 U.S. at 203.[142]

The CIT has repeatedly recognized the Department's discretion to modify its practice and has upheld decisions by the Department to change its policies on a case-by-case basis rather than by rulemaking when it has provided a reasonable explanation for any change in policy.[143]

The Department's decision to apply the CVD law in this investigation is also not subject to the notice-and-comment rulemaking of the APA because of the nature of the proceedings before the agency. The "APA does not apply to antidumping administrative proceedings" because of the investigatory and not adjudicatory nature of the proceedings, a principle equally applicable to CVD proceedings.[144]

Jianli cites to Alaska Hunters at 1033-34, to support its claim that the APA's requirements apply if the Department decides to apply the CVD law to an NME. However, in that case, the FAA had published a notice of general application.[145] This is not analogous to the Department's practice here, where the practice was developed on a case specific basis – there was no broad notice of general application that the Department would never investigate future CVD complaints against NMEs.

The GOC and Jianli cite to determinations where they claim the Department established a rule under the APA that it would not apply the CVD law to the PRC. As discussed above, the argument premised on these determinations is incorrect because the Department does not create

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hoc litigation is one that lies primarily in the informed discretion of the administrative agency").

141 See Chenery Corp. at 203.

142 See GOC v. United States at 1282.

143 See, e.g., Budd Co., Wheel & Brake Div. v. United States, 746 F. Supp. 1093 (CIT 1990) (holding that the Department did not engage in rulemaking when it modified its hyperinflation methodology: "because it fully explained its decision on the record of the case it did not deprive plaintiff of procedural fairness under the APA or otherwise"); Sonco Steel Tube Div. v. United States, 694 F. Supp. 959, 966 (CIT 1988) (formal rulemaking procedures were not required in determining whether it was appropriate to deduct further manufacturing profit from the exporter's sales price). This is because it is necessary for the Department to have the flexibility to observe the actual operation of its policy through the administrative process and as opposed to formalized rulemaking. See Ceramica Regiomontana, S.A. v. United States, 10 CIT 399, 404-05, aff'd, 810 F.2d 1137 (Fed. Cir. 1987). The Department provided a fully reasoned analysis for its change of practice in this case. See LWTP from the PRC IDM at Comment 1; see also Georgetown Steel Memorandum.

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

145 Id. at 1033; see also Compliance With Parts 119, 121, and 135 by Alaskan Hunt and Fish Guides Who Transport Persons by Air for Compensation or Hire, 63 FR 4 (Jan. 2, 1998) (notice to operators).

binding rules under the APA through its administrative determinations. Instead, in these determinations the Department expounds on its practice in light of the facts before the Department in each proceeding. Furthermore, in the determinations to which the GOC cites, the Department never found that the Congress exempted the PRC from the CVD law.
Jianli cites to Wire Rod from Poland which provided the Department's analysis on the Soviet-bloc economies and examined whether the CVD law could be applied, the Department articulated its decisions based on the status of those economies at the time. For example, after analyzing the operation of the market (or lack thereof) in Poland, the Department explained that:

> These are the essential characteristics of nonmarket economic systems. It is these features that make NME's irrational by market standards. This is the background that does not allow us to identify specific NME government actions as bounties or grants. [146]

The Department concluded that Congress had never clearly spoken to this issue. Id. In the absence of any statutory command to the contrary, the Department exercised its "broad discretion" to conclude that "a 'bounty or grant,' within the meaning of the CVD law, cannot be found in an NME."[147] The Department based its decision upon the economic realities of these Soviet-bloc economies. It did not create a sweeping rule against ever applying the CVD law to NMEs. Indeed, the Department's subsequent actions demonstrate that it did not create a rule against the application of CVD law to NMEs. For example, in 1992, the Department initiated a CVD investigation against the PRC, notwithstanding its status as an NME, after determining that certain industry sectors were sufficiently outside of government control.[148]

The GOC and Jianli reference Certain Steel Products from Austria (General Issues Appendix), again claiming that a reference to the Department's practice elevated that practice to the level of a rule. However, the statement is simply an explanation that the CVD law is not concerned with the subsequent use or effect of a subsidy and that "Georgetown Steel cannot be read to mean that countervailing duties may be imposed only after the Department has made a determination of the subsequent effect of a subsidy upon the recipient's production."[149] This reference to Georgetown Steel does not set forth a broad rule, but merely acknowledged the Department's practice regarding non-application of the CVD law to NMEs.

The Department has appropriately, and consistently, determined that formal rulemaking was not appropriate for this type of decision. Contrary to the GOC's and Jianli's claims, instead of promulgating a rule when it drafted other CVD rules,[150] the Department reiterated its position that the decision to not apply the CVD law in prior investigations involving NMEs was a practice:

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[146] See Wire Rod from Poland, 49 FR at 19374.
[147] Id.; see also Wire Rod from Czechoslovakia.
[148] See Lug Nuts from China Initiation. The Department ultimately rescinded the CVD investigation on the basis of the AD investigation, the litigation, and a subsequent remand determination, concluding that it was not a market-oriented industry. See Lug Nuts from the PRC.
[149] See Certain Steel Products from Austria (General Issues Appendix) at 37261.
[150] The Department notes that the GOC argues the Department "codified its position when it specifically limited the scope of its authority in the new CVD regulations to excluded non-market economies." GOC Case Brief at 9. The Department is unable to directly respond to the GOC's argument because without citation or quoted text it is unclear to which portion of the Department's CVD regulations the GOC refers.

> In this regard, it is important to note here our practice of not applying the CVD law to non-market economies. The CAFC upheld this practice in Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986).[151]

In a subsequent determination, the Department continued to explain that it has a practice of not applying the CVD law to NMEs, and did not refer to this practice as a rule. "The Preamble to the Department's regulations states that . . . it is important to note here our practice of not applying the CVD law to non-market economies. . . . We intend to continue to follow this practice." Sulfanilic Acid from Hungary IDM at Comment 1 (emphasis added). The claim that the Department has somehow created a rule, when it has neither referred to its practice as such nor adopted notice-and-comment rulemaking for this practice, is erroneous.

The Georgetown Steel Memorandum details the Department's reasons for applying the CVD law to the PRC and the legal authority to do so. 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.[152] The citation to the Economic Intelligence Unit quote, "market forces now determine the price of more than 90 percent,"[153] 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 Memorandum), where the Department explains, "The fact that enterprises generally are free to set wages and the majority of prices does not ipso facto lead to the conclusion that wages and prices are market-based in all instances. Private enterprises and citizens in 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."[154]

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.[155] 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

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[151] See CVD Preamble, 63 FR at 65360 (emphasis added). See also Certain Steel Products from Austria (General Issues Appendix) at 37261.
[152] See Georgetown Steel Memorandum at 5.
[153] Id.
[154] Id.
[155] See Georgetown Steel Memorandum at 5; see also Lined Paper Memorandum at 22.

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.

Jianli 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.[156] 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).[157] 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.[158] 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.[159] 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 given ample latitude to adapt its rules and policies to the demands of changing circumstances.[160]

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.[161] 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.[162] In

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156 See generally Georgetown Steel Memorandum.
157 See, e.g., Sulfanilic Acid from Hungary.
158 See, e.g., Georgetown Steel Memorandum.
159 See, e.g., Rust v. Sullivan, 500 U.S. at 187.
160 Id., 500 U.S. at 186-87 (citations and internal quotations omitted).
161 See CFS from Indonesia IDM at "GOI's Provision of Standing Timber for LTAR," and Comments 11 and 12.
162 See Softwood Lumber from Canada IDM at "Provincial Stumpage Programs"; see also Softwood Lumber from

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,[163] which explicitly provides for use of external benchmarks, where there are special difficulties in applying standard CVD methodology.

Finally, any reliance on GPX is misplaced because that decision is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted.[164]

Comment 2 Double Counting/Overlapping Remedies

The GOC, Changbao, Jianli, and TPCO Group argue that application of the CVD law, while also applying NME AD methodology in the parallel AD case, will result in unlawful double remedies.

Jianli asserts that the Department's continued use of a countrywide rate in AD investigations involving the PRC for companies not accorded separate rate status, instead of using the all-others rate methodology for non-sampled respondents, is clear proof that the Department continues to believe that the PRC is an NME country in all respects that are relevant to calculation of subsidization in CVD investigations. Jianli argues that unless and until the Department recognizes that the PRC should not be treated as an NME for AD purposes, the application of CVD measures to the PRC will constitute double penalization. Jianli argues that the Department, therefore, improperly initiated this CVD investigation against the PRC and should revoke that initiation in its final determination.

TPCO Group asserts that by Congressional intent AD and CVD laws address very different types of behavior and harm, and the statute provides safeguards to prevent the overlapping and, therefore, double counting of remedies when the laws are applied at the same time. Changbao asserts the Department has acknowledged in previous cases involving simultaneous market economy AD and CVD proceedings that parallel AD and CVD cases do create risks of double remedies and that such double remedies are to be avoided.[165] Changbao explains that because the Department compares normal value derived from actual home market prices to actual export prices in market economy AD calculations, it is necessary to distinguish export and general domestic subsidies in the margin calculations.[166] Changbao notes that to the extent export subsidies create economic incentives to reduce export prices versus domestic prices, export subsidies are presumed to induce dumping, and simultaneously countervailing the export subsidy and offsetting the dumping would result in double remedies for the same commercial conduct. Specifically, TPCO Group and Changbao note the statute provides for an adjustment to export

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Canada - Amended.

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

[164] Even if reliance on GPX was not misplaced, GPX does not absolutely preclude the Department from simultaneously applying the CVD law and the NME methodology under the AD law. The Court in GPX clearly stated that "Commerce is not barred by the statutory language from applying the CVD law to imports from the PRC" and "Commerce may have the authority to apply the CVD law to products of an NME-designated country." See GPX at 2-3, 13.

[165] See Uranium from France AD Final Results at 46506.

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

price in the dumping calculation by adding the amount of any CVDs attributed to export subsidies. Changbao notes that double counting is not an issue with domestic subsidies in market economy cases, as these duties are presumed to impact domestic and import pricing equally, as both the normal value and the export price reflect the impact of general domestic subsidies. TPCO Group asserts that the problem with simultaneous AD and CVD remedies involving countries treated as NMEs under the AD law is that both remedies address the same underlying problem. TPCO Group argues that NMEs include any country where the Department finds costs and pricing are so distorted by government intervention that no market truly exists. TPCO Group argues that while it is questionable whether countervailable subsidies are cognizable in an NME economy, the Department and the courts have surmised,[167] under the Department's prevailing and flawed interpretation of the statute, the broad distortion considered by the statute would necessarily include any countervailable subsidies present in an NME.[168]

Changbao argues that the relationship between domestic subsidies and AD duties is fundamentally different in NME cases. TPCO Group, WSP, and Changbao explain that the Department does not use actual producer costs or prices in the NME dumping analysis, but it resorts to undistorted surrogate market economy benchmarks to establish normal value, in order to offset market distortions. According to Changbao, the surrogate values are used for inputs, G&A expenses, financial expenses, and profit. Changbao asserts that none of these surrogate values are affected by any domestic subsidies conferred by the NME government. For this reason, Changbao asserts, the NME methodology compares a normal value that does not reflect any general domestic subsidies while the export price does reflect the actual commercial impact of such subsidies. Therefore, Changbao argues, the magnitudes of any general domestic subsidies would be expressed as dumping margins in NME cases. TPCO Group notes that this is quite similar to CVD methodology. TPCO Group asserts that both NME AD and CVD methodology examine the cost of operation in an undistorted commercial setting (broadly defined in NME AD and narrowly defined by subsidy programs in the case of CVD), using market benchmarks to ascertain the market cost. For the same reason, according to Changbao, simultaneous AD and CVD remedies in NME cases lead to double counting. Changbao asserts that the GAO expressly acknowledged this risk of duplicative remedies even before the Department launched its first CVD investigation of NME products.[169] According to the GOC, the CIT explained in GPX that export price is not being compared to a PRC price, in which case both sides of the comparison would be equally affected by any subsidy, but to a subsidy-free constructed normal value, and this, without some type of adjustment, could result in double remedy.[170] TPCO Group asserts that although the outcomes of NME AD and CVD approaches may be different, this is merely a function of different methodologies, not one of different purposes, as the NME methodology captures and offsets through AD duties the same advantage offset by CVD duties. TPCO Group notes that, in contrast, in AD market economy cases the Department does not seek to account for a subsidy benefit manifesting itself through lower prices or costs, as this is left to any CVD remedy.

[167] See Georgetown Steel at 1317-18.
[168] While TPCO Group believes that as a matter of law the Department is precluded from simultaneous application of NME AD methodology and the CVD statute, TPCO Group only focused its brief on the double remedy implication of simultaneous application.
[169] See GAO Report: Challenges at 17.
[170] See GPX at 17.

Changbao asserts allegations regarding provision of steel rounds for LTAR and preferential loans present direct risks of double counting. The GOC asserts that in the instant case, the Department preliminarily found that steel rounds were subsidized, and this carries with it the implication that the alleged subsidy reduced the production costs of subsidized producers. Yet, the GOC argues, the Department's NME methodology has no mechanism to take account of this cost reduction, as it values steel rounds at surrogate market values that ignore the cost reduction and inflate normal value. The GOC insists the problem arises because normal value is not based on home market prices or costs of production, but third country surrogate values for inputs, G&A expenses, financial expenses, and profit, all of which are unaffected by domestic subsidies in the PRC. WSP and Changbao argue that at a minimum, the Department should not treat the purchase of inputs as countervailable as long as such inputs are being valued using the surrogate value methodology in the AD case. In particular, WSP and Changbao assert the Department should not consider the purchase of steel rounds, as well as financing for Changbao, to be countervailable. Changbao argues in the CVD Preliminary Determination, the Department concluded Changbao received a benefit through the purchase of steel rounds for LTAR. Changbao explains that the Department measured this benefit by comparing Changbao's monthly average purchase prices for steel rounds to a benchmark world price, and included this benefit in the subsidy calculation. WSP notes that in GPX, the CIT recognized the NME AD statute was designed to account for government intervention in an NME country's economy, including resulting price distortion.[171] WSP and Changbao assert that in the parallel AD OCTG case, the Department valued respondents' material inputs, including steel rounds, using Indian import values.[172] WSP and Changbao assert that by applying a surrogate value to steel rounds in the AD case, the Department has removed any price distortion associated with steel rounds, including any effect of subsidies. Similarly, Changbao asserts, normal value included financial ratios derived from financial statements of surrogate manufacturers, and these ratios do not include the alleged provision of policy loans by the GOC. Therefore, according to Changbao, the dumping calculation will incorporate the price effects of such policy loans on export price, and any separate countervailing of such alleged policy loans in the instant case will provide unlawful double remedy. The GOC insists the problem is not limited to steel rounds, as the Department measures dumping using third-country prices for many inputs such as land, interest expenses, and electricity. WSP argues that, therefore, no CVD should be imposed on steel rounds when a surrogate value is used for the same product in the parallel AD investigation. Finally, if the Department does continue to use a surrogate value for steel rounds, WSP requests the Department to explain why such methodologies comply with GPX.

TPCO Group, Changbao, and the GOC assert that the Department bears the burden of demonstrating that no double remedy arises through simultaneous application of it NME AD methodology and the CVD law. Changbao asserts that in past PRC CVD proceedings, the Department has declined to confront the double counting issue on the grounds that respondents had not quantified the extent of double counting or established the conceptual distinction between export subsidies and domestic subsidies in market economy cases.[173] TPCO Group argues the whole reason for the macro approach under the NME methodology is that it was deemed impossible to disentangle and quantify market distortions present in NME countries.

[171] Id. at 12.
[172] See AD Preliminary Determination at 35-36.
[173] See, e.g., OTR Tires from the PRC IDM at Comment 2.

TPCO Group notes that because of the interrelated amalgam of government directives and controls,[174] a more precise tool to construct normal value in an NME would have been impractical. TPCO Group asserts that this rationale is now of limited applicability given the Department's position that real prices and cost do exist in NMEs such as the PRC. TPCO Group argues that this fact calls into question the simultaneous application of NME AD and CVD methodologies. TPCO argues that it is the Department that concluded in can distinguish countervailable subsidies from the amalgam of other distortions it finds in the PRC. TPCO Group asserts that the Department's methodology denies any ability to isolate countervailable subsidies from other market effects. TPCO Group asserts that beyond input subsidy issues, it is impossible to illustrate overlap given there is no way to determine from the surrogate financial ratios used in the NME AD case where countervailable subsidies that are offset in the NME AD calculation begin or end. TPCO Group asserts that although the Department appears to have professed the ability to distinguish between countervailable subsidies and other market distortion in NMEs, it has never articulated how it may isolate the distinct types of distortion to avoid a double remedy.

TPCO Group argues that the fact that the NME methodology is cruder or broader than the CVD methodology does not excuse the overlap and confirms that the two remedies were never intended to be used simultaneously. TPCO Group notes that the Department admitted that the distortions contemplated under NME methodology did not include distortions traditionally understood to be countervailable subsidies,[175] but under the present formulation, those distortions now include countervailable subsidies since the Department takes the position it can identify countervailable subsidies in an NME such as the PRC. TPCO Group asserts that the complexity of the issue is of the Department's own making.

WSP argues that pursuant to the CIT ruling in GPX, the Department should not apply the CVD law to the PRC. The GOC insists that the CIT found the current AD/CVD methodologies applied to PRC imports to be unfair and effectively punished PRC companies twice for the same act. The GOC notes that the Department offsets an alleged subsidy first by imposing a CVD, and then again when measuring dumping, the Department compares U.S. price to a constructed normal value without taking into account the alleged subsidies found in the CVD investigation. TPCO Group, WSP, and Changbao assert that the Department should adhere to the CIT's clear instructions in GPX. Changbao notes that the CIT found that the imposition of AD remedies based on NME methodologies alongside CVD remedies has a high potential for double counting.[176] Changbao notes that the CIT also found that the Department can do all of its remedying through NME AD methodology. TPCO Group, Changbao, and the GOC note that if the Department seeks to impose CVD remedies on products of NME countries, the Department must apply the methodologies that make such parallel remedies reasonable, including methodologies that make it unlikely double counting will occur, in accordance with GPX.[177] Changbao argues that the CIT in GPX confirmed the Department cannot avoid addressing an important aspect of the problem caused by applying CVD and AD methodologies to NME goods by placing the burden on respondent, because there is likely no way for any respondent to

[174] See Georgetown Steel Memorandum at 9-10.
[175] Id. at 9-10.
[176] See GPX at 13.
[177] Id. at 18-19.

accurately prove what very well may be occurring.[178] TPCO Group, Changbao, and the GOC note that the CIT placed the burden to address the double remedy on the Department and rebuked the Department for insisting the respondent in that case provide specific evidence of double remedy before even considering the issue.[179] Changbao notes that the CIT also stated that the Department has the duty to apply methodologies to make such parallel remedies reasonable, including methodologies that make in unlikely double counting will occur.[180] Changbao notes that, in the past, the Department suggested double counting issues should be raised in the context of the AD proceeding.[181] Changbao disputes this and claims that the Department's duty to apply methodologies making double remedies unlikely applies in both proceedings. The GOC argues that in GPX, the CIT recognized that the NME AD statute is designed to account for government intervention in an NME country's economy, including price distortion, and the NME AD statute overlaps with a functioning CVD statute, as both work to correct government distortion of market prices in NME countries.[182] WSP and the GOC note that the CIT also found that the Department can do all of its remedying through NME AD methodology, and if it seeks to impose CVD remedies on products from NME countries, the Department must apply methodologies that make such parallel remedies reasonable, including methodologies to make it unlikely double counting will occur.[183] TPCO Group, WSP, Changbao, and the GOC argue that the Department has signaled no desire to apply new CVD or NME AD methodologies to make it unlikely double remedies will occur in this and the parallel NME AD proceeding. TPCO Group, WSP, Changbao, and the GOC note that according to the CIT, the Department, therefore, has only one alternative: it should refrain from imposing CVDs on NMEs goods until it is prepared to address this problem through improved methodologies or new statutory tools.[184] WSP argues that this means the only choice left is for the Department to not impose CVDs in this case, by terminating the investigation or issuing a final negative determination. The GOC concludes that since the Department has applied its NME AD methodology in the parallel OCTG AD case, the Department should terminate this CVD investigation or adjust its calculations in the AD case to take into account the amount of any subsides found to exist in the instant case, or it should make its AD determination without employing the NME methodology.

Maverick, U.S. Steel, and other domestic interested parties assert that the Department's application of countervailing duties does not result in duplicative remedies. TMK IPSCO, et al. assert that the AD and CVD laws[185] require the Department to impose full AD and CVD duties where the Department can measure the subsidy, regardless of the effect on price, and U.S. Steel asserts that respondents have cited no statutory or legal authority to reduce a CVD rate to account for double counting. Maverick and others contend that adjusting the dumping margin to account for double remedies is inconsistent with the Act, as only export subsidies are mentioned with regard to adjustments for subsidies in concurrent AD/CVD investigations. Maverick insists

[178] Id. at 19.
[179] Id. at 28-29.
[180] Id. at 19.
[181] See LWRP from the PRC at Comment 2.
[182] See GPX at 12-13.
[183] Id. at 18-19.
[184] Id. at 28.
[185] See sections 701 and 731 of the Act.

the absence of any offset for domestic subsidies show Congressional intention that no adjustments are made for domestic subsidies.

TMK IPSCO, et al., including U.S. Steel argue that the GPX decision was not a final judgment, will be appealed, and has no binding influence on this case. Moreover, TMK IPSCO, et al. contend, the court in GPX disregarded the plain meaning of the statute, the Congressional intent, and the Supreme Court directive in Chevron, and it was wrong that the Department's approach was unreasonable. U.S. Steel agrees that the court was wrong in GPX. TMK IPSCO, et al. assert that in GPX, the court's allocation of proof regarding double counting was unreasonable, because if anyone has access to information regarding the effects of subsidies, it would be the foreign manufacturers themselves.

U.S. Steel argues that the Department's reasoning, in the case underlying GPX, on the double-counting issue has been significantly clarified since the decision by the Department that was at issue in GPX. Specifically, U.S. Steel notes that the Department has made clear that domestic subsidies affect normal value in the NME AD calculation,[186] while GPX assumes otherwise.

Maverick and U.S. Steel assert that the presumption that under the AD law, domestic subsidies automatically lower export prices pro-rata while having no effect on normal value, as determined in NME proceedings, is incorrect. Maverick asserts that the Department has rejected this presumption, explaining that whereas the connection between export subsidies and export prices is direct, the connection between domestic subsidies and export price is indirect and subject to a number of variables, and the pro-rata presumption is speculative, and there is no presumption Congress harbored any presumption about the effect of domestic subsidies on export price.[187]

Maverick asserts that while the GOC references the subsidies given to respondents for various inputs, the GOC provided no evidence of how these domestic subsidies directly lower export prices, and how these subsidies are not accounted for in surrogate values. TMK IPSCO, et al. and U.S. Steel assert the respondents and GPX improperly fixate on the price effects of subsidies. TMK IPSCO, et al. argue that the purpose of the CVD law is broader, as it is to offset the unfair competitive advantages created by foreign subsidies. TMK IPSCO, et al. contend that potential advantages of a subsidy go beyond price, such as improvement of marketing, raising output, improving efficiency or quality, without necessarily lowering its export prices. TMK IPSCO, et al. assert the NME AD methodology cannot remedy these effects even in principle. TMK IPSCO, et al. and U.S. Steel also note that domestic subsidies may actually reduce total input quantities consumed, thereby lowering normal value and dumping margins. TMK IPSCO, et al. argue that this is generally the case with loan subsidies, as money is fungible. U.S. Steel claims that in some cases, NME exports may account for a sufficient share of the world market to influence prices in the world market, and as a result, domestic subsidies in the PRC could increase output and exports, which would reduce world market prices, and in turn, reduce profit rates for surrogate value countries.

[186] See KASR from the PRC AD Final.
[187] See CFS from the PRC IDM at Comment 2 and KASR from the PRC IDM at Comment 1.

TMK IPSCO, et al. also claim that measuring price effects creates an insuperable obstacle to administration of the CVD law, and measuring non-price effects is even harder, as even a manufacturer may not know exactly how a subsidy changed its operations. Moreover, TMK IPSCO, et al. assert the CIT, the CAFC, and Congress found that the Department is not required to account for the effects of subsidies in applying CVDs.[188] TMK IPSCO, et al. contend that GPX is inconsistent with Saarstahl, and in GPX the court reasoned where an AD duty has already remedied the price effect of a subsidy, the Department may not impose a CVD. Finally, TMK IPSCO, et al. assert that Changbao's argument is particularly strange because Changbao received a zero percent AD margin, so presumably Changbao used the benefit of its cheap inputs to do things other than lower its prices.

U.S. Steel asserts that TPCO Group's argument that all countervailable subsidies in the PRC represent double counting of AD margins is wrong. U.S. Steel argues that the NME methodology does not correct for domestic subsidies, but rather, corrects for price distortions that result in artificially high and low input prices. U.S. Steel claims this point can be elucidated by reference to a GAO report on the operation of NME AD methodology.[189] U.S. Steel notes the impact of using surrogate values is to adjust normal value upwards and downwards for price distortions throughout the economy. In addition, U.S. Steel explains the Department does not collect actual NME cost information, so it is impossible to determine the net effect of these adjustments

Department's Position

The respondents have not cited to any statutory authority that would allow us to terminate this CVD investigation to avoid the alleged double remedies or to make an adjustment to the CVD calculations to prevent an incidence of alleged double remedies. 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 recent PRC cases.[190] in Citric Acid from the PRC IDM at Comment 2, Lawn Groomers from the PRC IDM at Comment 2, and KASR from the PRC IDM at Comment 2. See also KASR from the PRC AD Final

The respondents' reliance on GPX is misplaced. This decision is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted.[191]

Comment 3 Cutoff Date for Identifying Subsidies

The GOC argues that if the Department continues to apply a cut-off date for measuring CVDs, it

[188] See Saarstahl at 1543.
[189] See GAO Report: Eliminating at 31.
[190] See Citric Acid from the PRC IDM at Comment 2; see also Lawn Groomers from the PRC IDM at Comment 2; see also KASR from the PRC IDM at Comment 2
[191] Even if reliance on GPX were not misplaced, GPX does not support the positions attributed to it by the GOC. Contrary to the respondents' claim that GPX absolutely precludes the Department from simultaneously applying the CVD law and the NME methodology under the AD law, the Court in GPX clearly stated that "Commerce may have the authority to apply the CVD law to products of an NME-designated country." See GPX at 13. Moreover, GPX did not find that a double remedy necessarily occurs through concurrent application of the CVD statute and NME provision of the AD statute, only that the "potential" for such double counting may exist. See GPX at 18.

should be January 1, 2005, because it was the beginning of the POI in CFS from the PRC and it was only then that the Department, in the preliminary determination, claimed that CVD law was applicable to the PRC. The GOC states that any date prior to January 1, 2005, would subject Chinese exports to the CVD law before the PRC would have a reasonable expectation that the CVD law applied. The GOC contends 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 the CVD law only after finding that a country is no longer an NME.[192] The GOC alleges 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.[193] The GOC states 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 offers that the Department stated this in Georgetown Steel. The GOC contends the Georgetown Steel Memorandum did not provide sufficient analysis of any market conditions prior to January 1, 2005, to support the use of the Department's December 11, 2001, cut-off date.

The GOC cites the Lined Paper Memorandum as a determination by the Department that the PRC had not completed its transition to a market economy by 2005. The GOC states that analysis of the Lined Paper Memorandum requires a cut-off date no earlier than January 1, 2005.

The GOC and Changbao suggest that since the CIT in GPX has determined the use of December 11, 2001, is arbitrary, the Department should use January 1, 2005, to align with CFS from the PRC. Changbao claims that at the time Sulfanilic Acid from Hungary was published, the Department's determination that Hungary was no longer an NME coincided with the determination that Hungary was now subject to CVD law.

The GOC counters Petitioners' claims that the Department should investigate and countervail subsidies prior to December 11, 2001, asserting that such claims ignore fundamental requirements of due process and fairness, go against Department precedent in examining benefits prior to determination that CVD law applies to a particular country, and contradict the Department's rationale for applying NME rules to AD cases in the PRC. The GOC states that Petitioners' request of a case-by-case subsidy analysis should be rejected because there has been no information supplied regarding which subsidies should receive a unique cut-off, why the subsidies should be treated this way, or what cut-off date would be appropriate.

Changbao contends countervailing subsidies allegedly conferred prior to December 11, 2001, would be unlawful, referring to CWP from the PRC, in which Changbao says the Department determined a uniform date to measure subsidies in the PRC for the CVD law. Changbao counters claims of preferential treatment by stating the 2001 cut-off date is based on the Department's determination that enough economic reform had occurred in the PRC to apply the CVD law, not the applicability of the CVD law to non-WTO countries.[194] Changbao contends the Department has determined that AUL regulations should not be used, because if subsidies cannot be meaningfully identified and measured before December 11, 2001, then the regulations

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[192] See GPX at 25.
[193] See Sulfanilic Acid from Hungary IDM at 8, 14.
[194] See KASR from the PRC IDM at Comment 3.

are inapplicable.[195] Changbao also states the Department has not requested or collected enough information to countervail any benefits allegedly conferred prior to December 11, 2001.

TMK IPSCO, et al. state the Department should examine subsidies conferred prior to December 11, 2001, and reference the CIT in GPX, which states the Department must determine if it can measure pre-accession subsidies where it investigates Chinese subsidy programs.[196]

Maverick and U.S. Steel concur with TMK IPSCO, et al.'s call for removal of a cut-off date in identifying and measuring subsidies. Maverick and U.S. Steel reference section 701 of the Act, stating that the CVD law requires the Department to apply countervailing duties to subsidies that benefit imports of any country into the United States, regardless of WTO membership status. Maverick suggests the Department use AUL regulations in investigating Chinese subsidies. U.S. Steel holds that the Department has two options: use the new methodology as required by GPX, or eliminate the cut-off date.

U.S. Steel and Maverick also argue the accession documents to the WTO signed by the Chinese do not forbid application of CVD law to subsidies conferred prior to the December 11, 2001, accession date. U.S. Steel and Maverick state the PRC was required to disclose subsidies in order to put other WTO members on notice so that action may be taken against them.[197] Maverick claims the use of the December 11, 2001, cut-off date confers preferential treatment on the PRC while holding other WTO members accountable for their subsidies. U.S. Steel claims that when the Department first found in CFS from the PRC that the PRC was subject to U.S. CVD law, the Department looked to "major reforms that occurred well in advance of, and wholly unrelated to, the PRC's accession to the WTO."[198] Maverick cites the SCM Agreement, which holds that subsidies granted prior to joining the WTO can be included in the overall rate of subsidization.[199] U.S. Steel argues that neither the SCM Agreement nor the PRC's Protocol of Accession call only for application of countervailing duties conferred after accession to the WTO.

U.S. Steel and Maverick each argue that GPX requires the Department to eliminate the practice of using December 11, 2001, as a cut-off date. Maverick and U.S. Steel contend that major economic reforms which allowed for the identification and measurement of subsidies occurred in the mid 1990s, enabling the Department to countervail subsidies before its proposed cut-off date. Maverick states that this point is made clear in the Georgetown Steel Memorandum.

Maverick calls for the use of AUL regulations, rather than the December 11, 2001, cut-off date, in identifying and measuring subsidies. Maverick cites to 19 C.F.R. § 351.524(d)(2) in suggesting the use of AUL regulations is statutorily proscribed. In this case, Maverick states, AUL is 15 years. By selecting a date in 2001, Maverick contends the Department is ignoring years worth of subsidies.

[195] See LWTP from the PRC IDM at Comment 2.
[196] See GPX at 28-29.
[197] See CWP from the PRC IDM at Comment 2.
[198] Id.
[199] See SCM Agreement, at Annex IV, para 7.

U.S. Steel refutes the GOC's arguments that the use of December 11, 2001, ignores due process and fairness, and that the date is inconsistent with the Department's prior practice in Sulfanilic Acid from Hungary. U.S. Steel claims both arguments were addressed and rejected in CWP from the PRC, which also held that Sulfanilic Acid from Hungary was not controlling.[200] Maverick claims that the Georgetown Steel Memorandum and CFS from the PRC make clear the Department's position that it was able to identify and measure subsidies. Maverick contends the Department had no reason to look behind Hungary's designation as an NME for application of CVD law in Sulfanilic Acid from Hungary. U.S. Steel states that the GOC has offered no new evidence or support for either of its claims.

Maverick refutes the GOC's claim of ignoring due process and fairness because application of CVD law to the PRC is a changed practice, which is within the Department's right to administer, pursuant to determinations made regarding the PRC's current economy compared to that of the Soviet-style examined in Georgetown Steel.[201] Maverick also argues the PRC should have been aware its products could be subject to CVD law because of an investigation by the Department 15 years ago;[202] as well as the PRC's awareness of provisions in the Act since its creation.

Maverick also notes that the Lined Paper Memorandum, which the GOC looks to for support, was resolved in an antidumping investigation. Maverick states that the CIT has recognized that laws regarding antidumping and countervailing duties are in place for differing purposes.[203] Maverick also asserts that neither the Department, nor Maverick, disagrees that the PRC remains an NME. Maverick's position is that the Department has recognized that the Chinese economy has undergone changes allowing for CVD law application prior to 2005.

Department's Position

Consistent with recent PRC CVD determinations (CWP from the PRC, LWTP from the PRC, LWRP from the PRC, LWS from the PRC, OTR Tires from the PRC, and KASR 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.[204] 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. Additionally, the PRC's Accession Protocol contemplates application of the CVD law. While the Accession Protocol, in itself, would not

[200] See CWP from the PRC IDM at Comment 2.
[201] See CFS from the PRC IDM at Comment 2.
[202] Id. at Comment 5.
[203] See Royal Thai Gov't.
[204] See Report on the Accession of China.

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.

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

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

The GOC points to the Lined Paper Memorandum as proof that the Department had determined that the PRC had not yet completed its transition to market-economy status by 2005. As we acknowledged above, economic reform is a process that occurs over time, and it may progress faster in some sectors of the economy or areas of the country than in others. Nevertheless, we have concluded that the cumulative effects of the many reforms implemented prior to the PRC's WTO accession led to economic changes allowing us to identify and to measure subsidies bestowed upon producers/exporters in the PRC after December 11, 2001.

Regarding Petitioners' concern that adoption of a December 11, 2001, cut-off date for application of CVD law allows and provides preferential treatment to the PRC, we reiterate that economic changes that occurred leading up to and at the time of WTO accession allowed us to identify or measure countervailable subsidies bestowed upon Chinese producers. In this regard, the Department is not providing the PRC with special/preferential treatment. 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.[205]

We acknowledge that there was not a single moment or single reform law that suddenly permitted us to find countervailable subsidies in the PRC. Many reforms in the PRC, such as the

[205] See Georgetown Steel at 1318.

elimination of price controls on most products were put in place before the PRC acceded to the WTO.[206] However, the Department has identified certain areas such as in the credit and land markets where the PRC economy continues to exhibit non-market characteristics.[207] 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.

Petitioners contend that section 702 of the Act directs the Department to determine and countervail illegal subsidies without exception, and further that the statute does not permit a fixed date from which the Department will find countervailable subsidies. These arguments ignore that the imposition of CVD law requires the Department to be able to identify and to measure subsidies. The Department addressed the virtually identical concerns in Wire Rod from Czechoslovakia.[208] 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 non-market economy countries like Czechoslovakia. We concluded that state intervention in that economy, such as government control of prices, did not allow us to identify specific NME government actions as bounties or grants. The Department's analytical approach in Wire Rod from Czechoslovakia was upheld by the CAFC in Georgetown Steel.[209] The Court found that the Department had the discretion not to apply the CVD law where subsidies could not meaningfully be identified or measured. In the instant investigation, our analysis has led us to conclude that the economic changes that occurred leading up to and at the time of WTO accession allowed us to identify or measure countervailable subsidies bestowed upon Chinese producers.

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.

Reliance on GPX is misplaced because that decision is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted.

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.[210]

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[206] See Georgetown Steel Memorandum at 5.
[207] Id. at 3
[208] See Wire Rod from Czechoslovakia at 19371.
[209] See Georgetown Steel at 1318.
[210] See CWP from the PRC IDM at Comment 2; see also LWRP from the PRC IDM at Comment 4;

Comment 4 Application of AFA in Preliminary Determination

The GOC contends that the Department's preliminary determination to treat all of the steel rounds and billets suppliers as "authorities" was unwarranted and unlawful. Citing Mannesmannrohren-Werke at 1316, the GOC argues that before the Department can apply AFA it must determine that a party has failed to act to the best of its ability by assessing the respondent's abilities, efforts and cooperation. Additionally, the Department is obligated to explain why the absence of certain information will significantly impact the progress of the investigation. Id. at 1313.

In this investigation, the GOC claims it has acted to the best of its ability throughout. The GOC points to GQR, in which it responded that the time to gather the requested information was limited and that it was working to do so. Next, the GOC claims that it was fully responsive to the Department's first supplemental questionnaire by providing, in G1SR, a list of the steel rounds suppliers, the ownership status of each of them, and the volume supplied to the mandatory respondents, while noting that it had been unable to determine the ownership status of certain suppliers and that it would provide that information when it became available. Finally, shortly before the Preliminary Determination, the GOC provided updated information on the ownership of the suppliers in G2SR.

The GOC further contends that it was patently unlawful for the Department to apply AFA in the Preliminary Determination by relying upon information submitted by the petitioners that was purportedly inconsistent with the information submitted by the GOC. Citing Motor Vehicle Mfr. Ass'n. at 43 and Gerald Metals at 720, the GOC claims that the Department was obliged to weigh the evidence and explain its conclusions regarding that evidence. Accordingly, the Department could not apply AFA to all of the GOC's supplier data when petitioners' information suggested that only some of that data was incorrect.

In rebuttal, Maverick claims to be astonished by the GOC's assertions of cooperation given that MOFCOM's official policy of "Defensive Participation and Limited Cooperation" requires GOC officials to provide the least amount of information possible in CVD investigations in order to protect political and economic intelligence. (This alleged "policy statement" was provided at Exhibit 1 of Maverick Pre-Preliminary Comments.) Further, Maverick points out that, in its view, the GOC provided no material information prior to the Preliminary Determination on this issue. According to Maverick, the GOC failed to provide the ownership information requested by the Department in the initial questionnaire or the first supplemental questionnaire. Instead, citing G1SR, Maverick points out that the GOC told the Department that the "data gathered and supplied by the GOC and the respondents already in this investigation should accomplish the Department's purpose."

According to Maverick, however, when G1SR was filed on August 26, 2009, the GOC already had the data it would subsequently submit in GOC FIS. For example, Maverick notes that the business registration form submitted in GOC FIS for one supplier shows that it was extracted

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see LWTP from the PRC IDM at Comment 2; see also LWS from the PRC IDM at Comment 2; see also KASR from the PRC IDM at Comment 3.

from the SAIC databases well before it was finally submitted. Maverick contends that the GOC tracks information related to ownership (e.g., capital verification reports) electronically through SAIC so the information was easily accessible to the GOC. Nevertheless, according to Maverick, the GOC did not promptly extract the information and then, once extracted, the GOC delayed in providing it. Instead, at the time of the Preliminary Determination, Maverick asserts that the GOC had only provided the Department with a one-page worksheet containing self-serving classifications of the respondents' steel rounds suppliers.

Finally, Maverick dismisses the GOC's claim that the Department should have evaluated the GOC's evidence and weighed it against the information submitted by the petitioners. In Maverick's view, the GOC hadn't provided any evidence prior to the Preliminary Determination so there wasn't any evidence to weigh.

In its rebuttal, U.S. Steel also disputes the GOC's contentions about its efforts to provide responsive information. According to U.S. Steel, the GOC claims in its case brief that it was unable obtain any of the documents requested by the Department prior to the Preliminary Determination. However, the information finally submitted in GOC FIS proves this is false. Specifically, according to U.S. Steel, the GOC had obtained certain documentation for most of the steel rounds suppliers it claimed were not state-owned shortly after the Department's August 11, 2009 supplemental questionnaire and weeks before the Preliminary Determination. Despite its access to these documents, U.S. Steel asserts that the GOC waited another month - and weeks after the Preliminary Determination - to submit them.

Department's Position

We disagree with the GOC that the application of AFA in the Preliminary Determination with respect to the ownership of the steel rounds suppliers was unwarranted or unlawful. The GOC has pointed to the information that it did provide, but has failed to mention the requested information that it did not provide, such as the annual reports and capital verification reports of the suppliers that were less than majority owned by the GOC. (A complete list of the information the GOC failed to provide is included in the Preliminary Determination, 74 FR at 47213.)

Section 776(a)(2)(B) of the Act states that the Department shall rely on facts otherwise available when a party fails to provide information requested by the Department. Section 776(b) of the Act permits the Department to draw an adverse inference when it determines that a party has not acted to the best of its ability to comply with a request for information. At the time of the Preliminary Determination, the GOC had provided little evidence to indicate that it had acted to the best of its ability. At most, the GOC indicated that the information was "complex" and that the GOC was working to get the information. See GQR at 51. However, the GOC did not request an extension of the deadline for submitting the information. Moreover, despite the fact that the GOC did not provide any of the source documents regarding ownership and control sought by the Department, the GOC stated in G1SR at p. 24 that, "the data gathered and supplied by the GOC and respondents already in this investigation should accomplish the Department's purpose." In short, the GOC appears to have decided what information was needed and when it would finally be submitted. In these circumstances, it is difficult to understand how the GOC can claim to have acted to the best of its ability in providing the information requested by the Department.

The information submitted by petitioners prior to the Preliminary Determination demonstrates precisely why the source documents regarding the ownership of the steel rounds suppliers were needed.[211] Specifically, the petitioners' information indicated that the ownership types reported by the GOC for certain companies likely did not reflect the conclusion the Department would have reached had it received the supporting documents it requested of the GOC in the original questionnaire. See Maverick Pre-Prelim Comments at Exhibit 3-19. For example, majority-government-owned FIEs might be designated as FIEs by the GOC, but would be treated as authorities under Department practice because of the GOC's majority ownership.[212] Similarly, companies designated as privately-owned might have significant government ownership and, hence, be controlled by the GOC.[213] We disagree with the GOC that the Department was obliged, in this situation, to weigh the evidence and apply AFA only with respect to those steel rounds suppliers for which the petitioners had provided contradictory information. The GOC, not the petitioners, was responsible for providing the supporting information and its failure to do so warranted the application of AFA regarding all the steel rounds suppliers.

Comment 5 Application of AFA Regarding PRC Market for Steel Rounds

The GOC asserts that the Department erred in the Preliminary Determination in applying AFA to determine that the GOC dominated the steel rounds market generally in the PRC (and, consequently, resorting to an external benchmark). The Department's stated reason for applying AFA was that the GOC had failed to provide requested information about the production and consumption of steel rounds or billets in the PRC. However, the GOC notes that it explained in G1SR and G2SR that the requested data was not available because steel billets are not a commodity that is tracked by the National Statistical Bureau.

Citing Mannesmannrohren-Werke at 1321, the GOC claims that the CIT has ruled it is incorrect for the Department to apply facts available, much less AFA, where a respondent failed to give information that did not exist. In this case, the GOC has provided information about the suppliers of steel rounds to the OCTG producers being investigated and the GOC suggests that this information be used in the final determination as a proxy for the PRC's steel rounds market. In rebuttal, Maverick argues that the Department should reject the GOC's claim and continue to apply AFA regarding the missing industrial data. Maverick points out that despite the fact that the Department's questionnaire expressly directed to GOC to notify the Department of difficulties in responding to the questionnaire and the fact that several extensions were granted, the GOC did not inform the Department that it was having trouble obtaining this information prior to filing GQR. Even in its questionnaire responses, Maverick asserts that the GOC has not provided a plausible reason as to why the information could not be provided. Citing CWLP from the PRC – Preliminary at 52306, Maverick contends that the GOC has provided such information

[211] See Maverick Pre-Prelim Comments; U.S. Steel Pre-Preliminary Comments re TPCO (Aug. 28, 2009); TMK IPSCO et al. Pre-Preliminary Comments re Changbao (Aug. 28, 2009), U.S. Steel Pre-Prelim Comments re Wuxi (Aug. 28, 2009).
[212] See, e.g., OTR Tires from the PRC IDM at 10.
[213] Id. at Comment C.1.

in past cases using a sophisticated database that tracks producer-specific output. Moreover, according to Maverick, the GOC has never actually reported that the information does not exist. Instead, it reported that it could not provide the information "in significant part" because the National Statistic Bureau does not maintain specific output data for this product. Maverick contends that the GOC never explained what other reasons prevented it from providing the requested information; why the National Statistic Bureau does not maintain data on this product; or what other agencies or bureaus collect information and whether that information could be used. Instead, Maverick asserts, the GOC provided a highly limited response, consistent with its "Defensive Participation and Limited Cooperation" policy and the Department still doesn't know what types of information the GOC maintains and in what format. Thus, Maverick concludes, the GOC refused to put forth its maximum effort to cooperate with the result that an adverse inference is warranted and justified.

Department's Position

We continue to find for this final determination that the GOC did not act to the best of its ability to comply with the Department's request for information about the production and consumption of steel rounds/billets in the PRC and have drawn an adverse inference, concluding that the prices in the PRC for steel rounds do not provide a suitable benchmark. See "Use of Facts Otherwise Available and Adverse Facts Available" section, above. The GOC reported in its questionnaire responses that steel rounds or billets are not a commodity for which the National Statistics Bureau maintains output data. However, we agree with Maverick that the GOC's response does not fully respond to the Department's request. The GOC reported in G2SR at p.3 that it had "investigated multiple sources to determine what comprehensive information is available regarding the Chinese steel billet industry," but it did not describe what those sources were or whether alternative measures might be derived from existing data. Thus, the Department simply doesn't know – because the GOC did not report it – what data exists and whether that data might provide a reliable measure of the share of steel rounds/billet production accounted for by SOEs and other government-controlled producers.

The GOC has argued that the Department should use the ownership information and the amounts supplied by the producers that sold steel rounds to the respondents as a proxy for information regarding the industry as a whole. A priori, we question whether this calculation would provide a suitable proxy. First, the Department selected as respondents the largest exporters of OCTG to the United States.[214] The GOC has reported that the downstream uses of billets are in rebar, plain bar, merchant bar, light sections, narrow strip, wire rod and seamless tubes.[215] Because billets are an input into steel products other than OCTG and because our respondents are large exporters, their consumption information may not be representative of production and consumption generally in the PRC of rounds/billets. Second, for any respondents that are integrated and use self-produced billets/rounds, their purchase data does not reflect consumption of steel rounds/billet.

214 See Respondent Selection Memorandum.
215 See G2SR at p. 7.

Finally, for the reasons explained in our "Use of Facts Otherwise Available and Adverse Facts Available" section above, we are treating all the respondents' suppliers of steel rounds as authorities for this final determination. Thus, to the extent that this measure could serve as a proxy, it supports our conclusion regarding prices in the PRC for steel rounds/billets.

Comment 6 Application of AFA Regarding Respondents' Steel Rounds Suppliers

Maverick and U.S. Steel argue that the Department should continue to reject the GOC's claims with respect to the ownership of the respondents' steel round suppliers and apply AFA for the final determination. These petitioners claim that even with the additional, unprecedented opportunity the Department gave the GOC to submit information after the Preliminary Determination the GOC has still failed to act to the best of its ability.

According to U.S. Steel, the GOC claims it has provided adequate information about the ownership of the respondents' steel rounds suppliers in its post-Preliminary response (G3SR). However, in less than two weeks from receipt of G3SR, petitioners were able to collect and submit information that refutes the GOC's claims about the ownership of many of these suppliers (Pets' 10/5/09 submission). U.S. Steel argues, therefore, that the Department must conclude that all the information provided by the GOC is unreliable and must be rejected.

U.S. Steel itemizes the proprietary information provided by petitioners which it contends contradicts the information reported by the GOC for the following suppliers: Panzhihua Xingangfan Corp. ("Panzhihua"); Tianjin Tianzhong Giant Heavy Industry Co., Ltd. ("Tianzhong"); Jiangyin Xingcheng Special Steel Co., Ltd. ("Xingcheng"); Hubei Xinye Steel Co., Ltd. ("Hubei Xinye"); Shijiazhuang Iron & Steel Co., Ltd. ("Shijiazhuang"); Weifang Steel Group Corp. ("Weifang"); Hunan Hualin Xiangtan Steel Co., Ltd. ("Hualin" or "Valin"); Jiangyin Huarun Steel Manufacturing Co., Ltd. ("Jiangyin Huarun"); Shandong Shouguang Juneng Special Steel Co., Ltd ("Juneng"); Henan Fengbao Iron & Steel Co., Ltd., ("Fengbao"); Wuxi Xuelang Steel Group Co., Ltd. ("Xuelang"); Wuxi Xuefeng Steel Co., Ltd. ("Xuefeng"); Jiangsu ShaGang Group HuaiGang Special Steel Co., Ltd. ("HuaiGang"); Nanjing Iron & Steel United Co., Ltd. ("Nanjing United"); and, Nanjing Steel Co., Ltd. ("Nanjing"). The specific ownership information is proprietary and summarized in Final BPI Memo at p. 1-4. U.S. Steel points out that these suppliers are just examples and that the petitioners were able to obtain this information despite lacking the GOC's resources and access to records in the PRC.

U.S. Steel further contends that the GOC failed to provide other information critical to a determination of whether the steel rounds suppliers were subject to government ownership and control. Specifically, according to this petitioner, the Department requested annual reports, financial statements, capital verification reports, business registrations and articles of association for every company that the GOC claimed was not state-controlled. Despite having had over three months and at least three opportunities to respond, U.S. Steel claims that the GOC provided virtually none of these documents. In this petitioner's view, the GOC's failure to provide these annual reports and financial statements is made all the more glaring by the fact that the annual reports the GOC did provide for companies it acknowledged to be state-owned and controlled clearly show their state ownership. U.S. Steel additionally contends that the GOC failed to provide information requested in the Department's questionnaire regarding several additional issues: the shares held by government entities; government-controlled voting rights; government decision making; government control of company officials, directors and managers; and other means of government control.

For these reasons, U.S. Steel argues that the Department should find that the GOC has not acted to the best of its ability and that AFA is warranted. U.S. Steel argues that the GOC withheld information requested by the Department, failed to provide information within the deadlines established by the Department, and significantly impeded the Department's investigation, thereby more than satisfying the criteria in section 776(a)(2) of the Act for application of facts available. Moreover, in accordance with section 776((b) of the Act, an adverse inference is warranted because the GOC has not acted to the best of its ability. Citing Nippon Steel at 1382, U.S. Steel claims that to demonstrate it has acted to the best of its ability, a respondent must do the maximum that it is able to do and the GOC has failed to satisfy this standard.
U.S. Steel contends that the GOC's pattern of conduct in this case closely follows the strategy of "Defensive Participation and Limited Cooperation" established by MOFCOM for U.S. countervailing duty investigations. Under this policy, according to U.S. Steel, GOC officials and industry representatives are instructed, among other things, not to provide all the documents requested by the Department. U.S. Steel asserts that by following this policy the GOC has denied the Department the ability to adequately investigate the ownership and control of the respondents' steel rounds suppliers.

Citing the SAA at 870, U.S. Steel asserts that Congress intended the Department to use AFA "to ensure that a party does not obtain a more favorable result by failing to cooperate than if it had cooperate fully." Moreover, citing Asociacion Colombiana at 475 and Allied Signal at 1191, U.S. Steel argues that a major purpose of the AFA provision is to ensure that the Department controls its investigations, not respondents. U.S. Steel contends that if the Department does not apply AFA in this investigation, it would not only reward the GOC for its recalcitrance and intransigence but it would also encourage future respondents to selectively provide information thereby undermining the Department's ability to enforce the CVD law.

Maverick points out that the Department provided the GOC no less than four opportunities to provide information critical to the investigation regarding the ownership of the respondents' steel rounds suppliers. Maverick claims, however, that the GOC stalled and delayed until the eleventh hour and then supplied a response so deficient that it cannot be used, thus meeting the criteria of section 776(a)(2) of the Act for the application of facts available. Like U.S. Steel, Maverick cites Nippon Steel at 1382, in support of applying an adverse inference, and points to MOFCOM's "Defensive Participation and Limited Cooperation" as evidence of a national policy to impede U.S. countervailing duty investigations.

Maverick also catalogs the information requested by the Department that the GOC did not provide, claiming that the GOC routinely tracks this kind of information through various agencies such as SAIC, concluding that the GOC had the information in its possession but was unwilling to provide it. Maverick's discussion of the alleged missing information relies on proprietary information and, therefore, is summarized separately in the Final BPI Memo at p. 4. Citing CWLP from the PRC IDM at 34, Maverick notes that the GOC refused to provide the same type of information in that case because it would set a precedent in future CVD proceedings.

Maverick charges that the information finally submitted by the GOC in GOC FIS was carefully calibrated to include only documents that were advantageous to the GOC's position. Moreover, according to Maverick, the information submitted by the GOC on October 15, 2009, in GOC Rebuttal FIS included documents requested by the Department in its original questionnaire. The fact that the GOC would submit such information while verification was ongoing is evidence, Maverick claims, of GOC maneuvering tactics intended to impede the investigation.

Maverick concludes by arguing that the Department should not reward this behavior by the GOC. Consequently, in this petitioner's view, the Department should disregard GOC FIS in its entirety and find, as it did in the Preliminary Determination, that the respondents procured all their steel rounds from "authorities."

In rebuttal, the GOC disputes petitioners' claims that AFA should be applied in the final determination regarding the ownership of the respondents' steel round suppliers. At the outset, the GOC contends that petitioners have misrepresented the facts regarding the GOC's submission of steel rounds supplier data. First, the GOC disputes petitioners' claims that it deliberately failed to provide the supplier information in a timely manner. According to the GOC, the data collected pertained to numerous suppliers spread across half of the PRC and to gather it required coordination with 14 provincial governments and many more municipal and county governments. Second, the GOC disputes the analogy drawn by petitioners between this investigation and CWLP from the PRC. Contrary to what was alleged to have occurred in CWLP from the PRC, the GOC provided information responsive to all of the requests made by the Department's verifiers and had prepared additional information for the Department's use at verification but the Department refused to accept it. Third, the GOC objects to petitioners' claim that the Department should refuse to consider the GOC FIS because petitioners had insufficient time to review it. The GOC points out that the Department set the September 21 deadline for the submission of information responsive to the questionnaire and any lack of time for review is of petitioners' making because they did not request alignment of the AD and CVD final determinations.

With respect to petitioners' claim that AFA should be applied, the GOC finds the contention to be baseless. Citing Nippon Steel at 1382, the GOC asserts that before making an adverse inference the Department must assess a respondent's abilities, efforts and cooperation in responding to the Department. In this investigation, the GOC states, it cooperated fully with the Department submitting detailed information pertaining to 45 steel rounds suppliers, and the Department verified the information (while observing that the GOC had prepared additional records on ownership). Specifically, the GOC states that it submitted, where available, for each supplier: (1) a diagram detailing each supplier's ownership structure; (2) the business registration license; (3) the capital verification report; (4) articles of association; and (5) annual reports. Thus, in the GOC's view, the imposition of AFA in this final determination would be unlawful and unwarranted.

The GOC also disputes petitioners' claims regarding the specific steel rounds suppliers listed in U.S. Steel's comment. The GOC's discussion relies on proprietary information and, hence, is summarized separately in the Final BPI Memo at p. 4-6. The GOC claims that it has placed extensive, authoritative documentation on the record regarding the steel rounds suppliers' domestic and foreign shareholders, corporate structures, company representatives, voting rights, corporate decision-making, and the rights and responsibilities of their shareholders and company officials. In contrast, information provided by petitioners is unreliable, in many instance outdated (and, thus, not applicable to the POI), and only minimally translated. The GOC discusses examples of the sources of petitioners' information, which are summarized separately in the Final BPI Memo at p. 6, because of their proprietary nature. Moreover, the GOC asserts, the Department verified its information.

Jianli contends that petitioners' arguments for applying AFA regarding steel rounds suppliers focus on the GOC's perceived behavior and alleged recalcitrance prior to submission of GOC FIS. However, because the Department set the September 21, 2009 deadline for the submission of information responsive to the questionnaire, Jianli asserts that the Department must find that the GOC responded in full and in a timely manner. Further, Jianli disputes petitioners' claim that the GOC follows a policy of noncooperation. According to Jianli, MOFCOM's supposed official policy referred to as "Defensive Participation and Limited Cooperation" was authored by a private lawyer who was not in a position to state official or unofficial GOC policy. Finally, Jianli contests petitioners' claim that the GOC failed to submit financial statements for the respondents' steel rounds suppliers. Jianli points out that the Department's questionnaire requested annual reports; that only public companies prepare annual reports; and that the GOC submitted annual reports for all the steel rounds suppliers that were public companies. Thus, Jianli claims, failure to provide financial statements cannot be a basis for AFA. Finally, according to Jianli, the information requested by the Department in Appendix 3, items (d)-(k) can be determined from the capital verification reports and articles of association submitted by the GOC.

Changbao and WSP also oppose the application of AFA regarding steel rounds suppliers in the final determination.

Department's Position

We disagree with Maverick that we should ignore GOC FIS, which included the documentation regarding the ownership of the respondents' steel rounds suppliers. The information was submitted within the deadline set by the Department and, as evidenced by their October 5 submission, petitioners were not denied the opportunity to review and rebut the information in GOC FIS. As such, the Department must consider the information provided by the GOC with regard to the ownership of respondents' input suppliers in making a determination for this final determination.

However, even having accepted GOC FIS and carefully considering the information provided in this submission, we have determined that we lack the information necessary to determine whether the steel rounds suppliers are government authorities. As discussed under "Use of Facts Otherwise Available and Adverse Facts Available," the GOC failed to provide requested information regarding the ultimate owners of certain of the steel rounds suppliers and, for others, did not provide additional information requested by the Department, including whether the shareholders and/or members of these enterprises' boards of directors are government officials or otherwise affiliated with a government agency. While Jianli claims that this information can be obtained from the capital verification report and articles of association that were submitted in GOC FIS, Jianli has not cited to any section of the capital verification reports and articles of association, where this requested information can be found nor can we find information the GOC response which answers these relevant questions. And, without this information, we are not in a position to evaluate whether the government might be exercising control in this manner.

The GOC's failure to provide this information, despite the extended deadline for doing so, indicates that the GOC did not act to the best of its ability to provide the requested information. Therefore, in accordance with section 776(b) of the Act, we have drawn an adverse inference and are treating the non-majority-government-owned steel rounds suppliers as authorities within the meaning of section 771(5)(B).

Comment 7 Double-Bracketing of Certain Information

According to the GOC, information in Petitioners' FIS regarding ownership of the respondents' steel rounds suppliers contained a broad and unwarranted request for double bracketing that failed to meet the standard in19 CFR 351.304(b)(2) of requiring a party to show a "clear and compelling need" in order to withhold information completely from disclosure. The GOC notes that after the deadline for submission of factual information and a meeting with the Department, petitioners submitted a single-bracketed version of certain of the previously double-bracketed documents on October 30, 2009. In doing so, the GOC argues that petitioners directly admitted that their claim for double bracketing had been unwarranted.

Additionally, the GOC claims that it was severely prejudiced by the lateness of the October 30 filing because any opportunity for GOC counsel to review the information and respond was effectively denied. Thus, the GOC contends that it would be a fundamental denial of fairness and due process for the Department to rely on any allegations contained in the double-bracketed material for the final determination. Finally, the GOC contends that it was additionally prejudiced because the Department did not respond to the GOC's objection to the filing; nor has the Department told the GOC or its counsel whether it had returned the double-bracketed information to the petitioners.

Maverick claims that double bracketing of the information in Exhibit 1 of Petitioners' FIS was necessary to protect the identity of the market researcher and the designation of the sources where the information was obtained. Maverick asserts that the Department allows double bracketing of this type of information, consistent with section 777(c)(1)(A) of the Act and 19 CFR 351.304(b)(2). With respect to protecting the sources of information, petitioners explained in Petitioners' FIS that access to this information is restricted in the PRC and, therefore, disclosure of the information could compromise the personal identity of the market researcher, thereby jeopardizing his personal and economic security.

Maverick claims that the double-bracketed information included in the attachments to Exhibit 1 was summarized and discussed in the market researcher declaration in single-bracketed form. Thus, the type and nature of the information contain in the attachments to Exhibit 1 were made available to the respondents. Maverick points out that the information in GOC Rebuttal FIS makes clear that the GOC was able to discern the nature of the evidence in double brackets from its review of the single-bracketed declaration.

Maverick recounts that after meeting with the Department on October 21, 2009, and consulting with the market researcher, petitioners submitted certain documents that were previously double-bracketed in single-bracketed form on October 30. Maverick disputes the GOC's charge that it was prejudiced by the lateness of this submission because it had no opportunity to respond. Maverick points out that the GOC did respond in GOC Rebuttal FIS, which it points out, indicates that the GOC was able to review and respond to the evidence in Petitioners' FIS. Moreover, while Maverick disagrees that the GOC should have had a "second bite at the apple," Maverick contends that 19 CFR 351.301(c)(1) permitted the GOC to file factual information in rebuttal to petitioners' October 30 submission and the GOC chose not to do so.

U.S. Steel also rebuts the GOC's claim that it was unfairly disadvantaged. With respect to the double-bracketed information in Exhibit 1 of Petitioners' FIS, U.S. Steel claims that petitioners demonstrated a clear and compelling need to withhold the information from disclosure. U.S. Steel further claims that the vast majority of the declaration included in Exhibit 1 was only single-bracketed and revealed the specific companies that had been researched, the precise details of the ownership, and the bases for all the conclusions that were reached by the market researcher. Thus, in U.S. Steel's view, the single-bracketed information contained all the details necessary to understand, analyze and rebut each of the statements made therein. Moreover, U.S. Steel points out, the GOC did submit factual information in rebuttal in GOC Rebuttal FIS. U.S. Steel asserts that this submission contained information directly pertaining to certain of the steel rounds producers discussed in the market researcher's declaration.

Thus, U.S. Steel concludes, the GOC had ample opportunity to address the information in Petitioners' FIS and October 30, 2009 submissions, first in GOC Rebuttal FIS and again, had it so chosen, within 10 days of the October 30 submission.

Department's Position

We disagree with the GOC that the double-bracketing claim for the information included in Petitioners FIS was unwarranted. Section 777(c)(1)(A) of the Act establishes the provision for a certain type of BPI for which a party can claim a clear and compelling need to withhold from disclosure under the terms of an APO.

> Upon receipt of an application . . . which describes in general terms the information requested and sets forth the reasons for the request, the administering authority . . . shall make all business proprietary information presented to, or obtained by it, . . . (<u>except</u> privileged information, classified information, and <u>specific information of a type for which there is a clear and compelling need to withhold from disclosure</u>) available to all interested parties who are parties to the

> proceeding under a protective order . . . regardless of when the information is submitted during a proceeding.

(Emphasis added.)

In the legislative history governing the 1988 amendment, Congress indicated that this exception is "expected to be used rarely, in situations in which substantial and irreparable financial or physical harm may result from disclosure." H.R. Conf. Rep. No. 100-576, 623 (1988). The legislative history of the 1988 amendment indicates the "{p}articular exceptions might include trade secrets, customer names, and the names of consulting firms conducting market research." H.R. Rep. No. 100-40, 140 (1987). Moreover, Congress indicated that "{i}n making a decision to release {information}, the administering authority would balance the need of the party seeking the information to obtain it against the need of the submitter to protect the information from limited disclosure under administrative protective order." H.R. Rep. No. 100-40, 139 (1987). 19 CFR 351.304 addresses the statutory provision concerning BPI submitted to the Department during the course of its AD and CVD proceedings, for which parties may claim a clear and compelling need to withhold from disclosure under APO. 19 CFR 351.304(b)(2)(i) states:

> If the submitting person claims that there is a clear and compelling need to withhold certain information from disclosure under an administrative protective order (see paragraph (a)(1)(ii) of this section), the submitting person must identify the information by enclosing the information within double brackets, and must include a full explanation of the reasons for the claim.

Accordingly, the Department has previously accepted double-bracketed BPI on the record of its proceedings. However, in practice, the type of double-bracketed BPI accepted by the Department has been limited to the personal identity of market researchers, the names and designations of the sources of information, or customer names obtained during an antidumping investigation in accordance with section 771(c)(1)(A) of the Act.

In this investigation, after reviewing Petitioners' FIS, the Department concluded that much of petitioners' double-bracketed information could lead to the identity of the source of petitioners' information. Hence, the Department agreed with the petitioners' claim that there was a clear and compelling need to protect the double-bracketed information in Petitioners' FIS and did not reject the submission.

Nonetheless, it is also the Department's practice not to base its decisions (including decisions on allegations) on double-bracketed information because of due process concerns.[216] Therefore, we worked with petitioners so that as much of the information as possible contained in Petitioners' FIS could be submitted in single brackets.[217] This resulted in petitioners' October 30 submission which provided certain of the previously double-bracketed information in a manner that permitted disclosure under APO. Because the Department accepted petitioners' claim that there was a clear and compelling need to protect the double-bracketed information, the Department

[216] See, e.g., Stainless Steel Bar from India - 2009 Administrative Review IDM at Comment 9.
[217] See October 21, 2009 and October 27, 2009 Memoranda to the Files from Susan Kuhbach regarding Double Bracketing of Certain Information in Petitioners' October 5, 2009 Submission.

does not consider petitioners' decision to forego the protection they originally sought in Petitioners' FIS as an admission that petitioners' claim was unwarranted. Just as petitioners can request exemption from release under APO for double-bracketed information under 19 CFR 351.304(b)(2), they can also forego that protection if intervening events make it possible for them to disclose that information under APO. The Department does not believe petitioners' October 30 submission represents anything more than a decision to forego such protection.

We further disagree with the GOC that it has been prejudiced by the lateness of the October 30 filing. As Maverick and U.S. Steel noted in their comments, the substance of the information contained in the October 30 submission was clearly laid out in single-bracketed declaration included in Exhibit 1 of Petitioners' FIS. Moreover, information in GOC Rebuttal FIS addresses information in the declaration. Finally, the GOC could have submitted further rebuttal information in response to the petitioners' October 30 filing.

With respect to the GOC's additional concerns, the Department does not base its decisions on double-bracketed information as explained above. Therefore, the GOC's assertions that it has been denied due process or treated unfairly are unfounded. The Department responded to the GOC's objection to the double bracketing in petitioners October 5 filing on November 20, 2009. See November 20, 2009, letter to counsel for the GOC. Finally, as explained in our November 12, 2009 letter to counsel for Jianli, we did not reject the double-bracketed portions of Petitioners' FIS because we agreed with their claim of a clear and compelling need to protect that information. However, as explained above, much of that information has been superseded by the information included in Petitioners' October 30, 2009 submission. Regarding the remaining double-bracketed information, the Department finds that Petitioners have provided a sufficient explanation regarding the clear and compelling need to withhold the information from APO release.

Comment 8 Whether Government "Authorities" Provided Steel Rounds to Respondents

The GOC contends that the Chinese steel rounds producers that supplied the OCTG respondents are diverse enterprises that provided this input at market prices. Based on the information it submitted, the GOC claims the respondents purchased steel directly (or indirectly through trading companies) from 45 suppliers: 20 privately owned enterprises, 16 SOEs, eight FIEs and one collectively owned enterprise, with SOE/COEs accounting for a small share. Citing Local Government Verification Report, the GOC claims the Department verified this information.

The GOC notes that in several previous CVD proceedings, and as recently as KASR from the PRC, the Department has relied on five factors (the so-called "five factors test") to determine whether a firm is an "authority" for CVD purposes: (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 interest; and, (5) whether the entity is created by statute. In the instant investigation, the GOC claims to have put substantial evidence on the record to demonstrate that the steel rounds suppliers to the respondents are not authorities. For example, in GQR, the GOC explained its understanding that none of the suppliers was created pursuant to specific Chinese statutes and stated that the GOC does not play a role in the operation of this industry. Also, in G1SR, the GOC informed the

Department that there were no laws or policies governing steel rounds prices, the level of production of steel rounds or the development of new capacity. On this basis alone, the GOC claims that the Department should find that the steel round suppliers were not authorities.

The GOC notes that the Department emphasized the government ownership criterion in KASR from the PRC, and catalogs the information the GOC placed on the record of the instant investigation regarding each of the 28 privately held and FIE steel round suppliers. This information included business registration forms, capital verification reports, and articles of association for Chaoyang Seamless Oil Casting and Forging Parts Co., Ltd.; Daye Xinye Special Steel Co., Ltd.; Yongnian County, Jinan Special Steel Co., Ltd.; Fengbao; Heilongjiang Jianlong Iron & Steel Co., Ltd.; Hubei Xinye; Huaigang; Jiangyin Huaran; Xingcheng; Neimenggu Tuoketuo County Mengfeng Special Steel Co., Ltd.; Shandong Guangfu Group Fukai Stainless Steel Co., Ltd.; Juneng; Shenyang Toyo Steel Co., Ltd.; Shijiazhuang; TangShan City Qingquan Steel Group Zhaoyu Special Steel Co., Ltd.; Tianjin Qiankun Special Steel Co., Ltd.; Tianzhong; Weifang; Xuefeng; Xuelang; Zenith Steel Group Corp.; Zhengzhou Yongtong Special Steel Co., Ltd.; Nanjing United; Nanjing; Panzhihua; Hebei Shilu Special Steel Co., Ltd.; Tianjin Rongcheng United Steel Group Co., Ltd., and Valin. In its rebuttal brief, the GOC makes several arguments based on the ownership of these companies which are summarized in Final BPI Memo in p. 9-12. Based on this information, the GOC states that these suppliers are not government authorities and that the Department may not lawfully countervail any steel rounds purchased from them.

The GOC further contends that petitioners seem to claim that because certain shareholders and members of boards of directors of the steel rounds suppliers or their corporate shareholders are or have been government officials or affiliated with the government at some point, the suppliers should be considered government authorities. The GOC asserts that the Department must dismiss this claim because it falsely assumes company officials will arrange steel rounds sales to OCTG producers at below market prices, decreasing their companies' profits. According to the GOC, this is illogical and, moreover, this behavior by company officials would violate their fiduciary duties to their companies and several related laws. Among others, the Chinese Securities Regulatory Commission's "Guidance on Listed Company Articles of Association" prohibits shareholders from taking action that would harm the company and the "Amendments to the Criminal Law of the People's Republic of China" threatens fines or imprisonment against board members or other senior managers if they violate their fiduciary duties. For Hong Kong companies, the GOC points to the common law that imposes clear fiduciary duties upon a company's directors. Therefore, the Department cannot find that shareholders would act contrary to the best financial interests of their companies somehow forcing the sale of steel rounds to OCTG producers at below market prices.

Changbao contends that the Department cannot assume that any steel rounds supplier in which the GOC has an ownership interest automatically qualifies as a government authority. Instead, the Department must apply the five factors test. Changbao cites DRAMS from Korea IDM at 16, to argue that the Department has concluded majority government-owned companies are not authorities. Instead, according to Changbao, the real issue is whether the entity exercises elements of government authority. Finally, as the Department cannot show that the state-owned steel rounds suppliers are government authorities, Changbao contends that the agency must demonstrate that such suppliers were entrusted or directed to provide steel rounds for LTAR using the two-pronged test endorsed by the CIT in Hynix at 1347. Changbao argues that there is no record evidence of entrustment or direction because the government plays no role in setting prices for steel rounds and the absence of government information regarding production and consumption of steel rounds demonstrates the absence of state control in this highly fragmented market.

Jianli claims that in KASR from the PRC IDM at Comment 4, the Department took the position that minority state ownership is insufficient, absent other facts demonstrating that the company is government controlled, to consider the company an authority. Jianli asserts that all of its non-SOE suppliers either have no or minority state ownership and that there is no compelling evidence on the record that these companies are subject to state control. Therefore, Jianli contends, none of these companies should be considered a government authority.

Jianli's discussion the specific steel rounds producers that supplied it and the ownership information for those companies is proprietary and, hence, is summarized in Final BPI Memo at p. 12-13. In general terms, Jianli first argues that where minority state-ownership exists, the Department should find the steel rounds supplier not to be an authority so long as there is another non-state shareholder that has virtually the same shareholding as the state. Such equality in ownership proportions nullifies any control the state might exercise, in Jianli's view, and is easily distinguished from the situation described in OTR Tires from the PRC IDM at Comment C.1., where the state owner of the company was not a majority owner but was by far the largest shareholder. Second, Jianli argues that where foreign firms hold a majority of a steel rounds supplier's shares and there is no evidence that the foreign firms are proxies for the state, the Department should conclude that the steel rounds supplier is not an authority. Third, Jianli argues that where majority state ownership exists for a small fraction of the POI, the Department should not find the steel rounds supplier to be an authority. Fourth, Jianli urges the Department to set a limit on how many levels of ownership it will look back. Jianli claims that there must be a point where being the subsidiary of a subsidiary of a subsidiary dilutes the ownership nexus sufficiently that control by the ultimate owner is nullified. Jianli suggests that the cutoff point be set where ownership is established in a foreign subsidiary. As a practical matter, Jianli contends, the owners' documents will be located in the foreign country so the Department is not able to verify the information in any case. In the case of Jianli's supplier, the foreign owner is publicly listed on the Hong Kong stock exchange and its fiduciary duties to its stockholders pursuant to Hong Kong corporate law and its own internal auditing procedures prevent the type of underselling that is allegedly occurring under this program. Fifth, citing Steel Sheet and Strip from Korea at 30642-43, Jianli argues that for companies with no government ownership, the Department must analyze the remaining (non-ownership) criteria under the five factors test. For its steel rounds suppliers, Jianli contends that these criteria are not met because there is no evidence on the record to suggest government involvement in or control over these companies.

With respect to one steel rounds supplier, Jianli discusses information submitted by petitioners that purports to link the majority shareholder to the local government. Jianli claims that the Department did not pursue this issue at verification, thereby accepting that neither the central nor the local government had any involvement in the company.

TPCO claims that petitioners in this proceeding have never alleged that private companies were entrusted or directed by the GOC to provide steel rounds for LTAR. Thus, TPCO argues, the focus of the inquiry has been on the provision of steel rounds by SOEs, i.e., companies with majority government ownership. Since the Preliminary Determination, the GOC has placed ownership information on the record that was confirmed at verification according to TPCO. TPCO claims that the GOC's information shows that numerous steel rounds suppliers of TPCO were not SOEs. TPCO's discussion of the specific steel rounds producers that supplied it is proprietary and, hence, is summarized in Final BPI Memo at p. 13.

WSP argues that the mere ownership by the GOC of a steel rounds supplier does not establish the supplier as an authority. Citing KASR from the PRC IDM at Comment 4, WSP contends that even government majority-owned companies can be found not to be authorities if the majority ownership does not result in control. Where majority government ownership does not exist, WSP claims the Department will consider all information relevant to the five factors test. WSP asserts that there is no evidence on the record showing that the GOC exercises control under the five factors test over any of the state-owned producers of steel rounds suppliers in this case. In fact, according to WSP, many of the producers of steel rounds have participated in previous U.S. antidumping proceedings, such as CWP from the PRC – AD and CWLP from the PRC – AD, and were granted separate rate status because their activities were free from government control. WSP further contends that there is no evidence that the GOC has entrusted or directed the steel rounds suppliers to provide a financial contribution. WSP concludes by arguing that the Department cannot find the privately owned steel rounds suppliers to be authorities.

In rebuttal, Maverick claims that the Department's policy, as explained in KASR from the PRC IDM at 42-44, is to look at whether the government can exercise control over the entity. According to Maverick, this does not require absolute control or control over day-to-day operations. Instead, an entity can qualify as an authority so long as the level of government control is sufficient to establish that profit maximization may not be the entity's sole objective.

Again citing KASR from the PRC IDM at 42-44, Maverick claims that the Department employs a rebuttable presumption that majority government-owned companies are authorities. Maverick does not agree that the GOC has rebutted this presumption. In particular, Maverick objects to the analogy drawn by the GOC between the situation in DRAMS from Korea, where the Department found government-majority-owned and-controlled banks in Korea not to be authorities, and the situation in this investigation. According to Maverick, the Korean banks only became subject to government control as a result of the Korean financial crisis, whereas government ownership of strategic industries in the PRC is a "pillar" of the "socialist market economy." Moreover, in other cases, the Department has found less than majority government ownership and still treated the entity as an authority, according to Maverick.[218]

Maverick asserts that where majority government ownership does not exist, the Department applies the five factors test, and these factors show that control, even in the absence of

[218] See CR Steel from Korea IDM at Comment 1, PET Film from India at 34907, OTR Tires from the PRC IDM at Comment C.1.

ownership, can render an entity an authority. For example, citing CWP from the PRC IDM at 61-67, Maverick claims the Department has found labor unions in the PRC to be authorities. Maverick urges the Department to consider the fact that basic steel production is viewed as a "strategic" or "pillar" industry in the PRC in determining whether the respondents' steel rounds suppliers are authorities. Maverick claims that the GOC maintains a significant presence in the steel industry through formal controls and even, on occasion, takes extreme, non-commercial measures to keep this strategic industry in line. Moreover, according to Maverick, GOC intervention can also affect companies without state ownership as reflected by statements of the CEO of China Oriental Steel Group to the effect that its actions are in line with PRC government policies.

Maverick also disputes the GOC's claims regarding fiduciary responsibilities contending that the degree to which a fiduciary duty exists for company officials is irrelevant to the analysis of whether a steel rounds producer is a government authority that has supplied this input for LTAR. According to Maverick, an allegation of provision of a good for LTAR does is not an allegation of fraud or nefarious dealings. Maverick claims that the steel rounds producer could have provided the input on commercial terms that were simply below the world market price. But in contrast to a private actor, a government authority will take government interests and objectives into consideration.

Maverick claims that the evidence placed on the record by petitioners either refutes the GOC-submitted information on the steel rounds suppliers' ownership or provides adverse information conveniently omitted by the GOC. In Maverick's view, when the GOC and respondent companies make an argument that "there is no record evidence to support a finding …" the GOC is improperly shifting the burden of supplying information to rebut the presumption that steel rounds suppliers are government authorities. Citing Lawn Groomers from the PRC IDM at 39, Maverick reminds the Department it has applied AFA when the GOC has refused to provide the complete picture necessary to conduct an authority analysis. Maverick discusses the information which it alleges is lacking for several companies mentioned by the GOC. Because Maverick's arguments rely on proprietary information, they are summarized in Final BPI Memo at p. 13-15.

U.S. Steel states, in rebuttal, that the GOC's claims regarding the ownership of the respondents' steel rounds suppliers are flatly refuted by record evidence. The evidence cited by U.S. Steel is proprietary and is in Final BPI Memo at p. 15. U.S. Steel claims that this evidence clearly establishes that the steel rounds suppliers are authorities.

Department's Position

In KASR from the PRC, the Department explained with respect to the five factors test that majority-government-owned firms are normally treated as authorities.[219] Thus, determining the ownership of a company is a threshold matter in our investigations. In the instant investigation, the GOC has identified numerous steel rounds suppliers as SOEs and the information submitted in GOC FIS shows that the state holds a majority ownership position in these firms. As explained further in Comment 9, we are treating these suppliers as authorities.

[219] See KASR from the PRC IDM at Comment 4

For the steel rounds suppliers it claims are not majority-owned by the government, the GOC has provided information about the suppliers' direct owners and, for some, traces the ownership through various levels. In general terms, these ownership traces can end showing ownership by a combination of Chinese companies, foreign companies, government entities or individuals. In KASR from the PRC IDM at Comment 4, we stated that for these non-majority-government-owned companies, we will consider "all relevant information regarding the control of the firm including, where appropriate, some or all of the five factors…" For the reasons explained under "Use of Facts Otherwise Available and Adverse Facts Available," we have determined that the GOC has not provided the information relevant to determine whether the government may be exercising control of these companies. Thus, the parties' comments in this regard are moot. Nevertheless, in the interest of correcting some misimpressions about our treatment of non-government-majority-owned firms, we address some of the general arguments made in the comments above.

First, minority government ownership of a company does not necessarily mean that the company is not an authority. As Jianli has noted, where the government is the largest, but not majority, shareholder, the Department may find that company to be an authority. Second, foreign ownership or registry of an owner does not necessarily mean that a company will not be treated as an authority. Foreign companies can be owned by the GOC or GOC-controlled companies. Finally, the Department may also find that individuals who are shareholders or members of a company's board of directors are also affiliated with the government and, in these circumstances, it would be necessary to determine whether the government is exerting control over the company in this manner. It is because there can be such varied fact patterns that the Department requested such information from the GOC in the initial questionnaire and subsequent supplementals. Without such information, the Department is not able to perform the appropriate analysis in this regard.

Regarding two specific points raised by the parties, the GOC has argued that the Department verified the ownership of the steel rounds suppliers as reported by the GOC. Similarly, Jianli argues that because the Department did not pursue an alleged link between an owner and a local government at verification that we accepted that neither the central nor the local government had any involvement in the company. The GOC is correct that we visited various SAIC offices as part of the verification and in most cases were able to confirm that the reported information tied to the documents maintained by the SAIC offices. However, the verification was limited to ascertaining the accuracy of the information and did not extend to gathering all the information that would be necessary to confirm the GOC's ownership classifications because that requested information had not been provided. With respect Jianli's claim, the Department's did not pursue particular information because it was not reported in the questionnaire response and the purpose of verification is to ascertain the accuracy of the information in the response. The Department may also use verification to explore conflicting evidence on the record. However, when particular issues are not pursued at verification it cannot be construed as "accepting" that the respondent's claim is verified.

Comment 9 Treatment of Companies in Which the State Has a Majority Interest

The GOC argues that the Department should not, as a matter of law, treat enterprises in which the government has a majority interest as government authorities. Citing DRAMS from Korea IDM at 17 and 61, the GOC points out that the Department has previously found entities with majority government ownership not to be authorities. The GOC also points to the AB Report on DRAMS from Korea, claiming that the appropriate issue is not government ownership or control per se, but whether the entity exercises elements of government authority. According to the GOC, laws and measures in the PRC separate government ownership from operational functions and there is no evidence on the record of this proceeding that those laws are not effective in maintaining that separation. Specifically, the GOC claims that SOE steel round producers do not set their operational plans in accordance with or under the direction of the government and they are autonomous in determining their selling prices. Thus, the Department may not presume that the SOEs' sales of steel rounds confer a financial contribution.

Department's Position

In KASR from the PRC IDM at Comment 4, the Department clarified its policy with respect to application of the five factors test. The aspect of that policy that is relevant here is the Department's treatment of enterprises that are majority-owned by the government as "authorities" within the meaning of section 771(5)(B) of the Act. Effectively, the Department has established a rebuttable presumption that majority-government-owned enterprises are authorities based on the reasonable proposition that where a government is the majority owner of an enterprise, it controls the enterprise. That presumption can be rebutted where a party demonstrates that majority ownership does not result in control of the enterprise.

Rather than seeking to rebut the presumption for the majority-government-owned steel rounds suppliers with specific evidence about these suppliers, the GOC argues against the presumption stating that the enterprises operate without government interference, inter alia, in setting their prices. This is similar to the argument discussed in KASR from the PRC that majority-government-owned enterprises may act in a commercial manner. As we stated in KASR from the PRC IDM at Comment 4:

> 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.

Citing to the AB Report on DRAMS from Korea, the GOC contends that the real inquiry is not government ownership or control per se, but whether an entity exercises elements of government authority. As explained above, the Department has properly established a rebuttable presumption that majority-government-owned enterprises are authorities within the meaning of section

771(5)(B) of the Act. The Department's practice is consistent with U.S. law and the GOC has not cited to any U.S. court decisions to the contrary. Instead, the GOC has based its argument entirely on the AB Report on DRAMS from Korea. However, we note that WTO reports are without effect under U.S. law until they are implemented pursuant to the statutory scheme provided in the URAA. See, e.g., Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1348-49 (Fed. Cir. 2005), cert. denied; 126 S. Ct. 1023, 163 L. Ed. 2d853 (Jan. 9, 2006). Accordingly, the AB Report on DRAMS from Korea has no bearing on whether the determination in this case is consistent with U.S. law.

Comment 10 Steel Rounds Provided by Trading Companies

TPCO argues that the Department cannot countervail purchases of steel rounds provided by trading companies absent a finding of financial contribution by the trading companies concerned. Citing section 771(5) of the Act and court precedent,[220] TPCO asserts that the Department must find a financial contribution and benefit to the respondent end user. TPCO argues that to find a financial contribution only to an unrelated trading company and then a benefit to the end user, particularly when the subsidy benefits are expensed at the time of receipt, is inconsistent with 19 CFR 351.511(b) and (c).

TPCO asserts that in its Preliminary Determination, the Department, in effect, ruled on the existence of an upstream subsidy for which no allegation was made by petitioners, or investigation undertaken by the Department, contrary to sections 701a(b) and 771(A) of the Act, and 19 CFR 351.523. TPCO asserts that absent a finding that the trading companies TPCO purchased from received a financial contribution and a benefit, an upstream subsidy analysis cannot be conducted. TPCO further argues that absent an upstream subsidy analysis, it is incumbent on the Department to demonstrate how the trading companies themselves provided a financial contribution and a benefit to TPCO. TPCO argues that this would require that the trading companies are authorities within the meaning of section 771 of the Act.

Citing 19 CFR 351.511(b) and (c), Changbao argues that for a subsidy to exist the Department must find a financial contribution and benefit to the respondent end user. Furthermore, Changbao 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 a result, Changbao argues that all steel rounds purchases from private trading companies should be excluded from the subsidy calculation for the final determination.

U.S. Steel rejects Changbao's claims that the Department should not countervail the steel rounds supplied to OCTG producers through trading companies for LTAR. U.S. Steel contends that the Department has repeatedly determined, consistent with 771(5)(B) of the Act, a subsidy exists where a financial contribution is made to a trading company and "all or some portion of the benefit" is conferred on the respondent.[221]

[220] See Delverde, SRL v. United States, 202 F.3d 1360 (Fed. Cir. 2000).
[221] See KASR from the PRC IDM at Comment 6.

Department's Position

We disagree with TPCO that the Department has or is required to conduct an upstream analysis in this situation. As in the Preliminary Determination, we continue to find countervailable purchases of steel rounds from privately-owned trading companies that purchase steel rounds from state-controlled producers/suppliers. We disagree with TPCO that the Department has, or is required, to conduct an upstream analysis in this situation, because the countervailable subsidy was the provision of the steel rounds themselves by an authority, rather than a subsidy "paid or bestowed" by the Chinese government with respect to an input product. In this situation, and upstream subsidy analysis is not required by section 771A of the Act. Further, under 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 KASR from the PRC,[222] CWP from the PRC,[223] LWRP from the PRC[224] and OTR Tires from the PRC,[225] we find that the GOC's financial contribution (provision of a good) is made to the trading company suppliers that purchase the steel rounds, while all or some portion of the benefit is conferred on the respondent OCTG producers through their purchases of steel rounds from the trading company suppliers. Under these facts, the Department was not required to make separate finding that the trading companies provided financial contribution to the respondent OCTG producers.

Comment 11 Indirect Financial Contribution

The GOC argues that even if the Department finds that the respondents' steel rounds suppliers are authorities there is no record evidence that the GOC has entrusted or direct them to supply steel round for LTAR. Citing the SAA at 926, the GOC claims that in examining entrustment or direction, the Congress mandated that the CVD law be applied on a case-by-case basis.

Department's Position

We disagree with the GOC that the Department is required to undertake an entrustment or direction analysis in the circumstances of this case. When an entity is found to be an authority, a subsidy is conferred when that entity makes a financial contribution that confers a benefit.[226] A finding of entrustment or direction is only required when the government "entrusts or directs a private entity to make a financial contribution…"[227] In this case, we have found that the suppliers of steel billet to the respondent companies are "government authorities." As such, we do not need to determine whether the government "entrusts or directs" those entities to provide a financial contribution.

Comment 12 Whether the Provision of Steel Rounds is Specific

The GOC argues that the provision of steel rounds to OCTG producers is not specific under

[222] See KASR from the PRC IDM at Comment 6.
[223] See CWP from the PRC IDM at 10 and Comment 7.
[224] See LWRP from the PRC IDM at 8.
[225] See OTR Tires from the PRC IDM at 10 and Comment D.4.
[226] See section 771 (5)(B).
[227] See section 771(5)(B)(iii).

section 771(5A)(D)(iii)(I) of the Act. First, the GOC claims that the SSB does not maintain a comprehensive list of industries in the PRC that purchase steel billets. However, the GOC points out that, according to the Steel Business Briefing, billets are used in a number of industries including rebar, plain bar, merchant bar, light sections, narrow strip, wire rod, and seamless tubes.[228] Therefore, the GOC argues that steel round sales are not directed to a specific group of industries or enterprises, but to a broad variety of industries. Second, the record evidence demonstrates that the GOC does not restrict the prices charged to steel rounds consumers in the PRC.[229] Therefore, the GOC contends that steel rounds were available at market prices during the POI.

U.S. Steel contests the GOC's assertion that the provision of steel rounds for LTAR is not specific within the meaning of 771(5A)(D)(iii)(I) of the Act. U.S. Steel argues that record evidence clearly supports the Department's preliminary finding that steel rounds are used by only a limited number of industries. Moreover, U.S. Steel cites proprietary information that shows that steel rounds of the type provided by the GOC here are used solely for the purpose of producing seamless steel pipes and tubes, including OCTG.[230]

Department's Position

We have continued to find provision of steel rounds to be de facto specific under section 771(5A)(D)(iii)(I). Section 771(5A)(D)(iii)(I) clearly directs the Department to conduct its analysis on an industry or enterprise basis. Consistent with our past practice, the products listed by the GOC (rebar, plain bar, merchant bar, light sections, narrow strip, wire rod, and seamless tubes) are a limited group of industries under section 771(5A)(D)(iii)(I). This is consistent with the Department's prior practice. For example, in Belgian Steel,[231] we concluded that eight industries (steel, food processing, paper, chemicals and fertilizer, mining, electromechanical, firearms, and cement and ceramics) were "too few" users, and as a result, found the relevant subsidy to be de facto specific.

Comment 13 Benchmark Issues

A. Benchmarks for Steel Rounds – Pricing Data

TPCO notes that in the Preliminary Determination, the Department used an average of three pricing series from the Steel Business Briefing ("SBB"), monthly export prices for billet from Latin America, Turkey, and the Black Sea/Baltic. TPCO contends that the Department should also include in the benchmark data from three additional pricing series that TPCO placed on the record in its September 17, 2009, submission: 1) SBB's "Semi-Finished / Billet / East Asia import CFR" ("SBB East Asia") price series; 2) the "Semi-Finished / Far East billet (65t lots) / London Metal Exchange (LME) Cash bid settlement" price series; and 3) the "Semi-Finished /

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[228] See G2SR at 3 and 7.
[229] Id.
[230] See TPCO Verification Report dated October 23, 2009, at Exhibits 14,42, and 43. See also, Maverick Tube Corporation submission, dated October 5, 2009, at attachment 1 at pages 355 and 363.
[231] Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium, 58 FR 37273, 37276 (July 9, 1993) ("Belgian Steel").

Mediterranean billet (65t lots) / London Metal Exchange (LME) Cash bid settlement" price series).[232] TPCO argues that for each, it would be "reasonable to conclude that such price would be available to purchasers in the country in question," in accordance with 19 CFR 351.511(a)(2)(ii). Specifically, regarding the East Asia import pricing series, TPCO argues that this pricing series represents import prices (inclusive of international freight) in the region in which the respondents operate. Additionally, TPCO points out that this series has been used for benchmarking (albeit for a different product) by the Department in KASR from the PRC IDM at Comment 8. Regarding the two LME price series, TPCO argues that using these two series would be appropriate because the LME maintains a futures market for steel rounds and adjusts its published market prices and maintains a number of warehouses worldwide to facilitate delivery. In their respective case briefs, Changbao and WSP join TPCO on this point.

In rebuttal, Maverick, and U.S. Steel contend that the Department should not use the SBB East Asia import pricing data or the LME pricing data. Regarding the SBB East Asia price series, Petitioners note that this data reflects import prices to multiple Asian countries on CFR (i.e., customs and freight included) terms. As such, Petitioners argue that the prices in this data series reflect prices inclusive of freight to an undetermined number of countries. Therefore, Petitioners maintain that the Department cannot accurately determine a freight-inclusive cost for shipping the input to the PRC. Further, Petitioners contend that the Department cannot accurately account for import taxes or duties associated with these shipments. Therefore, Petitioners urge the Department to disregard this data for the final determination.

Regarding the two sets of LME pricing data, Petitioners argue that the Department should not use this data in the final determination because the prices are for square billets, which are not suitable for OCTG production. Additionally, Petitioners point out that this data series is only available for the second half of the POI, and including this data in one half of the POI would be distortive.

Department's Position

When the Department resorts to using a world market price in calculating its benchmark to measure adequate remuneration and there are multiple commercially available market prices, the Department's regulations at 19 CFR 351.511(a)(2)(ii) instruct the Department to "average such prices to the extent practicable." In this case, we have several sets of market prices from which to choose, and find it appropriate to average the various prices together to determine a market price for steel rounds. In the Preliminary Determination, we used three series of SBB pricing data reflecting export prices for billet from Latin America, Turkey, and the Black Sea/Baltic region. Since the Preliminary Determination, parties have placed additional pricing data on the record, specifically, SBB East Asia import prices and two series of LME prices.

Regarding the SBB East Asia series, this data represents actual import prices of billet in the East Asia region and, consequently, is probative of prices that would be available to an importing purchaser in the PRC. Further, this pricing series has been used by the Department in a prior

[232] TPCO has provided prices from the East Asia series for the entire POI, and data from the second half of the POI for the two LME pricing series.

CVD cases involving tier-two LTAR benchmark calculations.[233] Additionally, we have not added ocean freight charges to this pricing series because these prices are import prices and, thus, are inclusive of ocean freight. We note that the freight included in this price series reflects the costs of delivering the product to the specific region in which the respondent OCTG producers operate.

With respect to Petitioners' contention that we should exclude the two LME pricing series because they appear to be for standard billet not suitable for OCTG production, we note that we have not limited our analysis to purchases of billet specifically for OCTG production. Instead, based on petitioners' allegation that interchanged the terms "billets" and "rounds," we requested respondents to report all purchases of these products. As explained in Comment 13B, we have included all of these purchases in our LTAR calculation. Therefore, we have no basis to exclude the LME prices on these grounds. Also, while it would be preferable to have these prices for the entire POI, petitioners have not explained why their inclusion of a portion of the POI results in distortion. As such, we have included this data in the calculation in the benchmark only in the last six months of the POI.

B. **Benchmarks for Steel Rounds – Premium Adjustment**

Pursuant to 19 CFR 351.511(a)(2)(i) and (ii), Maverick and U.S. Steel contend that the benchmark used in the Preliminary Determination should be adjusted upwards to account for the quality differences in the steel rounds used in OCTG production relative to the SBB pricing data, which petitioners maintain, is representative of a basket category of steel billet products of standard commercial quality. In support of this assertion, Petitioners cite Hot Rolled from India 2007 IDM at Comment 12, noting that in that case the Department adjusted the benchmark price for iron ore to better match the iron ore purchased by the respondent. Petitioners additionally cite Lumber from Canada 03-04 IDM at Comments 23 and 28.

To substantiate the quality difference in the steel round inputs relative to the SBB standard billets, Petitioners point to the following sources: an affidavit and Indian import statistics provided by Maverick in its Oct. 5, 2009, New Factual Information submission, as well as statements and mill certificates provided by the GOC and the respondents which show details regarding the steel purchased by the respondents in this investigation. Petitioners assert that the affidavit establishes the fact that OCTG quality billets are produced to a standard above and beyond regular commercial quality billets. Petitioners further maintain the statements of the GOC and respondents establish that the respondents purchased OCTG quality billets for their OCTG production.

To calculate the quality premium Petitioners contend the Department should use to adjust the SBB data, Petitioners point to the Indian import data. Petitioners contend that the Indian HTS number 7207.20.30 is specific to "seamless steel tube quality" steel billets. Petitioners additionally assert that the average price for products under this subheading in 2008 was $1,709 per metric ton. Maverick contends that the Department should divide this figure by the average (freight included) benchmark from the Preliminary Determination to calculate the price

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[233] See KASR from the PRC IDM at Comment 8.

difference for OCTG quality billets, which equals 1.53. Maverick further argues that the Department should then multiply the monthly benchmark by this figure to adjust for the quality differences between OCTG quality billets and the standard billets from the SBB data. U.S. Steel provides a similar alternate calculation based on the preliminary benchmark, exclusive of freight. U.S. Steel's resulting proposed quality adjustment ration is 2.13. Thus, U.S. Steel urges the Department to adjust for the quality premium commanded by premium OCTG billets over standard billets by multiplying the pre-freight billet price by 2.13.

In their respective rebuttal briefs three company respondents – Jianli, WSP, and Changbao – take issue with Petitioners' proposed "quality premium adjustment." The respondents note that in Hot Rolled from India 2007 the Department made a quality adjustment based on the reported data from the companies themselves, and contend that the Department does not have such respondent data in this case to make any quality adjustment. The respondents further contend that the Department did not solicit data regarding the type of steel billet used to produce the subject merchandise, and therefore, does not have appropriate data to calculate any adjustment. The respondents also argue that the Indian import data supplied by the petitioners would not be an appropriate basis to calculate an adjustment for a number of reasons. First, the respondents argue that the Indian import statistics for Indian HTS number 7207.20.30 show only a small quantity of imports, and point to Mittal Steel, in support of their position that the Department should not rely on such small quantities of imports. Additionally, the respondents contend that there is nothing to indicate that the products covered by this HTS number would actually be used for OCTG production. Finally, the respondents argue that Indian import statistics are prices that, by virtue of being prices available in India, are inherently not representative of prices that would be available to an OCTG producer located in the PRC.

Department's Position

We have not made the adjustment requested by the petitions. Notwithstanding the fact that it is unclear that the Indian import data proffered by Petitioners is representative of world prices of OCTG-specific billet, we note that we have not limited our analysis to strictly billet used the in the production of OCTG. Here, respondents have reported all billet purchases, regardless of the ultimate product they were used to produce, and we have included all purchases in our benefit calculation.[234] Therefore, it would be inappropriate to adjust the benchmark to account for differences in regular and OCTG-quality billet where the purchases to which we apply benchmark include non-OCTG steel round purchases.

C. Benchmark

Maverick argues that a tier-two benchmark to measure the adequacy of remuneration of steel rounds purchases is warranted under 19 CFR 351.511(a)(2). Maverick contends that record evidence demonstrates that the steel rounds market in the PRC is dominated by government-owned or controlled producers. First, Maverick contends that the GOC failed to provide information on the steel rounds industry as requested and, therefore, the Department should find

[234] See, e.g., Jianli's Supplemental Questionnaire Response at 10 and Exhibit 11 (reporting purchase details for all "purchases of steel rounds that were not used in the production of OCTG" in addition to those used for OCTG production).

the PRC's steel rounds market distorted based on AFA. Maverick argues that even if the Department does not use AFA, publicly available information evidence indicates that the GOC dominates the steel rounds market in the PRC.

Citing KASR from the PRC,[235] Maverick contends that the Department found the PRC wire rod market distorted and prices unreliable due to: (1) the "predominant role" of the government (based upon less than 50 percent of total market ownership or control); (2) a negligible level of imports; and (3) restraints on exports of wire rod. Maverick also cites CWP from the PRC,[236] as evidence that the GOC plays a dominant role in the hot-rolled steel industry. Maverick asserts that in this case, no publicly available information suggests that the GOC owns and controls less than a majority of steel round producers. Moreover, Maverick points to record evidence indicating that imports are negligible.[237] Finally, Maverick asserts out that record evidence demonstrates that the GOC maintains prohibitive restraints on steel rounds exports.[238]

The GOC and respondents Changbao, TPCO, WSP and Jianli (collectively "respondent companies") disagree with the Department's use of a world price ("second-tier") benchmark to determine the adequacy of remuneration of steel rounds purchases in the Preliminary Determination. Consistent with 19 CFR 351.511(a)(2)(i) and section 771(5)(E)(iv) of the Act, the GOC and respondent companies argue that the Department should use "actual transactions" (an "in-country" or "first tier") benchmark. Citing the CVD Preamble,[239] the GOC and Changbao assert that the use of a first-tier benchmark is appropriate where, as in this case, government providers constitute less than a substantial portion of the market. The GOC and respondent companies contend that the majority of purchases of steel rounds are, in fact, from privately-owned Chinese companies and FIEs, and, as such, are the appropriate basis for comparison.[240] Changbao argues that there is no evidence of government-set price controls. Changbao and TPCO contend that the information compiled by the GOC shows that a significant percentage of steel rounds came from private suppliers and FIEs. Changbao argues that the lack of official steel rounds production statistics is evidence that the market is highly fragmented and lacks administration of an industry association, let alone control by the GOC.

Referring to arguments made in its case brief, the GOC rebuts Maverick's contentions and claims the petitioners have failed to provide evidence that the steel rounds market is distorted. Consequently, in the GOC's view, the Department must use a benchmark in the PRC to determine a benefit from the provision of steel rounds for LTAR. The GOC argues that section 771(5)(E) of the Act, 19 CFR 351.511(a)(2)(i), the CVD Preamble, and WTO Appellate Body[241] all require that the Department find that there was no distortion of market prices for steel rounds, and to use actual transactions in the PRC to determine the adequacy of remuneration.

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[235] See KASR from the PRC IDM at 14-15.
[236] See CWP from the PRC IDM at 6-7.
[237] See GOC's June 4, 2009 QR at 46-47.
[238] See Maverick's Steel Rounds New Subsidy Allegations at Exhibit 2.
[239] See CVD Preamble at 65377.
[240] See GOC Verification Exhibit 1, at Attachment 2.
[241] See WTO Appellate Body Report, United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada, WT/DS257/AB/R, paragraphs 103, 108 (January 19, 2004).

In its rebuttal brief, U.S. Steel contests the GOC's and company respondents' assertions that the Department should use a first-tier benchmark. U.S. Steel argues that the Department should continue to determine, as AFA, that the steel rounds industry is dominated by government authorities because of the GOC's failure to provide requested ownership information. Citing proprietary information placed on the record by petitioners, U.S. Steel argues that state-owned and controlled suppliers determine steel rounds prices in the PRC and that those prices are not appropriate benchmarks, under the Department's regulations and past practice. U.S. Steel also argues that the GOC further distorts prices using export restraints. Citing KASR from the PRC[242] and 19 CFR 351.511(a)(2), U.S. Steel argues that the Department has previously recognized that GOC distorts prices in its domestic market through the use of export restraints making them unsuitable as benchmarks.

In rebutting Maverick's claim that publicly available information purports to show that the GOC dominates the steel rounds market in the PRC, the GOC points to information obtained by the Department at verification which shows SOEs/collective enterprises sold only a small percentage of the steel rounds during the POI.[243] Countering Maverick's references to KASR from the PRC and CWP from the PRC, the GOC argues that the public information in question pertains to the wire rod and hot-rolled steel markets and addresses the alleged market dynamics for those products in those respective cases, not the steel rounds market.

In its rebuttal brief, Changbao contests Maverick's assertion that the GOC dominates the steel rounds market, thereby prohibiting the use of first-tier benchmarks. Rebutting Maverick's references to KASR from the PRC and CWP from the PRC, Changbao argues that these cases are inapposite. First, Changbao argues that both cases involved an adverse inference in determining the level of state ownership in the production of hot-rolled steel.[244] Changbao argues that without any justification for applying AFA in the instant investigation, there is no basis to infer that the steel rounds market is dominated by SOEs. Moreover, Changbao contends that Maverick's assertion that the steel billets market is similar to the hot-rolled steel market is unsupported by record evidence.

Regarding exports restraints, Changbao counters that in KASR from the PRC, the Department found that the wire rod market was distorted through export restraints which included export taxes and export licensing. Changbao contends that the instant investigation involves no export licensing system. Moreover, Changbao argues that Maverick failed to provide evidence of any connection between the export tax and lower domestic prices and therefore, there is no basis for the Department to use an external benchmark for the final determination.

Department's Position

As explained under "Use of Facts Otherwise Available and Adverse Facts Available" section, above, the GOC did not provide the requested information regarding the extent of state ownership in the PRC steel rounds industry and we have determined to apply AFA. See, also, Comment 5, above. Consequently, we find that the PRC steel rounds industry is dominated by

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242 See KASR from the PRC IDM at 15.
243 See GOC Verification Report at 2 and Exhibit 1 at attachment 2.
244 See CWP from the PRC IDM at Comment 3; See also, CWLP from the PRC IDM at Comment 1.

the GOC and that this results in a significant distortion of the prices there, with the result that the use of an external benchmark is warranted. Therefore, we do not reach the merits of the arguments raised in the parties' comments.

D. Benchmarks for Steel Rounds – Freight Charges

Jianli takes issue with the Department's inclusion of ocean freight charges in the steel rounds benchmark used in the Preliminary Determination, and argues that the Department should exclude ocean freight from the benchmark (or, alternatively add it to both the domestic price and benchmark world price) in the final determination. If the Department continues to include ocean freight in the benchmark, Jianli proposes several revisions to the calculation. Additionally, in their respective case briefs, Changbao and WSP argue that the Department should make the adjustments to the freight calculation laid out by Jianli in its case brief.

Jianli recognizes that under 19 CFR 351.511(a)(2)(iv), in measuring adequate remuneration and calculating an appropriate benchmark, the Department "will adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product. This adjustment will include delivery charges and import duties." However, Jianli argues it is only appropriate to apply this provision where it is necessary to achieve an "apples-to-apples" comparison of the domestic price to the benchmark price.[245] Further, Jianli contends that the Department's inclusion of ocean freight in the benchmark accounts for over half of Jianli's CVD rate calculated under this program. Jianli characterizes this result as "absurd," and in violation of general statutory construction principles.

First, Jianli contends that it purchased all of its steel billet inputs on an ex factory basis in the PRC, and thus, no freight expenses are included in its reported billet purchase prices. Thus, Jianli argues it would be inappropriate to add ocean freight charges to the benchmark because Jianli did not incur freight charges in the domestic prices it paid. Jianli asserts that either the ocean freight included in the benchmark should be excluded from both the benchmark and the domestic price, or, alternatively, added to both.

Second, if the Department continues to add ocean freight to the benchmark billet price, Jianli contends that the Department should use the freight rates Jianli supplied in its October 5, 2009, new factual information submission at Attachment 1. In support of this position, Jianli points to the Department's regulations at 19 CFR 351.511(a)(2)(iv), which directs the Department to construct a benchmark that reflects "the price that a firm actually paid or would pay if it imported the product." Jianli argues that the Maersk rates provided by Petitioners and used in the Preliminary Determination are flawed in three respects: 1) these rates reflect rates for a vague catch-all basket of steel products; 2) are from a shipping company that Jianli would not have used; and 3) are for shipments using a "flat rack container," a type of container Jianli contends is not used to ship steel billet or pipe. As an alternative ocean freight expense, Jianli

[245] In support of the assertion that the Department's practice is to make accurate "apples-to-apples" comparisons, Jianli cites the following cases and administrative determinations: Hebei New Donghua v. United States, 374 F.Supp.2d 1333,1338 (CIT 2005); Ad Hoc Committee v. U.S. at 212; CFS from Korea ,72 FR 60639 and accompanying IDM at Comment 11; Pasta from Italy IDM at Comment 3; Softwood Lumber Prelim CVD Determination, 57 FR 8800, LWS from the PRC IDM at 5.

points to information from its ocean freight provider which includes price quotes for the same period and same origination/destination as the Maersk rates.[246] Jianli contends that these price quotes are representative of what Jianli would have paid for ocean freight if it had imported billet because these rates are from the freight company Jianli would have used had it imported billet during the POI. Additionally, Jianli maintains these freight price quotes are for shipping the specific steel billet in question using the type of shipping container typically used to ship steel billet. Moreover, Jianli argues that these rates are inclusive of all of the freight charges the Department normally includes in its gross freight expense rate (i.e., ocean freight, handling charges, and documentation fees).

Third, Jianli argues that if the Department continues to use the Maersk shipping rates in the final determination, the Department should exclude certain fees and charges included in the Preliminary Determination. Specifically, Jianli cites to the Department's preliminary determination in Steel Grating from the PRC, where Jianli contends the Department only used basic freight, handling charges, and document fees in arriving at the appropriate ocean freight expense to include in the benchmark. Jianli urges the Department to follow the methodology used in Steel Grating from the PRC, and exclude all other miscellaneous fees, including the "Special Equipment Surcharge," which Jianli argues is associated with the unnecessary use of "flat rack" containers. Jianli additionally maintains that including the "Special Equipment Surcharge" in the benchmark is not supported by substantial record evidence because Jianli has submitted information from its freight company stating that using the special containers is not necessary for shipping OCTG billet, while using the special containers is only supported by vague statements on one freight company's website that such a container *may* be used for these products.

Fourth, Jianli argues that if the Department continues to include the "flat rack container" surcharge in the benchmark, it should use the load capacity figures for the "20 foot collapsible flat rack container" (i.e., 27.51 metric tons) rather than the "20 foot fixed corner flat rack container" (i.e., 21.44 metric tons) used in calculating the per-metric ton freight cost in the Preliminary Determination. Jianli notes that the Maverick's pre-preliminary comments show that either container can be used to ship "steel tubes, steel pipes, and steel bars." Jianli further points out that in the Preliminary Determination we calculated the per metric freight cost by dividing the total freight cost by 21.44 metric tons. Thus, if the Department includes the container surcharge, Jianli urges the Department to divide the total freight amount by 27.51 metric tons rather than 21.44 metric tons.

Finally, if the Department declines to remove ocean freight from the benchmark (or add ocean freight to Jianli's domestic prices), then Jianli argues that the Department should add Jianli's domestic inland freight expenses to its domestic prices. Here, Jianli points to its Pre-preliminary comments where it provided a sample inland freight calculation, including invoices for freight from the producer's warehouse to the port, and cost from the port to Jianli's factory.[247]

[246] See Jianli NFI at Attachment 1.
[247] See Jianli Pre-Prelim at Attachment 1.

U.S. Steel and Maverick addressed each of the above arguments and alternatives proposed by Jianli in their respective rebuttal briefs. First, U.S. Steel and Maverick argue that the Department should continue to add ocean freight to the benchmark, and make no corresponding ocean freight adjustment to the reported domestic purchase prices. U.S. Steel and Maverick contend that the Department's regulations at 19 CFR 351.511(a)(2)(iv) direct the Department to include delivery charges and import duties in the benchmark to calculate the price a firm would have paid had it imported the product. Here, Petitioners argue that in adding ocean freight the Department creates an ex-port price in the PRC, which is appropriately comparable to Jianli's and the other respondents' ex-factory prices.

Second, Petitioners argue the Department should continue to use the Maersk data and not Jianli's data. Petitioners contend that the Maersk data reflect actual prices charged by Maersk to customers who ship steel products from the geographic sources used in the benchmark price calculation. Moreover, Petitioners note that the Department has used Maersk freight rates in prior CVD cases, pointing to calculation memoranda contained in exhibits 2 and 3 of U.S. Steel's August 25, 2009, pre-preliminary comments. Further, Petitioners argue that the Maresk rates are specifically quoted for steel products and, hence, applicable to the steel rounds at issue here. Petitioners additionally note that although Jianli claims it would not have used Maersk for its shipments, one of the shipping contracts Jianli supplied was for a shipment made on a Maersk vessel. Petitioners further contend that Jianli's claim that it would not have used Maersk is irrelevant because the freight rates used need not be for the actual freight company a respondent used, but rather freight rates that are representative, accurate, and available to an importing party.

Regarding Jianli's argument that the Department should base its freight calculation on freight rates for standard containers (as opposed to the standard "flat rack" container rates submitted by Petitioners and used in the preliminary results), Petitioners maintain the Department should continue to use these freight rates. Here, Petitioners argue that the "flat rack" containers are appropriate and point to exhibits 4, 5, and 12 of U.S. Steel's August 25, 2009, pre-preliminary comments. Petitioners claim that these exhibits, show that "flat rack" containers are suitable for shipping steel rounds. Thus, Petitioners argue that the Department should base the freight calculation on freight rates for "flat rack" containers.

Regarding the freight expense data submitted by Jianli, Petitioners maintain that this data is incomplete, inaccurate, and selectively created for this investigation. Here, Petitioners note that Jianli only supplied actual service contracts for one month of the POI, and that the actual freight rates themselves are so absurdly low that they are plainly not representative of the freight charges a company would pay to import steel rounds.

Third, Petitioners contend that the Department should continue to include in the Maersk data all charges listed because these are the charges an importing party would pay, including charges associated with the "flat rack" container. Petitioners maintain this "flat rack" container and its associated charges are necessary to ship steel rounds, pointing to U.S. Steel's Pre-Prelim Comments at Exhibits 5 and 12. Further, Petitioners claim that the Department has used Maersk freight data inclusive of all fees in prior CVD cases to calculate benchmark prices. Therefore, Petitioners argue that the all-inclusive price represents the actual cost for ocean freight, and all charges should be included in the freight price used for the final results.

Fourth, Petitioners argue that the Department should not make the container capacity adjustment advocated by Jianli to the freight calculation. Petitioners argue that the Maersk data is based on using a specific type of container, and to adjust the charge based on another containers capacity would be distortive.

Finally, Petitioners maintain that the Department should not include Jianli's inland freight in its reported purchase price. Specifically, Petitioners contend that there is no inland freight included in the benchmark, and to include it on the purchase price side would not be accurate or achieve the Department's goal of making "apples-to-apples" comparisons. Furthermore, Petitioners note that Jianli's inland freight calculation is based on two freight invoices, which they maintain is not representative of all purchases from all suppliers throughout the POI, and therefore inaccurate. Accordingly, Petitioners contend it would be inappropriate to make any inland freight adjustments to the benchmark or reported purchase prices in the final results.

Department's Position

We have continued to include ocean freight in our world price benchmark. The Department's regulations at 19 CFR 351.511(a)(2)(iv) direct the Department to include delivery charges and import duties for LTAR comparison purposes when using world market prices. The Department has consistently interpreted this to include ocean freight when adjusting world market prices to reflect the price that "a firm actually paid or would have paid if it imported the product" as required by 19 CFR 351.511(a)(2)(iv).[248] Therefore, we have continued to include ocean freight charges in our steel round benchmark.

We disagree with Jianli that ocean freight needs to be added to its prices for domestically sourced steel rounds to achieve an apples-to-apples comparison. While we acknowledge that Jianli's domestic purchases are ex-factory, the benchmark prices we have calculated reflect the prices at the port, as required by 19 CFR 351511(a)(2)(iv). In this situation, no equality would be achieved by adding ocean freight to the domestic Chinese prices. Regarding Jianli's assertion that we should also add its inland freight to its domestic purchases, we find that this adjustment is not necessary. As outlined above, our benchmark achieves an equitable comparison as we are comparing ex-factory prices to prices at the port, and adding inland freight to the domestic price would not enhance the comparability of the two prices.

Regarding the additional ocean freight pricing data Jianli contends we should incorporate in our final results, we have averaged this data into our benchmark calculation along with the Maersk freight pricing data (as adjusted and discussed below). Although Petitioners characterize this pricing data as self-serving and unreliable, the pricing data submitted by Jianli are relevant price quotes provided by a freight provider.[249] There is no information on the record that would lead us to question the accuracy of these submitted ocean freight rates. Thus, we find that this data is reflective of what an importer would have paid to import steel rounds and have included it in our freight adjustment calculation. In examining the service contracts attached to Jianli's freight

[248] See, e.g., KASR from the PRC IDM at 16.
[249] See Jianli Pre-Prelim Comments at Attachment 1.

schedule, we note that Jianli has not included all charges shown on those contracts in its freight calculation. See Jianli NSI at Attachment 1. Specifically, each of the service contracts includes the following fees: "Freight," "THC," "Handling Charges," "Documentation Fee," and "Custom Clearance;" however, Jianli has only included Freight, Handling Charges, and Documentation Fees in its calculation. Id. at Attachment 2. Based upon these contracts, it appears that an importer would be required to pay each of these fees to ship and import steel rounds into the PRC. Therefore, in accordance with 19 CFR 351.511(a)(2)(iv), we have included all of these fees, including THC fees of $70 and Custom Clearance fees of $150 in Jianli's freight schedule.

With respect to Jianli's argument that we should disregard Petitioners' data because Jianli would not have used Maersk to ship its steel inputs, we have continued to include the Maersk data in our freight cost calculation. Although Jianli contends that the benchmark should reflect prices Jianli itself would have paid, 19 CFR 351.511(a)(2)(iv) directs the Department to adjust the price for freight "to reflect the price a firm actually paid or would pay if it imported the product" (emphasis added). Thus, so long as the ocean freight costs are reflective of market rates for ocean freight, and representative of the rates an importer – and not necessarily the respondent specifically – would have paid, then the prices are appropriate to include in our benchmark. Additionally, these prices are for shipping steel articles from the locations included in our benchmark to the PRC, thus these pricing series are appropriate to include in our benchmark.

Regarding Jianli's argument that the Maersk pricing data is inappropriate because it is based upon prices for shipping steel on a special "flat rack" container, we find that it is appropriate to exclude the "flat rack" container expense, which is reflected in the "special equipment surcharge" included in the Maersk pricing data. Here, Petitioners point to websites stating that these containers can be used to ship high-quality steel products.[250] On the other hand, Jianli has submitted information from its freight provider stating that "{s}teel billet shipments for our customers…were not made using flat rack containers."[251] Because the petitioners' information discusses the finished pipe products and not the rounds used to make the pipes, we have removed the "flat rack" expense from the Maersk pricing data because these charges are not necessarily reflective of what a firm would pay to import the product, in accordance with 19 CFR 351.511(a)(2)(iv). However, the remaining fees included in the Maersk data (i.e., the "bunker adjustment fee" related to fuel, currency adjustment fee, handling charges, security fees, etc.) appear to be normal and necessary charges that an importer would pay if using this freight provider, based on information on the record. Therefore, we have continued to include these charges in the Maersk pricing data for the final determination.

With respect to Jianli's contention that we should revise our freight adjustment to account for the differing load capacities of different containers, we find that no such adjustment is necessary. In the Preliminary Determination, we converted the per-container freight rates to a per-metric ton basis using a load capacity of 21.44 metric tons, which is applicable to "flat rack" containers. Although we have determined not to include this charge, the conversion factor is still appropriate. According to Jianli's own freight provider, the capacity of a standard 20-foot

[250] See U.S. Steel Pre-Prelim Comments at Exhibit 5 (indicating that flat rack containers are used to ship "machinery, industrial boilers, tractors, parts packed in cases, steel tubes, steel pipes, steel bars and cables") and Exhibit 12 (indicating that flat rack containers are used to ship "heavy machinery, pipes and boats).
[251] See Jianli Pre-Prelim Comments at Attachment 1.

container is "approximately 21 metric tons."[252] Given that there is no specific capacity data for standard 20-foot containers on the record of this case, that the capacity figure used in the Preliminary Determination was for a type of 20-foot container, and that this figure comports with Jianli's own freight provider, we have continued to use 21.44 metric tons as the container capacity for the final results.

Comment 14 Adequately Remunerated Transactions

The GOC contends that no matter what benchmark is used, the Department must not "zero" (i.e., exclude from its benefit calculation) billet purchases where the purchase price is above the monthly benchmark price. The GOC contends that to exclude such purchases would artificially create a benefit where none actually exists. In support of this position, the GOC cites Lumber from Canada NAFTA Panel, USA-CDA-2002-1904-03 (May 23, 2005) at 17-18, where a NAFTA panel found that "zeroing" of such purchases to be unlawful.

In its rebuttal brief, U.S. Steel contends that the Department should not offset instances where the respondents received steel rounds for LTAR with instances where the respondents paid more than LTAR. In support of this position, U.S. Steel cites to Lumber from Canada 03-04, 70 FR 73448 (Dec. 12, 2005) and accompanying IDM at Comment 43. In that case, which was issued subsequent to the NAFTA panel decision cited by the GOC, U.S. Steel contends that the Department chose not to offset positive benefits from one transaction with negative benefits from other transactions.

Department's Position

As stated in Lumber from Canada 03-04 IDM at Comment 43, "in a subsidy analysis, a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked by negative benefits from other transactions." Additionally, as noted in Lumber from Canada 03-04, the law does not contemplate the Department to provide a respondent with a credit for instances in which the government does not provide a benefit (i.e., instances where a respondent pays adequate remuneration for a good). The Department's position has not changed since Lumber from Canada 03-04, and, accordingly, we will not provide a credit for purchases of steel rounds above the benchmark rates in the final determination.

Comment 15 Whether there is a Financial Contribution

Citing section 771(5)(D)(i-iv) of the Act, the GOC contends a transfer or lease of land-use rights is not countervailable as it does not meet the definitions of "financial contribution" as laid out in the statute. The GOC contends that section 771(5)(D)(i-iv) provides an exclusive list of the categories that define "financial contribution," and any government action not listed is not a subsidy in terms of CVD law.

The GOC notes the Department found the transfer of land-use rights in this proceeding to be the provision of a good or service. The GOC submits land is neither a good nor a service, citing the

[252] Id.

definition of "good" in Black's Law Dictionary to demonstrate land does not fall within this category. The GOC also cites the Black's Law Dictionary definition of "services" and contends land would not fit under this definition either. Accordingly, as land does not meet the definition of good or service, it is not a financial contribution under CVD law.

TPCO concurs with the GOC.[253]

Citing section 771(5)(D)(iii) of the Act, U.S. Steel argues that the statute reflects a broad definition and its only limitation is for general infrastructure, which does not include land. Furthermore, U.S. Steel, citing CWLP from the PRC, contends the Department has concluded the legislative history underlying the statute, including the SAA, confirms this broad definition includes land, and the Department has a well-established practice of treating land as a good or service.[254] Finally, U.S. Steel states the Department has rejected this argument in the past.[255]

Citing the CVD Preamble and OTR Tires from the PRC,[256] Maverick states that it is the Department's practice to consider land as a good or service. Moreover, Maverick cites the SAA and other prior cases to contend that the statutory definition of financial contribution is broad enough to include land and the Department's well settled practice is to consider land-use rights a good or service.[257] Finally, Maverick cites to Softwood Lumber from Canada as further support that the Department has considered the term "goods" to include land.[258]

Department's Position

The Department has found in several cases that a government's provision of land-use rights confers a financial contribution pursuant to section 771(5)(D)(iii) of the Act.[259] In those cases, citing to the SAA as well as administrative and court precedents,[260] the Department fully addressed the arguments raised by the GOC with regard to whether land-use rights should be considered a "good" or a "service" within the meaning of section 771(5)(D) of the Act. The GOC and TPCO have provided no new arguments nor have they cited to any additional statutory authority that would lead us to conclude that the GOC's provision of land-use rights for LTAR in the instant case does not confer a financial contribution. Consequently, the Department continues to take the position that the provision of land-use rights constitutes the provision of a financial contribution under section 771(5)(D)(iii) of the Act.

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253 See TPCO Case Brief at 21-23.
254 See CWLP from the PRC IDM at Comment 22.
255 See Citric Acid from the PRC IDM at Comment 22, CWLP from the PRC IDM at Comment 22, LWTP from the PRC IDM at Comment 12, OTR Tires from the PRC IDM at Comment H.1, and LWS from the PRC IDM at Comment 8.
256 See OTR Tires from the PRC IDM at Comment H.1.
257 See SAA at 911-955, OTR Tires from the PRC IDM at Comment H.1, LWS from the PRC IDM at Comment 8, Softwood Lumber from Canada, Carbon Steel Flat Products from Korea, and Corrosion Steel Products from Korea.
258 See Softwood Lumber from Canada at 24-25.
259 See Citric Acid from the PRC IDM at Comment 22, CWLP from the PRC IDM at Comment 22, LWTP from the PRC IDM at Comment 12, OTR Tires from the PRC IDM at Comment H.1, and LWS from the PRC IDM Comment 8.
260 See LWS from the PRC IDM at 52; OTR Tires from the PRC IDM at 171-173; LWS from the PRC IDM at 51-52; CWLP from the PRC IDM at Comment 22.

Comment 16 Whether to Use an In-country Benchmark

Citing section 771(5)(E) of the Act, the GOC notes the Department must consider prevailing market conditions when determining whether a good or service has been provided without adequate remuneration. Prevailing market conditions include, according to the Act, price, quality, availability, marketability, transportation, and other conditions of purchase or sale. Furthermore, citing 19 CFR 351.511(a)(2), the GOC contends that the Department must follow a hierarchy when determining the adequacy of remuneration, which also considers product similarity, quantities sold, imported or auctioned, and other factors.

The GOC notes land presents a unique issue because it has its own characteristics in terms of value based on location and other factors. Given this, the GOC argues only two options are possible: 1) use an internal benchmark, or 2) determine whether the government price is consistent with principles in the country under investigation. The GOC asserts a land benchmark from another country is not permissible under the statute as the value of land in another country is derived from demand for land in that particular country. Thus, the GOC argues that the Department should reexamine using market-based prices within the PRC as a benchmark.

In support of using an internal benchmark, the GOC argues land sales in the PRC occur in a robust market-based system. First, the GOC contends the fact that land is state- or collectively-owned is immaterial and argues that several countries have government-owned land to varying degrees and that this land is nevertheless valued by a functioning market.[261] Moreover, the GOC cites Tianjin laws and recent studies on the PRC's land market to assert that land sales in the PRC are market-based.[262] The GOC also argues that Chinese law and practices regarding property rights have improved and that the country's real estate market has become increasingly competitive.[263] Thus, the PRC yields valid land prices which the Department must consider for the final determination.

Citing Lumber from Canada NAFTA Panel, the GOC further argues that it is impossible to create a world market or adjust another country's price for land given the innumerable variables influencing values across countries. The GOC also points to a WTO Panel that concluded that adjusting one country's prices to match prevailing prices in another country is difficult and unlikely to succeed.[264] The GOC notes that the PRC's WTO accession agreement stated a preference for domestic benchmarks and restricts any deviation from the SCM Agreement to only "special difficulties" in the application of that methodology.[265]
TPCO concurs with the GOC.[266]

Maverick contends that the Act does not prohibit the use of an external benchmark, but instead the Department's regulations list a hierarchy in the order of preference. Although a tier one

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[261] See GOC factual information at GOC_LAND-28 at 2-3.
[262] See GQR at GOC-P-2, GOC-P-3, and GOC-P-6; GOC factual submission at GOC-LAND-31 and GOC-LAND-30.
[263] Id. at GOC-LAND-32 and GOC-LAND-33.
[264] See WTO Lumber Panel at para. 108.
[265] See China WTO Accession Protocol at Article 15(b).
[266] See TPCO Case Brief at 23-28.

benchmark is preferred, Maverick states the Department has previously found the purchase of land-use rights in the PRC does not operate in accordance with market principles.[267] Thus, the Department has found external benchmarks appropriate.[268] Maverick further notes that despite the GOC's contentions that the PRC's land-use rights system changed drastically since 1990, the Department has still held there remains a wide divergence between the de jure reforms of the market for land-use rights and the de facto implementation of reforms in the PRC, among other findings.[269] Finally, Maverick contends that as the GOC did not submit sufficient new information to challenge the Department's prior findings, the Department should continue to apply a more reliable, external benchmark for the final determination.

Citing CWLP from the PRC, U.S. Steel contends the Department has considered respondents' arguments regarding the NAFTA Panel and determined that neither the Lumber from Canada NAFTA Panel, nor the SCM Agreement precludes the use of external benchmarks. The Department noted in CWLP from the PRC that NAFTA panel decisions have no precedential value. Moreover, the Department emphasized it is bound by U.S. law and precedent, and there is no evidence that use of an external benchmark conflicts with the SCM Agreement.[270]

Citing LWTP from the PRC, U.S. Steel notes that the Department rejected the use of a Chinese land benchmark because price in the PRC were not market determined.[271] In this instant investigation, the GOC has not provided new information that would cause the Department to deviate from this determination. Thus, U.S. Steel argues the Department should continue to use an external benchmark (land values from Thailand) for the final determination.

Department's Position

In prior cases, we have determined that Chinese land prices are distorted by the government's significant role in the market and, hence, cannot be used as a benchmark.[272] Moreover, because of this significant government involvement and because property rights remain poorly defined and weakly enforced, we continue to determine that land prices in the PRC do not provide an appropriate benchmark because they are not in accordance with market principles. See 19 CFR 351.511(a)(2)(iii).[273] The GOC's arguments and information submitted in this investigation have either already been addressed in prior cases or we disagree that the argument or information warrants a different finding. The arguments and information not addressed in prior cases are discussed below.

First, we note that its statement and support regarding varying levels government ownership of land in other countries and functioning markets does not address the Department's reasoning for finding Chinese land prices distorted by the significant government role in the market, but rather

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[267] See LWS from the PRC IDM at Comment 9.
[268] Id. at 17 and Preliminary Determination at 47222.
[269] See LWS from the PRC IDM at 16.
[270] See CWLP from the PRC IDM at Comment 22.
[271] See LWTP from the PRC IDM at Comment 12.
[272] See LWS from the PRC IDM at Comment 10, CWLP from the PRC IDM at Comment 22, LWTP from the PRC IDM at Comment 12, and Citric Acid from the PRC IDM at Comment 23.
[273] Id.

only discusses the historical and current issue of land ownership in Britain. Furthermore, in GOC-LAND-31, while the report does state the PRC has an "effective land market in force," it also highlights several problematic issues concerning in the PRC land market and notes that "land value{s} in the PRC are determined by both market and non-market elements."[274] Thus, it is not dispositive evidence of major reform which would result in the Department changing its finding. For GOC-LAND-30, the GOC states the document concludes Chinese property values – particularly for industrial land – are largely market determined. However, the GOC does not cite where this conclusion is made and it is not entirely clear how a World Bank paper discussing the implementation of the PRC's Rural Land Contract Law bolsters its claim.

In regard to international surveys, we note that the physical property rights column is based on the following factors: protection of physical property rights, registering property, and access to loans.[275] Thus, this physical property rights statistic the GOC cites contains additional factors not related to physical property rights as considered by the Department in our land analysis. The other international survey, which the GOC cites as ranking the PRC in terms of competiveness of property rights, only includes the table of contents preface and tables for the PRC and Thailand.[276] Thus, there is no context to understand what the source defines as property rights and to how the data may relate to the Department's land analysis. Finally, in regards to the Tianjin land laws, the GOC again does not explain how this data counters the Department's finding in prior cases and the Preliminary Determination. We note that the Department has previously explained that "we find that there is a wide divergence between the de jure implementation of such reforms of the market for land-use rights and the de facto implementation of such reforms."[277]

With respect to the NAFTA Panel decision cited by the GOC and TPCO, it is important to note that in the remand, the Department continued to find that the out-of-country benchmark was the proper choice. Moreover, NAFTA panel decisions are not precedential.[278] Specifically, the Department explained that:

> We disagree with the Panel's conclusion that there was not substantial evidence to support the Department's determination that market conditions in Canada and the United States are comparable, and that the adjustments the Department made adequately account for differences. We continue to believe that the resulting benchmarks constitute world market prices for timber that are commercially available to purchasers in Canada, within the meaning of 19 CFR 351.511(a)(2)(ii).[279]

The Department specifically indicated that it was not altering its practice in this respect. Finally, with respect to the SCM Agreement and the Appellate Body's decision in Softwood Lumber, the GOC has argued that Article 14 requires us to first seek to adjust prices in the PRC

[274] See GOC FIS at GOC-LAND-31 at 13.
[275] See GOC FIS at GOC-LAND-32 at 15-16.
[276] See GOC FIS at GOC-LAND-33.
[277] See LWS from the PRC IDM at Comment 10.
[278] See NAFTA Article 1904.9.
[279] See Softwood Lumber from Canada - Remand.

before adopting an out-of-country benchmark. We disagree that our decision is inconsistent with Article 14 as interpreted by the Appellate Body. We further note that the Appellate Body ruled that there are situations when government distortion of the market can justify use of an external benchmark.[280] Accordingly, we continue find that the use of an external land benchmark to value the adequacy of remuneration is warranted in this investigation.

Comment 17 Thai Benchmark Flaws

The GOC argues the Department's selection of Thailand for the land benchmark is entirely arbitrary. The GOC states the Department's rationale is 1) that the PRC and Thailand have comparable economic development and 2) Thailand's proximity to the PRC. In the first instance, the GOC argues the PRC and Thailand represent different models of development. In terms of proximity, the sheer difference in size alone and the PRC's role as one the world's largest economies makes comparability enormously difficult. Thus, the random factors provided by the Department do not demonstrate comparability of land prices.

The GOC also argues that the Thailand benchmark s derived from unique factors specific within Thailand such as proximity of supplies and inputs, transportation costs of inputs and products, transportation of workers and customers, utility costs and availability, and taxes and regulations. Thus, the GOC reiterates that Thailand cannot serve as a benchmark.

If the Department does countervail TPCO's land for the final determination, the GOC offers two benchmarks: 1) for granted land-use rights, the average price paid for industrial property in Tianjin, the PRC, compiled by CB Richard Ellis in Market View for each quarter of 2008 and 2) for leased land, the average rental rates for industrial property in Tianjin, the PRC, listed in the same publication for each quarter of 2008. The GOC notes that CB Richard Ellis authored the report relied upon by the Department for the Thailand land price and that these prices are from the same geographic location as TPCO, and the publication contains a detailed description of the real estate market that existed in Tianjin, the PRC, during the POI.[281]

TPCO concurs with the GOC.[282] TPCO also stresses the differences between land in Thailand and the PRC as they relate to consideration of "prevailing market conditions" under the Act.

Maverick agrees with the position taken by the Department in prior cases that Thailand provides an appropriate benchmark for determining the extent to which land-use rights are provided in the PRC for less than adequate remuneration.[283] Specifically, the Department has reasonably determined that Thailand is at a comparable level of economic development to the PRC.[284] Therefore, the Department should continue to use the Thailand benchmark for the final determination.

[280] See WTO Lumber Panel at paragraph 101.
[281] See GOC FIS at GOC-LAND-34.
[282] See TPCO Case Brief at 28-30.
[283] See LWS from the PRC IDM at 17 and OTR Tires from the PRC IDM at Comment H.7.
[284] See Preliminary Determination 74 FR at 47222.

Citing CWLP from the PRC, U.S. Steel contends the Department has previously considered respondents' arguments and rejected them.[285]

Department' Position

Certain aspects of the GOC's and TPCO's arguments have been addressed in prior cases and the Preliminary Determination, where the Department analyzed a number of variables in finding that Thailand is comparable to the PRC in terms of its prevailing market conditions: the economic similarity of Thailand and the PRC in terms of GNI per capita; the comparable population density: the perception that producers consider a number of markets, including Thailand, as an option for diversifying production bases in Asia beyond the PRC; and certain other economic and demographic factors. The fact that the PRC and Thailand may have different development models does not negate the other comparable characteristics noted above for both countries at this time. Furthermore, the GOC's argument concerning the sheer size of both countries is misplaced. As noted, the Department has used population density as a factor, which provides for a more localized comparison as opposed to country size in our data, which the GOC and TPCO argue in their briefs is paramount in selecting a land benchmark. Finally, while some factors may be specific to Thailand and not to the PRC, given the distortions in the PRC surrounding the land market and its prices, it would be speculative to make any adjustments to account for any differences in these factors. However, we believe that these differences are addressed in finding an external benchmark which takes several of the factors named by the GOC into account in terms of comparability, such as GNI, population density and other economic factors and demographic factors.

As we have continued to find that Chinese land prices are distorted by the significant government role in the market and, hence, cannot be used as a benchmark (see Comment 16 above), it would not be appropriate to use internal land prices from Tianjin.

Comment 18 Whether Land is Specific

Citing section 771(5A)(iv) of the Act, the GOC argues that Department may only find specificity based on geographic designation when the alleged subsidy is limited to an enterprise or industry within the jurisdiction of the authority providing the subsidy. The GOC contends that the record evidence does not support the conclusion that the TBNA limits the provision of land within its boundaries to the OCTG industry or enterprises such as TPCO. The GOC notes that all land-use rights arise from the state and all enterprises and industries necessarily acquire their land-use rights from the state. The provision of land-use rights is administered by the national and local governments in accordance with generally applicable laws and regulations. Thus, the GOC argues, neither the GOC, the Tianjin Municipal government, nor the TBNA provides land to specific industries or enterprises on a preferential basis. The GOC cites Measures of Tianjin Municipality for Compensated Use of State-Owned Land as support for its assertion and it notes that these measures provide for "a regulated and uniform land market" and require land transactions comply with "the principles of fairness, impartiality and publicity."[286] Finally, the

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[285] See Citric Acid from the PRC IDM at Comment 23, CWLP from the PRC IDM at Comment 22, LWS from the PRC IDM at Comment 11, and Preliminary Determination, 74 FR at 47222.
[286] See GOC Case Brief at 81 (citing GQR at GOC-P-6).

GOC notes the Department may also not find de facto specificity in regards to TPCO's land as there is no evidence on the record that government discretion was exercised in favor of TPCO in the provision of this land within the meaning of section 771(5A)(D)(iii)(IV) of the Act.

Maverick contends that the Act explicitly provides that a subsidy is specific if it is limited to an enterprise of industry located in a designated geographical region within the jurisdiction of the authority providing the subsidy pursuant to section 771(5A)(D)(iv) of the Act. Moreover, the Department has previously found that "when the land is in an industrial park located within the seller's (e.g., county's or municipality's) jurisdiction, the provision of the land-use rights is regionally specific . . ."[287] Maverick assert the same fact pattern is present here and the Department appropriately countervailed the land.

U.S. Steel argues the Department should reject the GOC's argument that specificity regarding regionally-specific subsidies be found on some other grounds as absurd. U.S. Steel contends the GOC previously made the same argument in LWTP from the PRC.[288] The Department rejected the argument and found land was regionally-specific regardless of whether the government authority afforded a preference within the region. Thus, the Department should continue to find that the provision of land in the TBNA to be specific.

Department's Position

In LWS from the PRC, the Department found "the provision of land-use rights to be specific because the provision of land-use rights in an industrial park within the county's jurisdiction is limited to an enterprise or industry or group thereof located within a designated geographical region pursuant to section 771(5A)(D)(iv) of the Act."[289] The facts in this investigation are analogous: the TBNA is a designated area that includes the jurisdictions that provided land-use rights to TPCO and its cross-owned affiliates.[290] Therefore, we continue to find specificity within the meaning of section 771(5A)(D)(iv) of the Act.

As the Department has found land-use rights to TPCO to be de jure specific, we need not address the GOC's claims regarding De facto specificity.

Comment 19 Provision of Land in the TBNA

Citing the Preliminary Determination, 74 FR at 47223, TPCO Group notes that the Department indicated that it did not have sufficient information on TPCO International's purchases of land-use rights to determine whether the purchases constituted countervailable subsidies. TPCO Group argues that the Department should not countervail these purchases because TPCO International purchased the land-use rights from private third parties, not from a government land authority.

No other interested party commented on this issue.

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287 See LWS from the PRC IDM at Comments 8 and 9.
288 See LWTP from the PRC IDM at Comment 12.
289 See LWS from the PRC IDM at Comment 9.
290 See Preliminary Determination, 74 FR at 47222.

Department's Position

We disagree with TPCO Group's assertion that all of the purchases were from private third parties. The information on TPCO International's land purchases is business proprietary; thus, we are addressing this information in the TPCO Calculation Memorandum for this final determination. However, we calculated that TPCO Group received no countervailable benefit from these purchases. See the TPCO Final Calculation Memo.

Comment 20 Whether Chinese Banks are Authorities

Citing the InitQ, the GOC requests the Department reconsider its findings in CFS from the PRC and Citric Acid from the PRC that national and provincial involvement in commercial banks means the entities are authorities. The GOC notes the Department's analysis of the Chinese banking system must reflect the period of investigation, 2008, not the outdated findings of CFS from the PRC. Further, they argue that the facts of the case demonstrate Chinese commercial banks are not government authorities that provide a financial contribution to OCTG producers.

First, citing section 771(5)(B) of the Act, the GOC argues Chinese commercial banks for which the state does not have a controlling interest, e.g. China Minsheng Bank, are not authorities as they cannot be described as the GOC or public entities within the PRC.[291] Thus, the Department should not countervail any loans provided to respondents from such types of banks.
For the remaining Chinese commercial banks, the GOC notes the Department has previously determined that state ownership alone is not sufficient to establish Chinese commercial banks are authorities and even found entities with majority government ownership not to be government authorities for purposes of CVD Law.[292] Thus, citing CFS from the PRC, according to the GOC, the issue is not ownership but whether the banks are acting on a commercial basis or fulfilling government policies and, in this regard, the record demonstrates the Chinese commercial banks involved in this proceeding make their individual lending decisions on a commercial basis.[293]

In CFS from the PRC,[294] the GOC claims the Department recognized the record information on government control was mixed and further argues that improvements and reforms in the Chinese banking sector have occurred since that investigation and the Department must address these developments. As support for these developments, the GOC cites several studies on the Chinese banking sector filed in its factual submission.[295]

TPCO and concurs with the GOC.[296]

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[291] The GOC notes information concerning China Minsheng Bank is in the GOC's 9/21 Lending Submission at Exhibit 11 at 39-44.
[292] See CFS from the PRC IDM at 55 and DRAMS from Korea IDM at 17 and 61.
[293] See CFS from the PRC IDM at 55.
[294] Id.
[295] See GOC Case Brief at 56-59 (citing GOC FIS at GOC-LEND-2-14, GOC-LEND-2-16 at 16, and GOC-LEND-2-13).
[296] See TPCO Case Brief at 12.

Citing G1SQR at GOC-SUPP-4 at 3-5, Changbao argues that there is sufficient evidence on the record to demonstrate that the PRC has a market-driven banking system and the company received financing during the POI in accordance with market principles and did not receive preferential financing.

Citing DRAMS from Korea,[297] WSP reiterates the GOC's argument that ownership alone does establish that an entity is a government authority within the meaning of the statute and the Department needs affirmative evidence of control to determine Chinese commercial banks are authorities. WSP further adds there is no evidence on the record that the GOC "entrusted or directed" the Chinese commercial banks to provide a financial contribution either.

Maverick acknowledges the Department stated government control over SOCBs is changing. However, Maverick notes that the Department further stated that the reforms were insufficient to warrant the classification of Chinese commercial banks as commercial entities and concluded the government remains very involved in the sector.[298] Moreover, Maverick contends the GOC had ample time to submit information challenging this presumption and failed to do so. Finally, Maverick states there is copious evidence that indicates the state continues to intervene in the operation of Chinese banks, e.g., Article 34 of China's Banking Law, and states the Department concluded the GOC remains heavily involved in the PRC's banking sector in April 2009.[299]

U.S. Steel argues the Department has repeatedly determined SOCBs are government authorities under the statute.[300] Citing LWTP from the PRC, the Department found the Commercial Banking Law requires banks to carry out lending under the guidance of state industrial policy.[301] The Department has rejected claims from the GOC that the banking sector has undergone significant changes.[302] U.S. Steel further argues the GOC has failed to show the commercial Banking Law has changed or SOCBs are not the implementing arm of government policy lending.[303] U.S. Steel finally notes that much of the information provided by the GOC is irrelevant, including profitability and portfolio increases, foreign investment,[304] etc. Thus, no such information exists on this record to overturn the Department's prior findings.

Department's Position

The GOC and WSP citing, in part to DRAMS from Korea, states that the Department has previously determined that state ownership alone is not sufficient to establish Chinese commercial banks, as government authorities. The cite to DRAMS from Korea, is misplaced because in CORE from Korea, the Department decided to modify our treatment of commercial banks with government ownership with respect to the finding of a financial contribution under section 771(5)(B)(i) of the Act. As we noted in CORE from Korea:

[297] See DRAMS from Korea IDM at 17.
[298] See CFS from the PRC IDM at Comment 8.
[299] See Citric Acid from the PRC IDM at 10 and Comment 7.
[300] See Citric Acid from the PRC IDM at 12, LWTP from the PRC IDM at Comment 6, OTR Tires from the PRC at Comment E.2, and CFS from the PRC IDM at Comment 8.
[301] See LWTP from the PRC IDM at Comment 6.
[302] See LWTP from the PRC IDM at Comment 6 and OTR Tires from the PRC IDM at Comment E.2.
[303] See OTR Tires from the PRC IDM at Comment E.2.
[304] See CFS from the PRC IDM at Comment 10.

> In both the DRAMs Investigation and the CFS Paper Investigation, we accorded different treatment under this section of the Act to government-owned banks that were commercial banks and those government-owned banks that acted as policy or specialized banks. Upon further review, we have determined that, with respect to determining whether a government-owned bank is a public entity or authority under the CVD law, it is more appropriate to focus solely on the issue of government ownership and control. This treatment of government-owned commercial banks is consistent with our treatment of all other government-owned entities, such as government-owned manufacturers, utility companies, and service providers. Furthermore, this treatment of government-owned commercial banks is also more consistent with 19 CFR 351.505(a)(2)(ii) and 351.505(a)(6)(ii). Thus, a government-owned or controlled bank, be it a commercial bank or a policy bank, is considered a public entity or authority under the Act.[305]

Therefore, the Department considers banks that are owned or controlled by the government to be public authorities under the CVD law. With respect to the GOC's request to not consider certain Chinese banks as authorities because the state does not have a controlling interest, we note this is the first instance in which the GOC has raised this issue with the Department. The Department has previously found that minority interest in an entity is enough to find the entity acts as a government authority.[306] Thus, although majority ownership by the government may be sufficient in some instances to establish whether an entity is an authority, in other instances a more thorough analysis (e.g., five factor analysis) may be necessary to make a determination. This analysis may include, among other things, ownership information, information on the board of directors, articles of association and so forth.

Given the timing of the GOC's request, the Department did not have the opportunity to fully examine the request or solicit any additional necessary information. Moreover, as the GOC has not named any other banks or cited to other specific data on the record as support, the Department will limit its analysis to China Minsheng Bank and the record evidence. In that regard, upon examination of the controlling shareholders and effective controllers, we note that New Hope Investment Co., Ltd. holds 5.90%, China Life Insurance Co., Ltd. (Ministry of Finance ownership) holds 5.10% and 89% of the company is owned by other companies holding 5% or less.[307] For the 89% shares, there are only names provided for the other 8 largest shareholders, which together hold 30.91% of total shares.[308] Thus, there is only information on the record for 41.91% of total shares and this information only encompasses names of the shareholding companies. Given the fact that over 58% of the shares in China Minsheng Bank is unaccounted for in the annual report and there is no other information pointed to by the GOC to establish this bank is not controlled by the state, we find that there is not sufficient evidence to consider China Minsheng Bank not a SOCB for purposes of this proceedings.

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[305] See CORE Korea 2009 IDM at 12.

[306] See Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea, 67 FR 62102 (October 3, 2002) and accompanying IDM at Comment 1.

[307] See GOC 9/21 Lending Submission at Exhibit 11, at 44.

[308] See GOC 9/21 Lending Submission at Exhibit 11, at 43.

In the June 4, 2009, questionnaire, the Department stated that if the GOC wanted us to revisit our findings in respect to the relationship between the GOC (including lower level governments) and SOCBs, then the GOC should provide evidence of "significant and fundamental changes." We have examined the studies provided by the GOC that purport to demonstrate that the relationship has significant and fundamental changes since the decision in CFS from the PRC and determined that several of the studies' findings were addressed by the Department in the CFS from the PRC[309] and others do not rise to the level of "significant and fundamental" given other information on the record.

In order to revisit the determination in CFS from the PRC, respondents must provide evidence to warrant a reconsideration of this determination on the Chinese banking sector. As noted, the GOC has failed to do so. For example, the GOC has failed to provide evidence that the government has divested itself of ownership in Chinese banks. The GOC has failed to address the issue of real risk assessment within the Chinese banking sector. The GOC has failed to address interest rate and deposit rate ceilings and floors set by the government. The GOC has failed to address both de jure and de facto reforms within the Chinese banking sector. The GOC has failed to address the elimination of policy-based lending within the Chinese banking sector. Therefore, the GOC has failed to provide the information that would warrant a reconsideration of the Department's determination in CFS from the PRC.

Finally, we note that Changbao's argument in relation to the loan document is addressed in Comment 21. In regard to WSP's comments, we note that is sufficient to continue to find SOCBs and policy banks authorities within the meaning of section 771(5)(B) of the Act and, as such, do not need to address WSP's "entrusted or directed" claims.

Comment 21 Whether the Policy Loan Program is Specific

Citing section 771(5A)(D)(i) of the Act, the GOC argues for the Department to find de jure specificity, in the Department must determine whether a subsidy exists and if it is explicitly limited by law to an enterprise or industry. First, the GOC notes that Chinese law does not provide for policy lending.[310] The GOC then asserts that the Department selectively examined the Five-Year plans placed on the record and, instead, should consider the broader scope and context of the documents.

As examples, the GOC cites the Steel Plan and Decision 40. In the case of the Steel Plan, the GOC states that Article 16 merely suggests that the GOC intends to consider policies to bolster specific steel projects through "interest assistance" and there is no evidence on the record that OCTG producers were recipients of such policies. For Decision 40, the GOC claims Article 3 emphasizes the role of the market in allocating resources and that Article 17 and 18 should be considered jointly. The GOC explains that Article 17 merely notes that encouraged projects should receive financing and restricted projects mentioned in Article 18 are not to receive financing. Thus, it is not an issue of preferential lending, but which type of project should and should not receive financing. Finally, the GOC asserts Decision 40 references hundreds of

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309 See CFS from the PRC IDM at Comment 8.

310 The GOC cites to Article 1 of the PBOC's Circular on Improving the Administration of Special Loans to demonstrate the four largest commercial banks in the PRC are prohibited from policy loans to enterprises.

projects and, therefore, is not de jure as it is not limited to a single enterprise or industry, pursuant to section 771(5A)(D)(i) of the Act.

The GOC also adds that information on the record does not reflect a directive to benefit the OCTG industry. As support, the GOC cites to the BPI Policy Loan Memo and notes that the Department relied on certain statements to make its determination, which in fact demonstrate that commercial banks undertake normal risk assessments, and do not support the finding that there is preferential lending extended explicitly to the OCTG industry. The GOC also argues that the Department's reference to Chinese banks in terms of following the guidance of governmental policy is misplaced because commercial bank would not forego revenue and standard risk assessment practices by extending preferential policies to various enterprises.

Finally, the GOC asserts that commercial bank policies and procedures as well as Chinese laws establish standards and rules which govern various types of risk management, financing rules, and principles by which banks in the PRC operate. As support, the GOC cites several SOCB annual reports and Chinese banking laws placed on the record.[311] Thus, as commercial banks in the PRC operate pursuant to commercial considerations, not legislation that provides preferential lending to the OCTG industry, the Department must find there is no policy loan program for the final determination.

TPCO concurs with the GOC.[312]

Changbao asserts that four plans, which pertain to the company, cited by the Department in the Preliminary Determination do not provide any basis for finding the OCTG industry received preferential lending. In regard to the 11th Five-Year Plan, Changbao cites CWP from the PRC in arguing the Department has previously determined it does not contain provisions explicitly providing for financing and credit.[313] For the 10th Metallurgical Plan and the Jiangsu 11th Five-Year Plan, Changbao again asserts there is no explicit financing or credit support to the OCTG industry. For Decision 40, Changbao asserts that CWP from the PRC Decision Memo stated there are no specific financing tools identified in the document and, thus, the Department determined no preferential was received pursuant to Decision 40 or the Directory Catalogue.[314] Finally, Changbao claims the Department has previously found the Steel Plan provides assistance to certain steel products for the use of domestically produced equipment.[315]

Changbao argues that none of its loans were for that purpose, which the Department verified, thus its loans are not covered by the Steel Plan.

Finally, Changbao references the BPI Loan Memo and argues the Department misconstrued statements, in text and context, provided in a cited exhibit.[316] These comments are discussed further in the BPI Memo. Moreover, Changbao argues the document clearly demonstrates that

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311 See GOC Case Brief at 63-65.
312 See TPCO Case Brief at 12.
313 See CWP from the PRC IDM at Comment 8.
314 Id.
315 Id. at Comment 9.
316 See G1SQ at GOC-SUPP-4.

proper risk analysis was considered and there is no specific reference to any five-year plans identified by the Department, which Changbao asserts is bizarre that a specific “policy” for which a loan was provided is not mentioned.

WSP argues that the Five-Year plans cited by the Department in the Preliminary Determination do not explicitly refer to loans by commercial banks or direct any bank to provide any loans to such industries. WSP also adds that none of the loan contracts examined at verification were anything but based on commercial considerations.[317] Finally, citing to WSQR, WSP asserts that there nothing on the record that WSP or Fanli received preferential loans and the loans received were not preferential or de facto specific.

TMK IPSCO et al. claim Changbao’s arguments merely rehash long standing claims by the GOC that state managers of SOCBs pay no attention to government policies. However, TMK IPSCO et al. assert Changbao arguments emphasize its state backing as evident in their discussion of certain BPI information, which is discussed in the BPI Memo.

U.S. Steel contends respondents have not provided new information that would warrant the Department to reconsider its preliminary finding.

First, U.S. Steel asserts the 1999 circular issued by the PBOC purportedly prohibiting the four largest banks from making policy loans is baseless as the Department preliminarily found the policy only applied to four banks and explicitly provided that banks continue to provide loans under the needs of the national economy and the social development under the guidance of the State industrial policies.[318] Thus, whatever the purpose and effect of the 1999 law, banks continued to make loans pursuant to government policies. Moreover, U.S. Steel claims the text of the government policies issued after 1999 cited by the Department makes clear the GOC continued to provide preferential lending to the OCTG industry.

U.S. Steel then contends certain plans provided by the GOC do establish a program of preferential lending for specific named industries. Moreover, U.S. Steel argues the Department has previously found that Five-Year plans require affirmative state action to implement and are mandated by various levels of government, as opposed to being mere guidance.[319] These plans are then delegated to local governments, which must align their industrial policies with central government policies and carry out those policies to the extent they affect the locality.[320]

In regard to Article 16 of the Steel Plan, U.S. Steel then argues respondents misconstrued its language, which calls interest assistance to key steel projects, including OCTG and such assistance is available to projects that rely on domestically produced equipment and newly equipment and facilities.[321] Thus, even accepting Changbao’s argument that its loans were not for purchases of domestic equipment, its projects that rely on domestic produced equipment as

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[317] See WSP Verification Report at Exhibits 12 and 14.
[318] See Preliminary Determination, 74 FR at 47218.
[319] See CFS from the PRC IDM at Comment 8.
[320] Id.
[321] See Preliminary Determination, 74 FR at 47217.

well as its projects that involve newly developed equipment and facilities would have received policy loans.

For Decision 40, U.S. Steel states the Department found in CFS from the PRC that the document details an active role for the state in guiding financial resources toward industries favored by the State.[322] Moreover, the Department preliminarily found OCTG was specifically named in the Directory Catalogue through such measures as preferential lending.[323] U.S. Steel argues none of the respondents have provided new information that would warrant a reconsideration of those findings.

In regard to the Jiangsu 11th Five-Year Plan, U.S. Steel asserts Changbao's argument is misplaced as there is ample evidence in the text of the document that detail specific objectives for the development of the OCTG Industry in Jiangsu Province.[324] As noted in CFS from the PRC, U.S. Steel contends calls for active development and contribution of financial and government resources, when combined with specific encouragement of particular products and industries, are substantial evidence of specific policy to support those products and industries with preferential financing.[325]

Finally, U.S. Steel cites to BPI information on the record to contradict respondent's claims that loan documents on the record demonstrate lending was not pursuant to government policies and the loans were granted on purely commercial considerations.[326] U.S. Steel also counters WSP's assertion that its loan contracts demonstrate it received loans on commercial considerations because neither the GOC nor the company provided loan application materials as requested by the Department. Thus, U.S. Steel argues there is nothing on the record concerning the real factors considered by SOCBs in relation to granting their loans.

Department's Position

We continue to find that loans received by the OCTG industry from SOCBs were made pursuant to government directives. We further disagree with the GOC and TPCO that this program is not de jure specific.

As noted in the Preliminary Determination, the Department examined the PBOC's Circular on Improving the Administration of Special Loans (YINFA{1999} No. 228), and found it was applied to four specific banks (and not commercial banks in general),. Moreover the Department noted that a more recent law, the Banking Law at Article 34, provides that banks should carry out their loan business "under the guidance of the State industrial policies."[327] Thus, the Department found that "the Banking Law, in some measure, stipulates that lending procedures be

322 See CFS from the PRC IDM at Comment 8.
323 See Preliminary Determination, 74 FR at 47217.
324 See Maverick Rebuttal Brief at 74.
325 See CFS from the PRC IDM at Comment 8.
326 See U.S. Steel Rebuttal Brief at 75-78.
327 See Preliminary Determination, 74 FR at 47218.

based on the guidance of government industrial policy."[328] We next turn to the plans, policies and government documents used as the basis for our finding.

For the 10th Metallurgical Plan, the plan was not noted because it provided financing or credit support for the OCTG industry, but rather to demonstrate the government's role in the steel industry. Specifically, the plan called for the development of key steel types that were imported, for which "petroleum pipe" was listed, and the objective of the plan was to encourage enterprise to cooperate with foreign enterprises, particularly in the development of high value added products and high-tech products.[329] Thus, the plan was not cited as a basis for policy lending, as put forth by Changbao, but to show that during the 10th Five-Year Plan period, the GOC had deemed "petroleum pipe" or OCTG a high value added, high-tech product which needed to be developed and encouraged.

In regard to the Steel Plan at Article 16, the intent of the Department in citing the plan was not to assert that subsidies in this proceeding were provided for under this plan for this program, but rather to highlight the language in Article 16, which again calls for the development of "key technology" and supporting "key steel projects" through various methods.

Turning next to Decision 40, we note that Article 3 states:

> Adhering to combining market regulation with government guidance. We shall give full play to the fundamental role of the market in allocating resources, strengthen the reasonable guidance of state industrial policies, and realize optimal resource allocation.[330]

Thus, the GOC's claim that Decision 40 emphasizes the market is misplaced. Moreover, examining Article 17 and 18 jointly still does not negate the Department's prior findings in regard to Article 17 and lending.[331] Regarding the GOC's claim on de jure specificity, we note that the Department has found that this plan is specific to certain industries.[332]

In regard to the Jiangsu 11th Five-Year Plan, the Department did not state in the Preliminary Determination, as argued by Changbao, that the plan contained language concerning financing or lending supports, but rather demonstrated that the plan mirrored the national government's objective of supporting and promoting the production of innovative and high-value added products, including OCTG.[333]

We also disagree with the GOC's and TPCO's position that evidence on the record supports that SOCBs acted in according with market principles in procuring the loans to the respondents. As noted in Comments 20 and 22, we have determined that the Chinese

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[328] Id.
[329] Id. at 47217.
[330] See Decision 40 at 2.
[331] See CFS from the PRC IDM at Comment 8 and LTWP from the PRC at 11-12, and Preliminary Determination, 74 FR at 47217.
[332] See CWP from the PRC IDM at Comment 8 and Citric Acid from the PRC IDM at Comment 5.
[333] See Preliminary Determination, 74 FR at 47218

banking sector is distorted and have found the SOCBs and policy banks to be authorities. We also note that the Department discussed Article 4 and 7 of the Banking Law as evidence of banks operating within market principles and extending loans based on the credibility of the borrower in the Preliminary Determination. In fact, we noted, as stated above, that the language contained in Article 34 of the same law, demonstrated that in some measure, lending procedures are based on the guidance of government industrial policy.[334]

Finally, we note that we have addressed Changbao's final argument within Final BPI Memo. As we did not receive any loan documentation from the GOC regarding WSP's loans, we also disagree with WSP that its loan contracts demonstrate that they were provided on a commercial basis. Thus, its argument is misplaced.

Comment 22 Whether the Department Should Use an In-country Benchmark

The GOC argues the Department unlawfully applied an external benchmark and did not follow its regulations by first looking for a comparable commercial loan and, then, if the firm has no comparable loan, using a national average interest rate for comparable commercial loans, pursuant to 19 CFR 351.505(a). The GOC claims there are two primary reasons why the Department must follow this standard.

First, the GOC argues that short-term rates are a function of government intervention through banking regulation, monetary policy, and government macroeconomic policy. As support, the GOC cites to actions by the U.S. Federal Reserve as well as documents on the record outlining the U.S. Federal Reserve and the PBOC actions in handling monetary policy.[335] Thus, the GOC claims the Department appears to view certain actions by governments as non-distorting, but finds the Chinese financial system distortive based on purported Chinese actions. The GOC asserts the Department has not explained this discrepancy and postulates that if the Department applied this unlawful presumption, it would never be able to use domestic benchmarks in any country to calculate subsidy rates.

Second, the GOC asserts that there is evidence on the record that banks in the PRC independently determine the appropriate lending rate to OCTG producers on a transaction-to-transaction basis.[336] Moreover, there is no evidence that the GOC interferes with lending decisions of commercial banks or has used its investment in any Chinese bank to provide preferential financing to "encouraged" or "preferred" industries. The GOC also cites to banking regulatory improvements which has improved corporate governance and internal controls.[337] Finally, record evidence demonstrates that the risk assessments in connection with loans under investigation were proper and ample.[338]

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334 Id.
335 See GOC Case Brief at 67.
336 See G1SR at GOC-SUPP-3 and GOC-Supp-7.
337 See GOC FIS at GOC-LEND-2-14.
338 See G1SR at GOC-SUPP-3 at 5, GOC-SUPP-4 at 8, GOC-SUPP-5 at 19, GOC-SUPP-6 at 16, and GOC-SUPP-7 at 8.

As explained above, the GOC argues it is evident from the record information the Department must use an in-country benchmark if it finds loans countervailable for the final determination, whether based on a non-countervailable loan or, in the alternative, a national average interest rate. For such a purpose, the GOC provides interest rates provided by the Shanghai Interbank Offered Rates ("SHIBOR").[339]

TPCO concurs with the GOC.[340]

WSP argues the Department should use a tier one or tier two benchmark as outlined in section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(3). WSP suggests the Department base the benchmark on a rate WSP or Fanli can actually obtain on the market or rely on a Chinese national average rate.

In rebuttal, Maverick contends the use of an external benchmark is entirely justified because of the challenges associated with the use of a Chinese benchmark. The Department properly determined that loans from Chinese or foreign-banks would be unsuitable for use as benchmarks, as is the national interest rate for commercial loans. Thus, consistent with the Department's practice, it should use external market-based benchmarks.

Citing CWLP from the PRC, U.S. Steel states in rebuttal that the Department has determined interest rates in the PRC do not reflect the rates that would be found in a functioning market and rejected these claims by the GOC.[341] Moreover, the Department rejected claims in a prior investigation that interventions into the banking sector mirrors those of the U.S. Federal Reserve.[342]

Department's Position

The Department has fully addressed the arguments raised by the GOC and TPCO regarding the Department's rationale for relying on an external benchmark and its authority to do so in prior cases and the Preliminary Determination.[343] The Department continues to find that loan benchmarks must be market-based and that Chinese interest rates are not reliable as benchmarks because of the pervasiveness of the GOC's intervention in the banking sector. Consistent with prior determinations, we are not using the SHIBOR rate because it is not a market-determined rate due to the fact that banks which make up SHIBOR are subject to a deposit cap and lending floor rate, considerations which led us to find distortions in the banking sector at large.[344] Finally, as noted in the CFS from the PRC, foreign banks do not offer a suitable benchmark due to their very small share of credit and operation in niche markets.[345]

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339 See GOC factual submission at GOC-LEND-2-4 and GOC Case Brief at 70.
340 See TPCO Case Brief at 12.
341 See CWLP from the PRC IDM at 7.
342 See Citric Acid from the PRC IDM at Comment 7.
343 See CWLP from the PRC IDM at Comment 15, CFS from the PRC IDM at Comment 7, LWTP from the PRC IDM at Comment 8, CWLP from the PRC IDM at 15, Citric Acid from the PRC IDM at 7, Citric Acid Prelim at 54373 and Preliminary Determination, 74 FR at 47216-47218.
344 See CFS from the PRC IDM at Comment 10.
345 See Citric Acid from the PRC IDM at Comment 7 and Citric Acid Prelim at 54373.

Comment 23 Whether the Regression is Statistically Valid

The GOC argues the methodology used in the Preliminary Determination to compute the short- and medium-term benchmark is flawed. First, the GOC argues that the benchmark rate does not reflect economic or monetary conditions in the PRC, but economic and monetary policies, as well as the governments' influence, of other countries. Thus, the GOC contends that the Department has only shown interest rates in the PRC are slightly lower than a simple average of rates in other countries that are dissimilar to the PRC.

Second, citing to the Drazen Report, the GOC contends the Department's claim that there is a broad inverse relationship between income and interest rates is unsubstantiated and, therefore, that there is no strong theoretical justification for using only GNI as an indicator of the level of interest rates.[346] The Drazen Report, as the GOC notes, recommends that if macroeconomic indicators are to be correlated with interest rates, economic theory and empirical analysis dictate those indicators should be national savings and inflation rates, information which the GOC has placed on the record.[347]

Third, the GOC contends the Department has not provided a sufficient factual basis to show the quality of a country's institutions is a key factor in interest rate formation and, thus, is should not include this in its benchmark calculation. Furthermore, the GOC argues the Department has placed no evidence on the record to show a correlation between the interest rates and governance indicators for the countries listed in its benchmark calculations.

TPCO concurs with the GOC.[348]

U.S. Steel cites prior determinations in which the Department's has rejected the Drazen Report's conclusions[349]

Department's Position

We have addressed the issues raised by the GOC and TPCO in prior proceedings.[350] No new arguments have been made in this investigation. We continue to disagree with the GOC's argument that the assumptions underlying the benchmark calculation are flawed and that there is no relationship between gross national income ("GNI") and interest rates. Thus, we have continued to rely on the calculated regression-based benchmark first developed in CFS from the PRC.

[346] See GOC factual submission at GOC-LEND-2-11 at 18 and 21 and GOC Case Brief at 71-72.
[347] Id.
[348] See TPCO Case Brief at 12.
[349] See Citric Acid from the PRC IDM at Comment 12, LWRP from the PRC IDM at Comment 12, and LWTP from the PRC IDM at 53.
[350] See Citric Acid from the PRC at IDM at Comment 12, CFS from the PRC IDM at Comment 10, OTR Tires from the PRC IDM at Comment E.4., LWRP from the PRC IDM at Comment 12, LWTP from the PRC IDM at Comment 9, CWLP from the PRC IDM at 13, CWASSP from the PRC IDM at Comment 10, and the Preliminary Determination, 74 FR at 47216-47217.

Comment 24 Terms of Loan Rates in the IMF Data

The GOC notes the Department has characterized IMF loan data as a mix of short- and long-term loans in prior proceedings.[351] The GOC also asserts that if the Department continues to treat this "mix of short-, medium-, and longer-term loan rates as a rate that must be adjusted upward to determine the long-term rate benchmark," the Department must then also adjust the rate downward to obtain a true short-term rate.[352]

TPCO concurs with the GOC.[353]

U.S. Steel argues the Department has found that IMF loan data is appropriate because it corresponds to loans with maturities of two years or less.[354]

Department's Position

We acknowledge that the Department characterized the IFS data as reflecting medium- and/or long-term financing in the cases cited by the GOC. However, The GOC's argument appears to have been referring to the Department's regulations of defining a long-term loan as being one year or more.[355] Notwithstanding this claim, as explained in Citric Acid from the PRC, we have reviewed the information about the interest rates used in our regression analysis very carefully and we are confident that the majority of these rates reflect loan terms of one year or less. Nonetheless, as a measure of caution we have applied these rates to loans with one to two year maturities. The GOC and TPCO have not pointed to any evidence about the interest rates we are using. Instead they point to years' old characterizations of the data (which may have changed since the 1990's).

With regard to the GOC's request for a downward rate adjustment, we continue to find that the majority of countries whose interest rates are included in the basket reported loans with terms of one year or less, as explained above.[356] Therefore, a downward adjustment would likely overcompensate for any difference between one- and two-year term loans.

Comment 25 Whether Negative Real Interest Rates Should be Excluded from the Regression

The GOC contends negative real interest rates are market-based and not statistical anomalies. Therefore, the GOC contends that they should be included in the calculation. As support, the GOC cites the United States treasury bills paying negative real returns.[357]

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351 See Usinor 1995 and Inland Steel 1997.
352 See GOC Case Brief at 72.
353 See TPCO Case Brief at 12.
354 See CWASPP from the PRC IDM at Comment 10.
355 See Usinor 1995 and Inland Steel 1997.
356 See Citric Acid Prelim 73 FR at 54373, Citric Acid from the PRC IDM at Comment 9, Changbao Prelim Calc Memo at Exhibit 3.
357 See GOC FIS at GOC-LEND-2-8.

TPCO concurs with the GOC.[358]

Citing Citric Acid from the PRC, U.S. Steel states the GOC has raised this issue before and the Department rejected it.

Department's Position

The Department has addressed the argument presented by the GOC and TPCO in a prior investigation, stating that we understood negative-adjusted rates are not common, tend to be anomalous, and, moreover, are not sustainable commercially.[359] Therefore, we have continued to exclude negative real interest rates in calculating our regression-based benchmark rate.

Comment 26 Whether Certain Countries' Data Should be Removed From the IMF Data

The GOC argues the Department should remove countries from the loan benchmark calculation that reported rates for bank products other than business loans since the purpose of the calculation is to compute a benchmark for commercial loans. The GOC notes the following: the Guatemalan rate includes maximum commercial bank lending rates; the Indian rate is a prime commercial rate; the rate for Indonesia applies to working capital loans; the rate for Maldives is for loans up to 20 months; and the Nigerian rate is for first class advances.

TPCO concurs with the GOC. [360]

U.S. Steel argues the Department should not exclude the countries from the IMF loan data as requested by the GOC because it has not provided a justification why the loans are different. U.S. Steel contends there is no distinction between the rates identified by the GOC and the others contained in the data.

Department's Position

The GOC made similar arguments in Citric Acid from the PRC.[361] In that case, the GOC requested Peru and Paraguay be removed. However, as we explained there, the Department believes it is likely that several other countries mix different bank products since those countries do not provide any description of what their rates represent and, in particular, do not characterize them as being strictly for business loans. For the same reasons explained in Citric Acid from the PRC, we do not agree that we should remove the rates for Guatemala, India, Indonesia, Maldives, and Nigeria in our computation of the regression-based benchmark rate for the final determination.

Comment 27 Whether the Long-Term and Discount Rate are Flawed

The GOC argues the Department's use of U.S. dollar bond rates is arbitrary. Specifically, the

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358 See TPCO Case Brief at 12.
359 See Citric Acid from the PRC IDM at Comment 11.
360 See TPCO Case Brief at 12.
361 See Citric Acid from the PRC at 10.

U.S. yield curves are inapplicable to the term structure of RMB rates because of different monetary policies, rates of inflation, varying expectations of both currencies and interest rates. Moreover, the use of U.S. dollar BB bond rates is inconsistent with the underpinning rationale because if interest rates are a function of national income levels and the PRC is in a different income grouping from the United States, there is no rational basis for using U.S. interest rates to compute the long-term mark-up. Finally, 19 CFR 351.505(a)(3)(iii) requires the Department to consider only Aaa to Baa on Moody's scale for creditworthy companies. As such, the GOC argues the BB bond rate used by the Department is inappropriate for creditworthy companies and the mark-up should instead be based on the yield curve for quality loans.

TPCO concurs with the GOC.[362]

Citing LWTP from the PRC, U.S. Steel states the Department has consistently used BB bond rates as they are near the middle of the overall range for bonds.[363]

Department's Position

The Department has fully addressed the arguments raised by the GOC and TPCO regarding the use of the U.S. corporate BB bond rate to derive a long-term external benchmark in prior cases.[364] The Department explained that 19 CFR 351.505(a)(iii) requires the Department to use ratings of Aaa to Baa and Caa to C- in deriving a probability of default in the stated formula. However, the there is no statutory or regulatory language requiring that these rates apply to the calculation of long-term rates under 19 CFR 351.505(a)(i) or (ii). Moreover, as the Department has explained elsewhere in this final determination, we are rejecting Chinese interest rates. The transitional nature of PRC financial accounting and standards and practices, as well as the PRC's underdeveloped credit rating capacity, suggests that a company-specific mark-up (to account for investment risk) should not be the general rule. The Department determined that a uniform rate would be appropriate, which would reflect average investment risk in the PRC associated with companies not found uncreditworthy by the Department. As we had no objective basis to determine this average investment risk or a basis to presume it is only for companies with an investment grade rating, we chose the highest non-investment rate.

When the Department began to apply this mark-up using the BB corporate bond rate, we solicited comments from parties and none were filed.[365] In this instant case, we have also not received any alternatives. As no new arguments have been presented, we will continue to use the BB corporate bond rate for the final determination in any long-term loan calculations or discount rate calculations.

Comment 28 New Subsidy Allegations

U.S. Steel and Maverick maintain that on September 23, 2009, nearly two months after

[362] See TPCO Case Brief at 12.
[363] See LWTP from the PRC IDM at 53.
[364] See LWTP from the PRC IDM at Comment 8 and Citric Acid from the PRC IDM at Comment 13 and Citric Acid Prelim at 54374.
[365] See Citric Acid from the PRC IDM at Comment 13 and Citric Acid Prelim at 54374.

Petitioners filed timely new subsidy allegations, on July 30, 2009, the Department issued a new subsidy allegation memorandum, in which it announced that it was initiating an investigation of certain of the new subsidies alleged by Petitioners.[366] However, according to U.S. Steel and Maverick, the Department did not request any information from the company respondents or the GOC concerning these newly alleged subsides. U.S. Steel and Maverick note that on October 21, 2009, the Department issued a memorandum announcing its decision not to include the newly alleged subsidies as part of this investigation because it lacked the time and resources to investigate such subsidies, due to the ". . . number and complexity of the newly alleged subsidies, and the short time the Department has to complete its investigation."[367]

U.S. Steel and Maverick argue that there is no basis for the Department's contention since section 775 of the Act requires the Department to investigate whenever it "discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition." They also cite to the Department's regulations, which provide for the investigation of newly discovered subsidies in a countervailing duty investigation where "sufficient time remains before the scheduled date for the final determination."[368] U.S. Steel and Maverick assert that, consistent with the Department's regulations, Petitioners submitted their new subsidy allegations within the time limit for submitting new subsidy allegations (i.e., 40 days before the scheduled date of the preliminary determination).[369] They dispute the Department's assertion that it could not have investigated any of the newly alleged subsidies before the deadline of the preliminary determination because at the time of the allegation, the Department was engaged in analyzing questionnaire responses, needed time to prepare supplemental questionnaires, and needed to analyze various comments by the parties related to its upcoming preliminary determination. U.S. Steel argues that the tasks cited in the Department's Status of New Allegation Memorandum are part of the Department's normal responsibilities in every countervailing duty proceeding and should not be reasons for the Department's inability to investigate the new subsidies. U.S. Steel further maintains that, in an effort to justify its decision not to investigate the newly alleged subsidies, the Department cites Bethlehem for the proposition that the Department may legitimately decline to investigate a new subsidy allegation where the subsidies are "unreasonably late or extraordinarily complex."[370] However, U.S. Steel asserts that Bethlehem and the other case cited by the Department[371] are distinguishable from this instant investigation in that neither of the cases cited involved a timely filed allegation of new subsidies. Accordingly, U.S. Steel contends that the analysis conducted by the court in Bethlehem and Royal Thai Gov't does not apply to this case. U.S. Steel also argues that there is also no basis for the Department's finding of "complexity" with respect to the

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[366] See the NSA Memorandum. See also the New Subsidy Allegation for Changbao (July 30, 2009) (Public Version); New Subsidy Allegation for TPCO (July 30, 2009) (Public Version); New Subsidy Allegation for Jianli (July 30, 2009) (Public Version); New Subsidy Allegation for WSP (July 30, 2009) (Public Version);
[367] See Status of the New Subsidy Allegation Memorandum (Public Document).
[368] 19 CFR 351.311(b).
[369] See Countervailing Duties, 62 FR 27296, 27336 (Dep't Commerce May 19, 1997) (Final Rule); Countervailing Duties, 61 FR 7308, 7325 (Dep't Commerce Feb. 27, 1996) (Proposed Rule) (noting that the text of C.F.R. §351.301(d) "is based on existing section 355.31(c) and sets for the time limits for a countervailable subsidy allegation in investigations and reviews. These time limits are unchanged from the existing regulations.")
[370] See the Department's Status of New Subsidy Allegation Memorandum at 4 (Public Document) (citing Bethlehem, 140 F. Supp. 1354 (Ct. Int'l Trade 2001)).
[371] See Royal Thai Gov't.

newly alleged subsidies at issue. According to U.S. Steel, the only two subsidies cited by the Department as being "complex" are a debt-to-equity swap involving TPCO and the provision of land use rights for LTAR. U.S. Steel further maintains that in the Preliminary Determination, the Department countervailed aspects of the debt-to-equity swap involving TPCO and placed detailed information on the record concerning the provision of land use rights for LTAR. Consequently, U.S. Steel argues that a full investigation of each of these programs would not have added appreciably to the Department's work load. For the aforementioned reasons, U.S. Steel argues that the Department can and should investigate and countervail the newly alleged subsidies based on Petitioners' new subsidy allegations and the questionnaire responses on the record concerning such subsidies.

The GOC and Changbao concur with the Department's decision not to investigate Petitioners' newly alleged subsidies, and assert that because the Department did not investigate such subsidies, no additional evidence has been added to the record supporting the initiation of an investigation on these purported programs. WSP also argues that Petitioners ignore the fact that the Department's inability to investigate the newly alleged subsidies was of their own doing. WSP contends that by refusing to request an alignment of the final CVD determination deadline of this investigation with that of the antidumping investigation, as is done in the vast majority of cases, Petitioners were well aware that they were leaving the Department with an extraordinarily compressed time schedule to complete the investigation, let alone investigate an additional nine separate and potentially complex programs. WSP further contends that most of the information that was cited in Petitioners' new subsidy allegation was public in nature, and thus, available to Petitioners well prior to the initiation of the investigation. However, according to WSP, it appears that Petitioners waited several months to allege such programs in order to limit the time available for the respondents to respond to any such allegation. Accordingly, WSP asserts that the Department properly deferred the investigation of such programs until a subsequent segment of this proceeding.

Department's Position

We disagree with U.S. Steel and Maverick. The Department's resources are not infinite and, as acknowledged by the court in Bethlehem and Royal Thai Gov't, resource constraints are a factor in the Department's consideration of whether it is required to investigate newly alleged subsidies that arise near the end of an investigation. As indicated in the Department's Status of New Subsidy Allegations Memorandum, the Court has recognized that investigating subsidies takes time. In Bethlehem, the Court found that when the Department is faced with unreasonably late or extraordinarily complex subsidy allegations, it may "lack the resources or time necessary to investigate" the new allegation.[372]

We note that while the Court found that the Department should have investigated the newly alleged, "straightforward" subsidy in the administrative proceeding underlying Bethlehem, the Court acknowledged that a limited time and a lack of resources might prevent the Department from conducting such an investigation. Moreover, a later CIT decision elaborated on the need

[372] See Bethlehem at 1361.

for time to investigate complex subsidies.[373] Quoting the above-cited passage from Bethlehem, the Royal Thai Gov't Court stated that equity infusion allegations "implicate[d] precisely" that concern:

> Thus, although four months may have been sufficient time in Bethlehem Steel where a straightforward subsidy was at issue, the five months that Commerce had in this case was not sufficient time to investigate U.S. Steel's complex equity infusion allegation.[374]

In contrast with Bethlehem and Royal Thai Gov't, the Department in this instant investigation was faced with even less time, as the allegations were received on July 30, 2009, and the final determination was due on November 23, 2009. In other words, the Department had a little less than four months to investigate at least 13 new allegations.

In the Status of New Allegation Memorandum, the Department recognized the fact that in the administrative determinations underlying both the Bethlehem and Royal Thai Gov't decisions, petitioners' allegation were untimely filed according to the deadline established in 19 CFR 351.301(d)(4)(i)(A). Nevertheless, both court rulings determined that the Department's deadline was beside the point and turned instead to the amount of time the Department had to investigate the allegations and their complexity.

Moreover, we note that while the Department has determined that certain of Petitioners' claimed subsidies should not be investigated for the reason that they were not properly filed, it is also true that Petitioners allegations involved some very complex subsidies, such as the provision of land for LTAR, and a debt-to-equity swap for one respondent.[375] In the above-referenced memorandum, we also noted that even the alleged subsidy programs, that appear to be more straight forward, were provided by different levels of the GOC (e.g., national, regional, municipal); thereby, adding to the length of time it would take to develop a proper investigative record. For these reasons, we believe that the allegation made by U.S. Steel and Maverick that the Department could and should have investigated the aforementioned subsidies is unfounded.

Because the CVD deadline was not aligned with the AD deadline, the Department schedule was compressed and extensive resources had to be committed in order to complete this investigation by November 23, 2009, even without investigating the newly alleged subsidies. Verification began on October 12, 2009, within five weeks of the preliminary determination. In these five weeks, the Department had to disclose its extensive preliminary calculations,[376] prepare verification outlines, and review new submissions by the parties in preparation for verification. Verification was conducted in one week. In the time remaining before the final determination, we prepared verification reports, received extensive case and rebuttal briefs from all interested parties, analyzed the parties' comments, and prepared the final determination. This time constraint prevented the Department from investigating the newly alleged subsidies.

[373] See Royal Thai Gov't.
[374] Id. at 1320.
[375] See the NSA Memorandum. See also, Status of New Subsidy Allegation Memorandum.
[376] See 19 CFR 351.224(b).

Moreover, because most of the newly alleged subsidies had not been previously investigated, a complex specificity analysis would have been required. Such a complex analysis would have required the Department to issue detailed questionnaires, analyze questionnaire responses and related government laws, decrees and regulations; and then analyze the actual program usage for each of the programs, including analysis of the actual number of enterprises and industries using each of the alleged programs, and the amount of benefits on an enterprise- and industry-specific basis. This is in addition to the data that would need to have been requested of the mandatory respondent companies about their use of the programs. This information could not have been gathered, analyzed, and followed up with supplemental questionnaires with further analysis of supplemental questionnaire responses, before the start of verification, on October 12, 2009. Nor could the Department have prepared a post preliminary determination of the countervailability of these programs. For all of the reasons mentioned, the Department did not have the necessary time to investigate the newly alleged subsidies in this investigation. Accordingly, as indicated in the Department's Status of New Shipper Allegation Memorandum, if this investigation results in the imposition of a countervailing duty order, the Department intends to investigate the above-referenced subsidies in the first administrative review.

Comment 29 Export Restraints on Steel Rounds

U.S. Steel, Maverick and TMK IPSCO, et al. argue that the Department should reconsider its rejection of Petitioners' new subsidy allegation with respect to the PRC's export restraints on steel rounds. They maintain that, in the CVD Petition, Petitioners alleged that Chinese producers of OCTG received a countervailable benefit from the GOC's export restraints on raw materials. They further maintain that in their new subsidy allegations filed on July 30, 2009, they demonstrated that the export restraints imposed by the GOC on steel rounds restricted exports and lowered Chinese domestic prices of steel rounds; thereby, conferring countervailable benefits on Chinese OCTG producers. Maverick claims that the Petitioners provided information indicating that the GOC's intent in enacting export restrictions on steel rounds was to provide its domestic downstream processors of round steel with lower input costs.[377] Maverick further contends that Petitioners also provided empirical evidence demonstrating a connection between the imposition of export taxes and the reduction in Chinese domestic prices for steel rounds.[378]

U.S. Steel, Maverick, and TMK IPSCO, et al., state that, while the Department acknowledged that Petitioners had provided reasonably available information showing that Chinese domestic prices are less than world prices, the Department declined to investigate export restraints because Petitioners' information did not show a connection between the export restraints and such a price difference. They argue that not only did the Department's decision fail to address the factual information submitted by Petitioners, but that the Department also waited for months to issue the NSA Memorandum and never alerted the Petitioners that their allegation was deficient. By contrast, U.S. Steel and Maverick contend that the Department allowed the GOC and the responding companies to submit new information at a late stage in this investigation.

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[377] See Exhibit 2 of Petitioners' NSA submission, dated July 30, 2009.
[378] Id. at 1-2.

U.S. Steel, Maverick, and TMK IPSCO, et al. further argue that Congress, recognizing the difficulties faced by private parties in obtaining complete and accurate information concerning subsidies, deliberately set the bar low for initiation investigations. They assert that under the "reasonably available" standard set forth in the statute, a petitioner is not required to prove that its subsidy allegation will be confirmed during the course of the investigation, nor must petitioners establish that a potentially countervailable subsidy actually has been used or has provided a benefit during the period of investigation, in order for a subsidy allegation to be included in the investigation.[379] Moreover, U.S. Steel, Maverick and TMK IPSCO, et al. contend that their allegation not only met the "reasonably available" standard by demonstrating the effect of the PRC's export restraints on the prices of steel rounds, but that it was bolstered by the U.S. Government, through the United States Trade Representative ("USTR"), which made clear the significant effect of the PRC's export restraints on the price of steel raw materials. In this regard, U.S. Steel and Maverick note that the United States, followed by Mexico and the European Communities, requested consultations at the WTO concerning the PRC's export restraints on a number of key inputs used by the steel industry, and have more recently requests a WTO dispute settlement panel.[380]

U.S. Steel, Maverick, and Petitioners argue that, in light of the findings by the USTR and others, as well as the evidence presented by Petitioners in their NSA, the Department's rejection of such an allegation is improper. They also contend that the Department has on record all the information required to countervail this subsidy, and argues that the Department should countervail the export restraints on steel rounds in the final determination.

The GOC and WSP assert that the Department correctly refused to investigate export restraints on steel rounds because, as the Department stated in its NSA Memorandum, Petitioners' alleged export restraints on steel rounds in this investigation do not show a connection between the export restraints and the price differences. According to the GOC, given its decision to reject petitioners' aforementioned allegation, the Department neither requested from the GOC nor examined the relevant government measures related to the alleged export tax on steel rounds. The GOC further maintains that the Department, similarly, has neither requested nor examined data pertaining to the purported impact of the export tax on domestic Chinese prices, supply, and demand of steel rounds. Accordingly, the GOC argues that the Department cannot lawfully base any aspect of its final determination on Petitioners' aforementioned allegation, which has neither been tested nor substantiated by record evidence.

The GOC further argues that, on procedural grounds, Petitioners' claim involving the impact of export restraints on the Chinese domestic prices of steel rounds should be rejected by the Department because the GOC has not had an opportunity to contest or comment on such an allegation. The GOC argues that having the opportunity to comment on Petitioners' unsubstantiated allegation is especially important, in light of the fact that the Department in CFS from Indonesia drew a distinction between export restrictions that may allow for some exports

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[379] See section 701(b)(1) of the Act; 19 CFR 351.203; Torrington; and Bethlehem..

[380] See China - Measures Related to the Exportation of Various Raw Materials, WTO Requests for Consultation by the United States; Mexico; and the European Communities. See also "United States Requests WTO Panel Against China Over Export Restraints On Raw Materials, European Union and Mexico Join The United States In Request," USTR Press Release (November 4, 2009) (Public Document).

and alternative sales outlets; and export ban which ". . . eliminates all such alternative sales outlets and would likely have a significant impact on the market dynamics of the product in question."[381] Moreover, the GOC maintains that in their effort to demonstrate the impact of the alleged export tax on steel rounds, Petitioners provided data, comparing steel round prices in the PRC to FOB steel round export prices in Turkey, and the FOB steel round prices in the Black & Baltic Sea Ports. The GOC contends that the data provided by Petitioners, shows insignificant change in the average Chinese price and the average Black & Baltic Sea export FOB price of steel rounds between the calendar years 2006 and 2008.

Department's Position

Petitioners' allegation involving export restraints on steel round, similar to their allegation involving export restraints on scrap and scrap substitutes, does not meet the threshold for the initiation of an investigation, as has been established by the Department in prior cases (e.g., CFS from Indonesia, and Leather from Argentina). For example, in Leather from Argentina, the Department relied on information indicating that an embargo on hide exports provided a countervailable subsidy to Argentine leather producers based on long-term historical price comparisons that demonstrated a clear link between the imposition of the embargo and the divergence of prices. Such information was not provided by Petitioners in the instant investigation. The information submitted by petitioners did not include an historical price trend comparison that would allow a review as to whether pricing differences during the POI are due to export restraints. As such, the Department continues to find that this allegation did not meet the standard for initiation, as set out under the statute.

Comment 30 Provision of Electricity for Less Than Adequate Remuneration

The GOC argues the Department may not countervail the GOC's provision of electricity as it constitutes infrastructure and, therefore, is not a financial contribution under the Act. Moreover the record evidence does not demonstrate that the GOC provides electricity to OCTG producers at preferential rates.

If the Department finds that the provision of electricity is a financial contribution, , the GOC argues the Department may not use rates from Guangdong as the benchmark because the GOC has provided the rates applicable to each of the jurisdictions where the respodents are located. These local rates, according to the GOC, are appropriate to determine if a benefit exists. The GOC adds that Guangdong rates are not appropriate as a benchmark because they are set differently from rates in other provinces in the PRC (e.g., not unified, heavy demand, distance from coal sources, etc.).[382]

The GOC claims that the Department stated in the Preliminary Determination that it would seek additional information and it did not.[383] Therefore, it would not be appropriate to apply adverse facts available under these circumstances.

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[381] See CFS from Indonesia IDM at 29.
[382] See G1SR at GOC-SUPP-28 at 2 and 16.
[383] See Preliminary Determination 74 FR at 47224.

Finally, if the Department decides to apply adverse facts available to this program, the GOC submits it should use the rate calculated in KASR from the PRC.

Jinali notes the Department stated in the Preliminary Determination that it would request further information on this program.[384] The Department did not request any further information. Thus, Jinali asserts, the record is the same and there is no basis to find the program countervailable.

Jianli states that Zhenjiang Province has a uniform rate schedule across the province and it has been verified that Jianli pays the applicable rates.[385] Thus, Jianli asserts there is no reason to find the electricity program countervailable based on de jure or de facto specificity. Jianli also claims the current case is similar to OTR Tires from the PRC and is easily distinguishable from other cases where the Department countervailed electricity because rates in the province differed among similarly situated customers.[386]

Maverick argues the Department should reject Jianli's argument and countervail the electricity program. Maverick notes that the cases cited by Jianli predate the Department's discovery that the NDRC sets the electricity prices in the PRC on a preferential basis. Maverick states the Department requested specific information from the GOC regarding NDRC involvement in pricing. The GOC either stated it was gathering the information or the Department's questions were based on misunderstandings.[387] In its final submission, the GOC failed to supply the information. As such, Maverick asserts the Department should use adverse facts available and countervail the electricity program in accordance with its finding in KASR from the PRC.[388]

U.S. Steel challenges the GOC's arguments. First, U.S. Steel states electricity is not considered infrastructure and is countervailable.[389] Second, U.S. Steel notes that the GOC failed to provide information requested by the Department which was necessary to assess what constitutes adequate remuneration in the PRC. U.S. Steel argues that the information was not provided in the supplemental questionnaire prior to the Preliminary Determination and further was not filed by the September 21, 2009, deadline. Third, U.S. Steel contends the Department provided the GOC ample time to provide the necessary information, wand that the GOC cannot now blame the Department for not asking further questions. Finally, U.S. Steel argues the Department should follow KASR from the PRC and assign adverse facts available, and using the highest electricity rate applicable to the user in the PRC.[390]

Department's Position

As noted in the "Use of Facts Otherwise Available and Adverse Facts Available" section above, the GOC did not provide information requested in the Department's August 11, 2009,

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384 See Preliminary Determination 74 FR at 47224.
385 See Jianli Verification Report at 12-13.
386 See OTR Tires from the PRC IDM at 24 and LWTP from the PRC IDM at Comment 11.
387 See G1SQR at 19-22.
388 See KASR from the PRC IDM at 5-6.
389 See Hot-Rolled Steel from Thailand at Comment 10 (sustained Royal Thai Gov't at 1354-1358.
390 See KASR from the PRC IDM at 5-6.

supplemental questionnaire. The GOC stated that it was "gathering the information."[391] Although the Department stated it intended to request further information, this was predicated on the assumption that the additional information previously requested by the Department would eventually be provided by the GOC. By not providing this information, the GOC impeded the Department's ability to fully evaluate the above program and make a determination on its countervailability. 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 31 Critical Circumstances

U.S. Steel maintains the Department should reverse its preliminary negative critical circumstances determination. In analyzing whether there are critical circumstances pursuant to section 703(e)(1)(B) of the Act, U.S. Steel asserts the Department should evaluate whether there are "massive imports" over a "relatively short period."[392] In performing such analysis, U.S. Steel states the Department normally compares import volume for the three months immediately preceding the filing of the petition ("normal base period") with the three months following the petition's filing ("normal comparison period"). However, according to U.S. Steel, the Department may also consider a period earlier than the normal base period and comparison period as a basis for its analysis if it finds "importers, or exporters or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely."[393] In the instant investigation, U.S. Steel contends that importers, exporters and producers did have reason to believe a proceeding covering OCTG from the PRC would likely be introduced as of July 2008[394] (i.e., prior to the normal base and comparison periods).[395] As such, U.S. Steel argues two reasons why the Department should render an affirmative finding of critical circumstances for the final determination.

First, U.S. Steel states there was substantial evidence from 2007 and 2008 placed on the record of this investigation which demonstrate importers, exporters and producers had reason to believe a proceeding was likely well in advance of the petition's filing. Referencing Wire Rod from Germany and Ammonium Nitrate from Ukraine, where the Department made affirmative findings of critical circumstances, U.S. Steel argues there was evidence showing importers, exporters and producers may have had some notice during the proposed base period that was likely and the Department found cause to use earlier base and comparison periods. According to U.S. Steel, earlier base and comparison periods similar to those requested in the instant investigation were employed in Wire Rod from Germany and Ammonium Nitrate from

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[391] See G1SR at 19-21.
[392] See U.S. Steel Case Brief at 84.
[393] See U.S. Steel Case Brief at 84.
[394] U.S. Steel noted evidence dated July 2008 included the initiation by the European Union ("EU") of an antidumping investigation against imports of seamless tubular products, including OCTG, from China; and a press report after the EU's initiation which stated "the United States is planning to start an antidumping investigation on Chinese seamless steel pipes and a representative of the Chinese Iron and Steel Association warning the United States "may start an antidumping investigation into seamless steel pipes soon." See U.S. Steel at 85.
[395] The petition was filed on April 8, 2009 which established the normal base period as January 2009 to March 2009 and the normal comparison period as April 2009 to June 2009.

Ukraine.[396] U.S. Steel argues that the events cited by Petitioners as having occurred during its proposed alternate base period, for example, should be evaluated as building an awareness among importers, Chinese producers and exporters that a case could be filed.[397] Id. at 87.

Second, U.S. Steel argues the Department has previously relied on weaker evidence in Ammonium Nitrate from Ukraine and Wire Rod from Germany to conclude an affirmative finding of critical circumstances than is presented in the instant investigation. Thus, U.S. Steel maintains that if the evidence from both of those cases suggested a proceeding was likely, then such evidence clearly exists in this investigation. Id. at 88.

Jianli rebuts U.S. Steel's claims and states there has not been any new evidence presented to require the Department change its preliminary determination. Consequently, Jianli asserts the Department should continue to find negative critical circumstances for the final determination.[398] Jianli also disagrees with U.S. Steel and argues the requisite knowledge provided in Wire Rod from Germany is stronger than the instant case. Citing the decision memorandum for that case, Jianli states the Department found critical circumstances because two news articles identified the likelihood of proceedings against subject merchandise from several countries. Id. at 23. However, unlike Wire Rod from Germany, Jianli maintains that for the instant investigation there were no objective news sources indicating a proceeding was likely concerning subject merchandise. Id.

According to Jianli, pre-July 2008 data provided by petitioners, do not demonstrate any likelihood of a trade case against OCTG. For example, Jianli highlights the EU antidumping investigation cited by petitioners, was broad and not specific to subject merchandise, merely stating "the product allegedly being dumped is certain seamless pipes and tubes, of iron or steel." Id. at 24. Similarly, Jianli argues the statement by the CISA official, that "the United States may start an antidumping investigation into seamless steel pipes soon" fails to specify an investigation into OCTG. Id. On the basis unconvincing evidence, Jianli urges the Department to conclude that no critical circumstances exist for the final determination.

Department's Position

In the Preliminary Determination, the Department found that critical circumstances do not exist because imports had not been massive over a "relatively short period of time," pursuant to section 703(e)(1)(B) of the Act.[399] Based on the Department's analysis of shipment data from the three-month period preceding the filing of a petition (i.e., base period) and the three months following the filing of the petition (i.e., comparison period), imports decreased for all four respondent companies, as well as that of all-other Chinese OCTG exporters.[400] Therefore, we find the criterion under section 703(e)(1)(B) of the Act has not been met, i.e., there have not been massive imports of OCTG over a relatively short period of time.

396 See U.S. Steel Case Brief at 86.
397 Id. at 87.
398 See Jianli Rebuttal Brief at 22.
399 See Preliminary Determination, 74 FR at 47211 and 47212.
400 See Preliminary Determination; see also "Critical Circumstances Analysis," dated September 8, 2009, on file in the Department's CRU.

We continue to disagree that the base and comparison periods proposed by petitioners are appropriate. We acknowledge that in the two cited cases, Ammonium Nitrate from Ukraine and Steel Wire Rod from Germany, warnings of possible investigations were made in the proposed base periods, but those warnings were made two or three months prior to the date the Department relied upon for determining the base and comparison periods. Thus, those earlier warnings could be viewed as leading up to a culminating event. In the instant investigation, however, petitioners have cited events as early as nine months prior to allegedly culminating event in July 2008. We also disagree with U.S. Steel's claim that that the information in Ammonium Nitrate from Ukraine and Steel Wire Rod from Germany was weaker than the information here. In the former case, the Department had information that the domestic industry was active (in monitoring imports) and in the latter, a trade publication had alerted importers, producers and exporters to the likelihood of investigations of wire rod. Here, the culminating event cited by petitioners was a statement by a Chinese official, not the U.S. industry, who was quoted as saying the U.S. "may" start an AD investigation on seamless pipe (a similar product, but not the merchandise subject to this investigation).

For these reasons, we have continued to rely on the "normal" base and comparison periods specified in 19 CFR 351.206(i). Further, using this base period, the Department continues to that critical circumstances do not exist because imports had not been massive over a "relatively short period of time," pursuant to section 703(e)(1)(B) of the Act.[401]

Comment 32 Export Restraints on Coke

U.S. Steel requests that the Department reconsider its position and find the GOC's export restraints on coke to constitute a countervailable subsidy for purposes of the final determination. U.S. Steel argues that, prior to the Department's Preliminary Determination; it submitted comments demonstrating that the GOC imposed export restrictions on coke in the form of export quotas, export licensing requirements, and export duties, which artificially increased the domestic supply and suppressed domestic prices of coke within the PRC; thereby conferring substantial benefits to downstream Chinese consumers of coke, including TPCO and WSP. U.S. Steel notes that, while the Department, in its Preliminary Determination, recognized that export restraints can constitute countervailable subsidies, the Department declined to countervail the GOC's export restraints on coke based on its conclusion that the information on the record did not support a finding that export restraints had a suppressive effect on coke prices in the PRC.

U.S. Steel argues that while the information it provided previously to the Department regarding export restraints should have been sufficient, the record also includes additional information which demonstrates that the aforementioned export restraints have had a suppressive effect on Chinese domestic coke prices. Specifically, U.S. Steel cites to the USTR's commencement of a WTO case involving the PRC's export restraints on coke and other raw materials, in which the USTR asserted that the PRC's export restraints on coke have artificially increased the domestic supply of this material input and suppressed coke prices within the PRC; thereby providing downstream Chinese steel producers, such as TPCO and WSP, a competitive advantage

401 See Preliminary Determination, 74 FR at 47211 and 47212.

compared to their foreign counterparts. Moreover, U.S. Steel asserts that the USTR's findings are further supported by the conclusion of the Governments of Mexico and the European Communities, which have joined the United States in initiating WTO dispute settlement proceedings against the PRC with respect to the GOC's export restraints on coke.[402] Accordingly, U.S. Steel argues that for purposes of the final determination, the Department should find the GOC's export restraints on coke to constitute a countervailable subsidy, and requests that the Department use the methodology proposed in U.S. Steel's August 25, 2009 submission to measure the benefits to TPCO and WSP resulting from the GOC's export restraints on coke.

In their rebuttal briefs, the GOC, TPCO and WSP argue that the Department should reject Petitioners' claim and continue to find the PRC's export restraints on coke not to be countervailable, as such export restrictions did not confer a countervailable subsidy to the Chinese OCTG industry during the POI. They contend that the Petitioners provided no new evidence in support of their claim that export restraints constitute a countervailable subsidy. The GOC, TPCO and WSP cite to the Preliminary Determination, in which the Department stated that it has countervailed export restraints in only a limited number of cases, based on unique sets of circumstances. The GOC maintains that the only recent case, namely, CFS from Indonesia, in which the Department has countervailed alleged export restraints, involved a different type of export restraints, in terms of both the severity and the length of time in which the measures were imposed, rather than the export tax and quota at issue in this investigation. Specifically, the GOC maintains that the countervailable subsidy at issue in CFS from Indonesia involved a total ban on the exportation of logs from Indonesia; whereas, the GOC's export restrictions on coke, alleged in this investigation, are not a total export ban that could constitute a countervailable subsidy to Chinese producers of OCTG. Id.

Moreover, the GOC contends that the Petitioners appear to implicitly claim that the suppliers of coke to the OCTG industry have been "entrusted or directed" by the GOC to make a financial contribution to the OCTG industry. However, according to the GOC, the Petitioners failed to provide any evidence that the suppliers of coke to the OCTG industry are motivated by reasons other than commercial considerations. In addition, the GOC maintains that the measures establishing the export tax and quota, that it provided to the Department, do not mention any intent to assist any domestic Chinese industries, much less the OCTG industry, and asserts that the petitioners failed to provide evidence demonstrating that the export restrictions on coke are specific to the OCTG industry.

Finally, the GOC and WSP argue that petitioners' claim that the export tax and quota provided benefits to the OCTG industry by suppressing the price of coke purchased by the respondent during the POI, is not supported by any independent studies or any other uncontroverted record

[402] See "China – Measures Related to the Exportation of Various Raw Materials, Request for Consultations by the United States, WT/DS394/1 (June 25, 2009); "United States Requests a WTO Panel Against China Over Export Restraints on Raw Materials, European Union and Mexico Join The United States In Request," USTR Press Release (November 4, 2009) (Public Document). See also "China – Measures Related to the Exportation of Various Raw Materials, Request for Consultations by Mexico, WT/DS398/1 (August 26, 2009);" and "China – Measures Related to the Exportation of Various Raw Material, Requests for Consultation by the European Communities, WT/DS395/1 (June 25, 2009)."

evidence. In this regard, the GOC, TPCO, and WSP maintain that the record evidence demonstrates that the export tax and quota on coke did not provide benefits to Chinese purchasers of coke, much less the OCTG industry. This, according to the GOC, TPCO, and WSP, is evidenced by the fact that the price series for metallurgical coke sold in the PRC, obtained from China Coal Resources, an authoritative source for such data, submitted by the GOC on record, demonstrates that coke prices actually rose from January 2006 through August 2008, despite the increase in export taxes from 5 percent to 40 percent. Accordingly, the GOC requests that the Department continue to find the export restraints on coke not to be countervailable and dismiss petitioners' aforementioned allegation for purposes of the final determination.

Department's Position

In the Preliminary Determination, the Department found that the PRC's export restraints on coke were not countervailable because the information on the record did not support such a finding. The Department stated that it has countervailed alleged export restraints in only a limited number of cases. In Leather from Argentina, the Department found that an embargo on hide exports provided a countervailable subsidy to Argentine leather producers based on long-term historical price comparisons that demonstrated a clear link between the imposition of the embargo and the divergence of prices.[403] In CFS from Indonesia, the Department found that a log embargo provided a countervailable benefit to paper producers, in part, based upon independent studies that stated that the log embargo provided a subsidy to downstream producers.[404] Moreover, in determining whether specific export restraints are countervailable, the Department looks at the length and severity of the restraints imposed.[405]

In this instant investigation, however, a finding of countervailability is not supported by the information available on the record, as has been established by the Department in prior cases (e.g., CFS from Indonesia, and Leather from Argentina). Specifically, there is no record evidence in this investigation, such as independent studies, demonstrating that the PRC's export restraints could be linked to the divergence between Chinese domestic prices and world prices of coke over a period of time, as was the case in CFS from Indonesia. Furthermore, there is no long-term pricing data on the record demonstrating a clear link between the imposition of export restraints and the divergence of Chinese and world market prices of coke as required under the precedent established in Leather from Argentina. Accordingly, the Department continues to find export restraints on coke to be not countervailable for purposes of this final determination.

Comment 33 VAT Rebates

U.S. Steel argues that the Department should countervail excessive VAT rebates that respondents received on exports during the POI. First, citing 19 CFR 351.517(a) and the CVD Preamble, 63 FR at 65383, U.S. Steel states that the Department determines whether a VAT rebate is excessive by comparing the amount of VAT rebated on the export of a product to the amount of VAT

[403] See Leather from Argentina, 55 FR 40212
[404] See CFS from Indonesia IDM at Comment 22.
[405] See CFS from Indonesia IDM at 29.

levied on a comparable like product sold domestically. U.S. Steel claims that the PRC's VAT rebate system provides an excessive rebate under the regulation and the CVD Preamble.

Citing the "Provisional Regulation of China on Value-added Tax" (Exhibit III-94 of the Petition), U.S. Steel notes that the amount of VAT levied under Chinese law equals the amount of VAT that a company collects on its output minus the amount of VAT that the company pays on inputs. Also, citing "Introduction to the VAT Rules in China" (Exhibit 1 of Petitioners' FIS), U.S. Steel notes that the domestic VAT rebate on inputs and output in the PRC is 17 percent, while the VAT rebate on exports of OCTG is 13 percent. Using this information, U.S. Steel provides a sample calculation to contend that OCTG producers receive an excessive VAT rebate upon exportation. U.S. Steel then applies this sample calculation to respondents' data to demonstrate that each respondent received an excessive VAT rebate during the POI.

In response, the GOC argues that the Department correctly determined in the Preliminary Determination that the VAT levied on sales of OCTG in the home market did not exceed the amount of VAT exempted on the export of OCTG. The GOC also asserts that U.S. Steel's argument focuses only on the producer of the like product, while the Department's regulations and the SCM Agreement also pertain to other companies in the manufacturing chain (e.g., raw material suppliers).

TPCO Group notes its support of the GOC's rebuttal arguments. Regarding U.S. Steel's calculation specific to TPCO Group, TPCO Group argues that U.S. Steel relies on assumptions and overstates the alleged benefit by not accounting for differences between the volume of domestic sales and export sales.

Jianli argues that the Department has consistently investigated and dismissed the same argument on VAT rebates in the PRC. Jianli states that the Department should not find the program countervailable under 19 CFR 351.517(a) because the 13 percent VAT rebate on exports is less than the 17 percent VAT on inputs.

Changbao argues that the Department correctly determined in the Preliminary Determination that the VAT refund on exports of OCTG did not confer a countervailable benefit because the export rebate of 13 percent was less than the VAT rate of 17 percent levied on domestic sales of OCTG. Changbao presents a set of steps for calculating the VAT rebate, applies these steps to U.S. Steel's example, and argues that no excessive VAT rebate is possible under the example.

Department's Position

We agree with the GOC and the respondents. 19 CFR 351.517(a) states,

> In the case of the exemption or remission upon export of indirect taxes, a benefit exists to the extent that the Secretary determines that the amount remitted or exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

On pages 38-39 of the GQR, the GOC identifies the following VAT rates:

- VAT rate on purchases of steel rounds: 17 percent;
- VAT rate on domestic sales of OCTG: 17 percent; and
- VAT refund rate on exports of OCTG: 13 percent.

U.S. Steel does not dispute the rates reported by the GOC. Instead, using these same rates, U.S. Steel presents a sample VAT calculation to demonstrate its argument that the VAT rebated on an export sale of OCTG is higher than the VAT levied on a comparable domestic sale of OCTG.[406] In its sample, U.S. Steel claims that the difference between VAT on a domestic sale of OCTG (i.e., 17,000 RMB in U.S. Steel's example) and VAT on inputs to OCTG (i.e., 11,900 RMB in the example) equals the amount of VAT levied on the OCTG producer (i.e., 5,100 RMB in the example).

19 CFR 351.517(a), however, identifies the relevant indirect domestic tax as "the amount levied with respect to the production and distribution of like products when sold for domestic consumption." In its example, U.S. Steel excludes the 11,900 RMB of VAT that an OCTG producer pays when it purchases steel rounds for the production of OCTG. This amount constitutes one part of the amount that the government levies with respect to the production and distribution of the like product sold for domestic consumption. Even though the government collects this VAT through the supplier of steel rounds, the OCTG producer pays VAT to the supplier when it purchases the steel rounds. Respondents have stated that they pay VAT on their inputs, and information on the record supports their statements.[407] Petitioners have not argued that respondents do not pay VAT on their inputs or pay rates lower than what the GOC reported in the GQR, nor have they explained why they have excluded these amounts from their calculation. Accordingly, the Department finds that it is appropriate to include these amounts when calculating the total amount levied for the purposes of 19 CFR 351.517(a).

The 5,100 RMB of VAT that the government collects directly from the OCTG producer on the final sale of OCTG constitutes the second part of the indirect tax that the government levies on the production and sale of OCTG in the domestic market. Thus, the total indirect tax on the production and sale of OCTG in U.S. Steel's example is 17,000 RMB, or 17 percent of the selling price of OCTG. This exceeds the net VAT rebate of 7,900 RMB that U.S. Steel calculated for a comparable export sale. Thus, under 19 CFR 351.517(a), no subsidy exists in U.S. Steel's example because the export rebate is less than the indirect tax on the production and sale of OCTG in the domestic market.

In addition to the sample calculation, U.S. Steel presented calculations that it argues are evidence that each of the respondents received excessive VAT rebates on exports of OCTG during the POI. We do not find that these calculations provide evidence that the respondents received a countervailable subsidy under 19 CFR 351.517(a). First, consistent with its sample calculation, U.S. Steel excluded VAT that OCTG producers paid to their suppliers in connection with their

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406 See U.S. Steel's Case Brief at pages 64-66.
407 See, e.g., TSQR at page 20 and TPCO Verification Report at pages 11-14 (purchase documentation showing VAT assessed on input purchases).

purchases of steel rounds. Thus, U.S. Steel did not calculate the full amount of VAT that the government levies on the production and distribution of OCTG in the home market. Second, on page 63 of its case brief, U.S. Steel explained its argument as follows: "(W)hen the amount of VAT levied on a domestic sale of OCTG is correctly calculated according to Chinese law and compared to the VAT rebated on a comparable export of OCTG, it is clear that the rebate is excessive…" In its calculations for each respondent, however, U.S. Steel calculated an aggregate VAT rebate on each respondent's total export sales and compared this to aggregate VAT on all domestic sales. U.S. Steel's calculations do not account for differences in the volume of sales between the domestic and export markets. Thus, U.S. Steel did not use comparable domestic and export sales in its calculations, which is the basis of U.S. Steel's argument and its hypothetical example. As a result, the calculations provide no basis for us to conclude that respondents received a countervailable subsidy under 19 CFR 351.517(a).

Comment 34 Changbao Sales Denominator

According to U.S. Steel, Changbao Steel stated its consolidated sales value consisted of the sales of itself, Precision and three other companies. As it argued with respect to TPCO, U.S. Steel claims the Department must ensure that the numerator and denominator reflect the same universe of merchandise. Thus, where a respondent is a parent, the Department should investigate and countervail the subsidies received only by the respondent and its subsidiaries that are involved in the manufacture and sale of subject merchandise. The Department should then attribute those subsidies to the unconsolidated sales of the respondent and the sales of any subsidiary involved in the manufacture and sale of subject merchandise. Based on this model, TMK IPSCO et al. argue the Department should put the subsidies of Changbao Steel and Precision Steel over their consolidated sales as they were the only companies to receive subsidies.

Department's Position

For the same reasons explained in response to Comment 39, we have continued to attribute the subsidies received by Changbao to its consolidated sales.

Comment 35 Whether the Department Should Investigate Non-Initiated Programs for Changbao Steel

TMK IPSCO, et al. argue the Department should investigate specific programs related to Changbao Steel including some that the Department declined to investigate in NSA Initiation Memo. The programs are: plant and equipment for less than adequate remuneration, land-use rights, and loan and interest forgiveness to Changbao Steel's predecessor.

For plant and equipment, TMK IPSCO, et al. argue the Department's rationale for not initiating is misplaced. They agree that sufficient evidence was not provided to show Changbao Steel received plant and equipment for less than adequate remuneration. However, TMK IPSCO, et al. argue that they do not need to demonstrate this at the initiation stage. Instead, TMK IPSCO, et al. contend, they only need to make allegations that are not "clearly frivolous," and to provide supporting information reasonably available to them. TMK IPSCO, et al. point out that because Changbao Steel is a privately held company, such evidence is not reasonably available to them.

Moreover, they state that evidence provided in this case and other proceedings show that the allegation was not clearly frivolous because the Department recently found the same program to be countervailable.[408] Furthermore, as explained below regarding the land allegation, there is evidence on the record that the government officials provided land to Changbao Steel for three percent of its value, which along with other evidence suggests that Changbao Steel has been favored by the GOC. Accordingly, the allegation met the applicable “not clearly frivolous” and “reasonably available evidence” standards and, therefore, should be investigated.

TMK IPSCO, et al. further argue the Department’s determination not to investigate land-use rights is in error. They note there was evidence on the record demonstrating that Changbao Steel received land for only three percent of the applicable value and that Changbao Steel was located in the Jiangsu Jintan Economic Development Zone and the Jintan economic development district of Changzhou. Further, there is evidence on the record, as described by the Department, that land sales in the PRC are often subject to corruption and violations of rules and regulations by local officials.[409] Thus, the allegation was not “clearly frivolous” and was supported by information reasonably available to the petitioners.

Finally, TMK IPSCO, et al. note the Department’s included in its investigation loan and interest forgiveness for SOEs. Changbao Steel acknowledged its predecessor had state ownership, but denied used or benefits from this program. However, TMK IPSCO, et al. contend that in their pre-preliminary comments they pointed to record evidence that contradicted this claim.[410] They further note that any benefits to Changbao Steel’s predecessor would also presumptively benefit Changbao Steel, pending investigation of the transaction. Thus, TMK IPSCO, et al. contend that as Changbao Steel has the information, the Department should have investigated this matter fully so as to include it in the final determination.

In rebuttal, Changbao Steel contends the Department correctly applied the initiation standard in deciding not to investigate the alleged provision of plant and equipment, and land-use rights for less than adequate remuneration, citing the Department’s New Subsidy Allegation Memo as support.[411] Changbao Steel claims TMK IPSCO, et al.’ assertion that the initiation standard is low is misguided. Changbao Steel argues it is TMK IPSCO, et al.’ obligation to provide the necessary information in support of investigating an alleged program and it is not up to the Department to cure failures in the allegation or to collect the requisite information during the investigation. The Act does not permit the Department to overlook these requirements and the Department must meet them at every stage.

Changbao Steel contends the allegation regarding the loan and interest forgiveness to Changbao Steel’s predecessor is groundless. Citing the BPI information, Changbao Steel states that the Department verified Changbao Steel did not receive any assistance from this program.

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408 See Citric Acid from the PRC.
409 See CWLP from the PRC at V.A.2 at Petition at 73-75 and Exhibit 99.
410 See Letter from Schagrin (August 28, 2009) at 8-9.
411 See Changbao Steel Rebuttal brief at 5.

Department's Position

We disagree with TMK IPSCO, et al. that the standard for investigating the alleged subsidies was met. First, with regard to the allegation relating to the provision of plant and equipment for less than adequate remuneration, TMK IPSCO, et al. relied on a statement in Changbao Steel's response regarding the history of the company to claim that there was no evidence Changbao Steel had paid for its plant and equipment. However, neither this statement nor any other information on the record, provides evidence that Changbao Steel had not paid for its plant and equipment. TMK IPSCO, et al.'s allegation was pure speculation without any support that Changbao Steel was provided with plant and equipment for less than adequate remuneration.

With regard to the land-use rights allegation, the website documents provided by TMK IPSCO, et al. mentioned Jiangsu Changbao Steel Precision Steel Tube and the land documents on the record reference Jiangsu Changbao Steel Tube. As such, the provided land document and the website pages refer to two different companies and, as noted, in our NSA Initiation Memo, there was no support linking Changbao Steel to an economic zone.[412] Moreover, the TMK IPSCO, et al.' claim that the GOC exercised discretion in affording special treatment to Changbao Steel by providing land at three percent of its value.[413] However, TMK IPSCO, et al. offered no support for this statement. Thus, TMK IPSCO, et al.' allegation again was based on pure speculation.

In regard to the "Loan and Interest Forgiveness for SOEs" program, we note that it is described in the questionnaire and checklist as follows: "Petitioners allege the GOC, through SOCBs, provides debt forgiveness to SOEs, including SOE producers."[414] Petitioners' pre-preliminary comments reference CSQR at 4 and 6 and Exhibit SC-9 (citing BPI information) to suggest that Changbao Steel benefitted from this program.[415] We disagree that the information cited by the TMK IPSCO, et al. provides any support to the allegation that Changbao Steel benefitted from this program. Moreover, we did not find any information at verification that would call into question Changbao Steel's statements that it did not use this program.[416]

Finally, we note that section 702(b)(1) of the Act states that petitioners must allege the elements necessary for the imposition of the duty imposed by section 701(a) of the Act and that the allegation must be accompanied by information reasonably available to petitioners supporting those allegations. While we agree with TMK IPSCO, et al. that this standard is not so high that they must show the existence of a subsidy, we do not share TMK IPSCO, et al.'s view that the initiation is "not clearly frivolous." In particular, we do not agree that because there may be evidence of preferential treatment of a company in one respect, for example because it is an FIE, that the preference extends to other possible subsidies unless there is evidence of the additional preferences. Thus, for the reasons explained above and in our NSA Initiation Memo, we do not agree that the Department erred in its decision not to investigate these particular programs.

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[412] See NSA Memorandum at 7.
[413] See Letter from Schagrin (July 28, 2009) at 15.
[414] See Initiation Checklist at 35-36 and June 4, 2009, original questionnaire at III-9.
[415] See Letter from Schagrin (August 28, 2009) at 8-9.
[416] See Changbao Verification Report at 12.

Comment 36 Jianli Group Sales

Jianli contends that the Department should use the revised sales figure presented as a minor correction at verification as the sales denominator in the calculation of Jianli's CVD rate for the final determination, under 19 CFR 351.525. Jianli notes that this sales figure is inclusive of "other business income," including sales of scrap, coal sales, processing fees and other income, and that none of the subsidies in this investigation are tied to the production of subject merchandise. In support of this position, Jianli cites Certain Steel from Austria (General Issues Appendix at 37238 and DRAMS from Korea.

Department's Position

For Jianli's sales denominator, we have used Jianli's total sales figure, inclusive of "other business income." Here, we note that Jianli's "other business income" consists primarily of scrap sales, and 19 CFR 351.525 directs the Department to attribute subsidies to "all products sold by a firm."

Comment 37 Jianli Group Clerical Errors

Jianli maintains that the Department made two minor errors in calculating Jianli's preliminary CVD margin. First, Jianli contends that the Department listed the drawdown and payment dates for a certain loan transaction incorrectly in the preliminary margin calculation. Second, Jianli argues that the Department transposed two numbers for one month of purchases from one of Jianli's steel billet suppliers. Jianli urges the Department to correct these errors in Jianli's subsidy calculation for the final results.

Department's Position

We have reviewed our preliminary calculations and the data submitted by Jianli and we agree that we made the two errors outlined by Jianli. We have corrected them for this final determination.[417]

Comment 38 Jianli Group Steel Rounds Data

In its case and rebuttal brief Maverick argues that the Department should apply AFA to Jianli with respect to its steel billet inputs. Maverick claims that the Department was unable to verify Jianli's reported steel billet purchases, and that, based upon one mill test certificate examined at verification, the Department uncovered additional steel suppliers that Jianli did not report. Maverick contends that this alleged discovery by the Department calls into question all of the data Jianli reported for its steel inputs. Maverick also argues that certain of Jianli's suppliers are all subsidiaries of one parent company, and the volume of purchases by Jianli would make Jianli one of the largest customers of the parent company. Maverick then points to the parent company's financial statements, which do not list Jianli as a customer. Finally, Maverick notes that ISO and API quality standards require that Jianli's steel products be highly traceable such

[417] For further discussion see Jianli's Final Calculation Memo.

that a purchasing party can trace Jinali's products back to the original supplier and specific blast furnace used to produce the input steel. Maverick then points to Jianli's statements in its questionnaire responses and at verification indicating that it cannot trace the mill certificates from its suppliers through to specific invoices and products sold. Therefore, Maverick argues that Jianli withheld important information and misled the Department, and thus, the Department should apply AFA, pursuant to section 776(a) of the Act with respect to Jianli's steel purchases.

In its case brief, Jianli argues that the Department successfully verified all of Jianli's steel billet purchases. Jianli concedes that it is unable to tie specific sales invoices to specific mill test certificates from its suppliers; however, it contends that it was able to tie the reported monthly purchase quantities to the reported monthly purchase amounts. Additionally, Jianli claims that the Department erroneously indicated that one mill test certificate examined at verification was for an unreported producer. However, Jianli contends that this mill test certificate shows the parent company and subsidiary company on the certificate, and that Jianli reported the purchases for that company as purchases from the subsidiary. Jianli reiterates this position in its case brief, and also contends that it creates its own mill test certificates for its final product, which ties back to the original blast furnace of its supplier.

Department's Position

At verification we were able to successfully verify Jianli's reported steel billet purchases. As explained in the verification report for Jianli, we were able to tie the selected purchase data to Jianli's financial and accounting records.[418] Here Petitioners would have us apply AFA to Jianli's steel inputs based upon two purported factual inconsistencies: Jianli's non-appearance on a third party's financial statements, and one mill test certificate obtained at verification.

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.

Neither absence of Jianli on a third party's financial statements, nor the confusion surrounding one mill test certificate meet the statutory requirements for applying AFA. Indeed, Jianli provided all necessary information and we successfully verified that information. Further Jianli has not failed to cooperate or comply in any way. Therefore, for the final results we are relying on Jianli's reported and verified information and not resorting to AFA with respect to its steel purchases.

418 See Jianli Verification Report at 11.

Comment 39 TPCO Group Sales Denominator

U.S. Steel contends that the Department must use only the sales of TPCO Group and its reporting affiliates, not TPCO Group's overall consolidated sales, as the denominator for TPCO Group's subsidy calculations. Citing the CVD Preamble (63 FR at 65400), Castings from India, and Allegheny Ludlum, U.S. Steel contends that the numerator and denominator in the Department's subsidy rate calculations must reflect the same universe of merchandise. Further, citing Lined Paper from Indonesia, Hot-Rolled Steel from Thailand, and LWRP from the PRC, U.S. Steel contends that the Department attributes subsidies to the combined sales of all cross-owned companies involved in the production or sale of subject merchandise. Further, U.S. Steel cites OTR Tires from the PRC and Pasta from Italy as cases in which the Department used the sales from reporting cross-owned affiliates, not total consolidated sales, as the sales denominator. Finally, U.S. Steel argues that the Department incorrectly cited 19 CFR 351.525(b)(6)(iii) in the Preliminary Determination because this regulation does not apply where a respondent is a parent company to other companies that do not report the subsidies they receive.

With respect to the sales denominator for the provision of steel rounds for LTAR, U.S. Steel contends that the Department must attribute the benefit from the provision of steel rounds for LTAR to TPCO Group's sales of steel pipe. Citing 19 CFR 351.525(b)(6) and Low Enriched Uranium from Germany, the Netherlands, and the UK, U.S. Steel states the Department will attribute a subsidy to a specific product if the subsidy is tied the production or sale of the product. U.S. Steel contends that the provision of steel rounds for LTAR benefits only the production of steel pipe, not unrelated products. Thus, U.S. Steel contends, the Department must use only TPCO Group's sales of steel pipe as the denominator to calculate the subsidy rate.

In its rebuttal brief, TPCO Group responds that 19 CFR 351.525(b)(6)(iii) and the CVD Preamble (63 FR at 65402) are unambiguous in establishing that the Department will attribute a subsidy received by a parent or holding company to the consolidated sales of that company. TPCO Group cites Hot-Rolled Steel from India, DRAMS from Korea, and CORE Korea 2006 as cases in which the Department has attributed subsidies received by a parent company to the consolidated sales of the parent company.

Further, TPCO Group contends that the scope of attribution for subsidies to parent companies is broader under 19 CFR 351.525(b)(6)(iii) than under the other attribution standards in the regulations. TPCO Group contends that U.S. Steel's proposal to use an unconsolidated sales denominator would concentrate subsidies that are untied to subject merchandise to only the responding companies. TPCO Group contends that U.S. Steel has provided no basis under 19 CFR 351.525(b)(6)(iii) for distinguishing parent companies that produce subject merchandise from parent companies that are not.

Finally, TPCO Group claims that U.S. Steel's references to Castings from India, Allegheny Ludlum, and Pasta from Italy do not support U.S. Steel's argument that 19 CFR 351.525(b)(6)(iii) applies only to respondents that are subsidiaries of parent companies. Regarding U.S. Steel's reference to OTR Tires from the PRC, TPCO Group contends that U.S. Steel offered only speculation on the circumstances of the case to support its argument.

Regarding the denominator for the provision of steel rounds for LTAR, in its rebuttal brief, TPCO Group responds that U.S. Steel's proposal would be inconsistent with past Department practice and would alter the allegation that the Department investigated. Citing Certain Steel Products from Belgium, the CVD Proposed Regulations, and the CVD Preamble, TPCO Group asserts that the Department applies its tying rule based on the intent of the government providing the subsidy, not the subsidy recipient. TPCO Group also cites CWLP from the PRC and KASR from the PRC as cases in which the Department used total sales to calculate the benefit from inputs provided for LTAR. Finally, TPCO Group argues that U.S. Steel's proposal narrows the subsidy under investigation to TPCO Group's production of pipe. TPCO adds, furthermore, that U.S. Steel cited no evidence that steel rounds purchased by TPCO Group benefited only its pipe production.

Department's Position

We agree with TPCO Group. We note that 19 CFR 351.525(b)(6)(iii) states,

> If the firm that received a subsidy is a holding company, including a parent company with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries.

The regulation makes no exception for respondents that are parent companies of other companies, as U.S. Steel asserts. We also disagree with U.S. Steel's characterizations of past determinations. U.S. Steel cites Castings from India and Allegheny Ludlum to claim the Department's attribution of TPCO Group's subsidies is inconsistent with our past practice. Neither of those cases addresses the issue of subsidy attribution for parent or holding companies and, moreover, the administrative decisions for both preceded the date of application for the Department's current regulations. See 19 CFR 351.702(a)(1).

With respect to the other determinations cited by U.S. Steel, the issue involved a different section of the attribution regulation (Lined Paper from Indonesia and Pasta from Italy) or refer to general summaries of the Department's attribution rules (Hot-Rolled Steel from Thailand and LWRP from the PRC). Finally regarding OTR Tires from the PRC, we agree with TPCO that the final determination does not evidence any deviation from the rule established in 19 CFR 351.525(b)(6)(iii).

Thus, consistent with the Preliminary Determination, we are continuing to attribute subsidies to TPCO Group to the company's consolidated sales.

We agree with TPCO Group. The CVD Preamble (63 FR at 65402) states,

> Given the wide variety of factual scenarios that we have encountered in the past, and are likely to encounter in the future, we are not promulgating an all-encompassing definition of "tied."

In the same section, the CVD Preamble also states, "{W}e intend to apply the term 'tied' on a case-by-case basis, using the guidelines in this section {(of the CVD Preamble}."

As we explain above, subsidies provided directly to the TPCO Group and to Changbao fall under the attribution regulation for parent companies at 19 CFR 351.525(b)(6)(iii), whereby subsidies to a parent or holding company are normally attributable to the sales of the parent/holding company and its subsidiaries. Thus, the parent company and its subsidiaries, including subsidiaries with no involvement with subject merchandise, benefit equally from a subsidy to the parent company under 19 CFR 351.525(b)(6)(iii).

At the same time, the facts in this case indicate that the regulation governing the attribution of subsidies tied to a particular product, 19 CFR 351.525(b)(5), may also be applicable. The CVD Preamble specifically recognizes that there may be circumstances where more than one attribution rule may apply to a company's situation: "(D)epending on the facts, several of the different (attribution) rules may came into play at the same time," (CVD Preamble, 63 FR at 65399). The CVD Preamble further anticipates, however, that reconciling different rules may be difficult in certain situations: "Our intent is to apply these rules as harmoniously as possible, recognizing that unique and unforeseen factual situations may make complete harmony among these rules impossible." Id., 63 FR at 65400. In this case, TPCO is both a producer and a parent company with subsidiaries, some of which are engaged in production of a wide variety of steel products that may or may not benefit from the inputs provided at LTAR in this case, and some of which are not engaged in such production.

Based on the facts in this case, we determine that while the attribution rule governing subsidies to parent companies, 19 CFR 351.525(b)(6)(iii), clearly applies to TPCO Group, it is less clear that the product tying regulation under 19 CFR 351.525(b)(5) is also applicable. Therefore, the Department has determined that it is most appropriate to follow the Department's regulation for subsidies provided to parent companies under 19 CFR 351.525(b)(6)(iii). On this basis, we continue to attribute subsidies to TPCO Group to TPCO Group's consolidated sales.

Comment 40 TEDA Holding

U.S. Steel contends that the Department should apply AFA to TPCO Group because of its failure to provide a timely response on behalf of TEDA Holding, TPCO Group's majority owner during the POI. U.S. Steel notes that TPCO Group provided a response on behalf of TEDA Holding on September 21, 2009, which is more than two months after the deadline for the original questionnaire response. U.S. Steel argues that the Department must apply facts available to TPCO Group under section 776(a)(2) of the Act because TPCO impeded the proceeding by providing the response well after the original deadline.

Further, U.S. Steel argues that if the Department accepts TEDA Holding's response, then it should apply facts available to calculate TEDA Holding's benefit from the policy lending program. U.S. Steel claims that TEDA holding failed to report certain information on this program.

In its rebuttal brief, TPCO Group responds that it was unclear whether TEDA Holding's unique circumstances warranted a full questionnaire response under the Department's questionnaire.

TPCO Group argues that it acted to the best of its ability by filing the TEDA QR irrespective of any issues over TEDA Holding's status.

TPCO Group also rejects U.S. Steel's argument that the Department must use facts available to countervail TEDA Holding's consolidated loans. First, TPCO Group argues that TEDA Holding does not meet the criteria applicable to the policy loan allegation because it is not an OCTG producer. Second, TPCO Group contends that even if the Department were to conclude that TEDA Holding received policy loans, there would be no basis to measure a benefit from any loans other than TEDA Holding's reported unconsolidated loans. Citing 19 CFR 351.525(b)(6) and Castings from India, 62 FR at 32302, TPCO Group argues that subsidies received by TEDA Holding's consolidated subsidiaries that have no involvement in the production of subject merchandise are not relevant to the subsidy calculation because they do not benefit the production of subject merchandise.

Department's Position

Based on the totality of information about TEDA Holding on the record, we determine that TEDA Holding acted as a government agency during the POI. Thus, we are not treating TEDA Holding as a parent company under 19 CFR 351.525(b)(6)(iii).

In our first supplemental questionnaire to TPCO Group, we asked TPCO Group to explain why it did not provide a response on behalf of TEDA Holding, given that TEDA Holding was TPCO Group's majority owner during the POI. In the TSQR, TPCO Group responded that it was unclear whether TEDA Holding had to file a full questionnaire response under the guidelines in the original questionnaire. Although we did not specifically request a questionnaire response from TEDA Holding, TPCO Group submitted the TEDA Holding QR on September 21, 2009.

On page 5 of the TEDA Holding QR, TPCO Group identified TEDA Holding's owner since its establishment as the "Tianjin Economic & Technological Development Zone Management Committee, the government agency in charge of local administration of the TEDA Zone." In explaining TEDA Holding's operations, TPCO Group stated,

> (TEDA Holding) is primarily involved in the operation and management of assets and public infrastructure. It serves a unique public service role within the TEDA Zone, working closely with the Tianjin Economic & Technological Development Zone Management Committee and authorized by the Committee to serve as land developer within the zone and provider of public infrastructure and services, including transportation infrastructure and public utilities such as water, electricity, and gas.

Further, on page 3 of the TEDA Holding QR, TPCO Group identified investments in several business sectors outside of public services or infrastructure (e.g., finance and logistics). TPCO Group also reported, however, that TEDA Holding is not directly involved in the production or selling of products and has no manufacturing operations of its own.[419] General information in

[419] See TEDA Holding QR at pages 3 and 5.

TEDA Holding's financial statements at Exhibit 1 of the TEDA Holding QR shows TEDA Holding's role as a manager of assets with no production or sales operations of its own.

Given the Committee's direct ownership of TEDA Holding, TEDA Holding's role as a provider of public services and infrastructure on behalf of the Committee, and TEDA Holding's function as a manager of state assets with no operations of its own, we find that TEDA Holding acted as a government agency during the POI. As a result, we find that TEDA Holding provided subsidies to TPCO in the form of the provision of a good or service for less than adequate remuneration. However, because TEDA Holding is not treated as a parent company under 19 CFR 351.525(b)(6)(iii), TEDA Holding's loans do not benefit TPCO.

Also, we disagree with U.S. Steel that TPCO Group's actions warrant the application of AFA under section 776(b) of the Act. We agree with TPCO Group that it was unclear whether TEDA Holding's unique status warranted a full questionnaire response. Even though we did not request a response on behalf of TEDA Holding, TPCO Group provided a full questionnaire response. Thus, we do not find that TPCO Group failed to act to the best of its ability.

Comment 41 TPCO Group Clerical Error

U.S. Steel contends that the Department applied an incorrect interest rate to calculate the benefit for certain loans to TPCO Group. U.S. Steel contends that the interest rate that the Department used in the calculation at Attachment 25 of the TPCO Calculation Memo did not match the rate on the benchmark sheet at Attachment 15 of this memo.

No other interested party commented on this issue.

Department's Position

We agree with U.S. Steel. We have applied the rates from the benchmark sheet to the calculation for TPCO Group in this final determination.

Comment 42 TPCO Group Accelerated Depreciation

TPCO Group argues that the Department should treat the "Accelerated Depreciation Program" as a tax deferral under 19 CFR 351.509(a)(2), not as an exemption of taxes under this same regulation. TPCO Group claims that any benefit from the program comes from the timing of the depreciation of assets, not the amount of depreciation. TPCO Group acknowledges that the Department treated accelerated depreciation as creating a tax exemption in SSPC from Belgium, but requests that the Department change this practice for the final determination.

In its rebuttal brief, U.S. Steel cites SSPC from Belgium to argue that the Department's practice is to treat accelerated depreciation as an exemption from direct taxes under 19 CFR 351.509(a)(1). Also, citing the CVD Preamble, 64 FR at 65375, U.S. Steel argues that treating the benefit as a tax exemption prevents a company from receiving a credit for a contingent tax liability that it may never incur. U.S. Steel also cites the same section of the CVD Preamble to argue that it would be inappropriate under 19 CFR 351.503 to offset countervailable benefits with higher future tax payments. Finally, U.S. Steel notes that the Department would have to track a company's future tax payments under TPCO Group's proposal.

Department's Position

In SSPC from Belgium, we stated that our practice is to treat the tax savings from accelerated depreciation as a tax exemption rather than a tax deferral because we cannot be certain that the benefits of an accelerated depreciation program will be offset by higher taxes in the future. We also stated that factors such as changes in tax provisions and government tax policies, the provision of additional future tax benefits, or the possibility that the recipient company is in a tax loss position in the future might prevent higher taxes from materializing.[420] We find that our methodology from SSPC from Belgium and the Preliminary Determination[421] is necessary to account for these factors. Thus, we have made no changes to the Preliminary Determination with regard to our calculation methodology for this program.

Comment 43 WSP Steel Rounds Data

As discussed in Comment 6, U.S. Steel contends the Department should continue to apply AFA by treating all steel rounds suppliers as government authorities within the meaning of section 771(5)(B) of the Act. Regarding WSP, U.S. Steel claims the application of AFA is further warranted given the company's failure to substantiate the identities of its steel rounds producers during the course of verification.[422] Specifically, U.S. Steel asserts that while WSP reported in its W1SR that it identified steel rounds producers based on mill test certificates received for all its purchases of steel rounds during the POI, WSP did not provide mill test certificates for sixty percent of the sales the Department attempted to verify. Id. at 51. As such, U.S. Steel argues WSP's identification of the steel rounds producers could not be verified. Therefore, pursuant to section 776(a)(2) of the Act, U.S. Steel contends the Department must apply facts available because WSP: (i) withheld information requested by the Department; (ii) failed to provide such information within the deadlines established by the Department and in the manner requested; and (iii) significantly impeded the proceeding. Id. Further, U.S. Steel urges it is appropriate to apply adverse inferences as WSP did not act to the best of its ability - ultimately having failed verification with respect to this issue. Id. at 52.

WSP contends U.S. Steel's account of the record is misleading and that WSP's steel rounds supplier information was fully verified with respect to all privately-owned producers. WSP Rebuttal at 3. In particular, WSP argues the Department verified mill test certificates from two privately-held producers and adds that one of these companies supplied the largest volume of all WSP's and Fanli's steel round purchases. Id. at 3. WSP explains that mill test certificates were not available with respect to three other suppliers because the steel rounds in question were resold and the mill test certificates subsequently passed on to the next purchaser. Id. at 4. WSP maintains that the three suppliers for which mill test certificates were not available involved original producers which were reported as state-owned companies. According to WSP it had no incentive to conceal mill test certificates for these suppliers and thus, if the Department decides

420 See SSPC from Belgium, 64 FR at 15581 (citing Steel Products from Germany, 58 FR at 37324-25).
421 See Preliminary Determination, 74 FR at 47221.
422 See U.S. Steel Case Brief at 49 and 50.

to apply facts available in this instance, WSP urges it should be limited only to these three state-owned entities.

Department's Position

As explained in the "Use of Facts Otherwise Available and Adverse Facts Available" section above, we are applying AFA with respect to purchases from all steel rounds producers. Therefore, the issue of applying AFA to WSP for failing to substantiate its reporting of steel rounds producers is moot.

Comment 44 WSP Loans

U.S. Steel argues the Department should determine WSP's affiliate, Mengfeng, received preferential loans and apply AFA because of a failure to provide information requested by the Department. U.S. Steel maintains that record evidence disputes WSP's claims that (1) Mengfeng did not have any loans "from state-owned commercial banks or policy banks that were outstanding during the POI" and; (2) Mengfeng did not have any loans that were issued pursuant to the programs outlined in the Department's questionnaire.[423] In particular, U.S. Steel points to the GOC's reported five-year plans that apply to the Inner Mongolia region and municipality of Hohhot City where Mengfeng is located. U.S. Steel contends that these plans demonstrate the government's policy to support the steel industry and even name Mengfeng. Id. at 54. Further support, according to U.S. Steel, is from Mengfeng's own 2008 financial statements which list a loan from an identified government entity. Id. U.S. Steel asserts that Mengfeng did not report information about this or any other loans, despite the Department's repeated requests for such information. Consequently, U.S. Steel states the use of facts available, under 776(a)(2 of the Act is warranted because WSP: (i) withheld information requested by the Department; (ii) failed to provide such information within the deadlines established by the Department and in the manner requested; and (iii) significantly impeded the investigation. Id.

Further, U.S. Steel states WSP did not act to the best of its ability and thus, partial adverse facts available should be applied to determine Mengfeng received countervailable subsidies in the form of preferential loans. Id. at 55. In fact, U.S. Steel urges the Department to find the loan from Mengfeng's financial statements to have been made pursuant to the GOC's policy of providing preferential lending to the steel industry. Consistent with the Department's previous finding that the GOC dominates the banking sector in the PRC, U.S. Steel adds that the lender of Mengfeng's identified loan should also be treated as a state-owned commercial bank or GOC policy bank. Id. Therefore, U.S. Steel recommends that the Department determine Mengfeng's loan provided a financial contribution subject to section 771(5)(D)(i) of the Act, and is specific to steel producers. To ensure WSP does not benefit from its lack of cooperation, U.S. Steel proposes the highest subsidy rate calculated for the GOC policy lending program from the instant investigation be the subsidy rate for Mengfeng's loan and subsequently added to the rates calculated for WSP and Fanli's loans under the same lending program.

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[423] See U.S. Steel Case Brief at 53.

WSP contends it has fully cooperated with the Department's request to report all information with respect to loans received by Mengfeng. WSP states the subsidy program at issue relates to loans received from state-owned commercial banks and policy banks from which WSP insists Mengfeng did not borrow. WSP Rebuttal at 4. Further, WSP also confirms the nature of the amount listed in Mengfeng's 2008 financial statements is not associated with a commercial or policy bank. Id. at 4 and 5. WSP states both it and Mengfeng responded fully to questions of all alleged programs under investigation and consistent with Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measure, is not required to respond to any questions where countervailing measures have not been properly alleged.

Department's Position

We determine that Mengfeng has cooperated in the manner requested by the Department during the investigation and, thus, no form of facts available is warranted. From our review of Mengfeng's data, we determine it does not qualify for facts available under section 776(a)(2) of the Act. Section 776(a)(2) provides, if an interested party withholds information requested by the Department, fails to provide such information by the deadline or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination. Based on evidence on the record, we find the application of facts available is not reasonable because Mengfeng responded to the Department's request for information, provided such information in a timely manner and did not significantly impede this proceeding under the antidumping statute. We received Mengfeng's response to the Department's original questionnaire on August 21, 2009, shortly prior to the statutory due date for our preliminary determination which was September 8, 2009. Mengfeng's response to the Department's original questionnaire stated that it did not have any loans from any state-owned commercial banks or policy banks that were outstanding during the POI. See MQR at 8. As such, Mengfeng cooperated by responding to the loan information, as requested.

We also find there is no support demonstrating the loan cited in U.S. Steel's case brief was provided pursuant to any government loan program. While the Department recommended investigating loan benefits possibly received by Mengfeng under China's National Development Campaign of the Western Regions in Inner Mongolia, time constraints precluded the Department from examining the alleged subsidies.[424] Therefore, from evidence on the record we find no basis to determine Mengfeng's loan information was withheld.

[424] See NSA Memorandum; see also Status of New Subsidy Allegation Memorandum.

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 Department's Positions are accepted, we will publish the final determination in the Federal Register.

AGREE ____ DISAGREE ____

____
Carole A. Showers
Acting Deputy Assistant Secretary
for Policy and Negotiations

____
(Date)

APPENDIX

I. *ACRONYM AND ABBREVIATION TABLE*

Acronym/Abbreviation	**Full Name or Term**
The Act	Tariff Act of 1930, as amended
AD	Antidumping Duty
AFA	Adverse Facts Available
APA	Administrative Procedures Act
AUL	Average useful life
BPI	Business proprietary information
CAFC	Court of Appeals for the Federal Circuit
CFR	Code of Federal Regulations
Charging	TPCO Charging Development Co., Ltd.
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
Fanli	Jiangsu Fanli Steel Pipe Co., Ltd.
FIE	Foreign-Invested Enterprise
GOC	Government of the People's Republic of China
IDM	Issues and Decision Memorandum
LME	London Metal Exchange
IMF	International Monetary Fund
LTAR	Less than adequate remuneration
Maverick	Maverick Tube Corporation
Mengfeng	Tuoketuo County Mengfeng Special Steel Company, Ltd.
MOFCOM	PRC Ministry of Commerce
NDRC	National Development and Reform Commission
NME	Non-market economy
PBOC	People's Bank of China
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
SOCB	State-Owned Commercial Bank
TBNA	Tianjin Binhai New Area
TEDA Holding	TEDA Investment Holding Co., Ltd.
TMK IPSCO, et al.	TMK IPSCO, V&M Star L.P., Wheatland Tube Corp., Evraz Rocky Mountain Steel, and The United Steelworkers
TPCO Group	Tianjin Pipe (Group) Corporation
TPCO Holding	Tianjin Pipe Investment Holding Co., Ltd.
TPCO International	Tianjin Pipe International Economic and Trading Co., Ltd.
TPCO Iron	Tianjin Pipe Iron Manufacturing Co., Ltd.
URAA	Uruguay Round Agreements Act
U.S. Steel	United States Steel Corporation
VAT	Value Added Tax
WSP	Wuxi Seamless Oil Pipe Co., Ltd.
WTO	World Trade Organization
Yuantong	Tianguan Yuantong Pipe Product Co., Ltd.

II. RESPONSES AND DEPARTMENT MEMORANDA

Short Cite	**Full Name**
	GOC
GQR	Response of the Government of the People's Republic of China to the Department's Initial Questionnaire (July 20, 2009)
G1SR	Response of the Government of the People's Republic of China to the Department's First Supplemental Questionnaire (August 26, 2009)
G2SR	Response of the Government of the People's Republic of China to the Department's Second Supplemental Questionnaire (September 1, 2009)
GOC Case Brief	Case Brief of the Government of China (November 9, 2009)
GOC FIS	Submission of Additional Steel Round "Program" Data; Initial Response Re: The Unlawful Application of Adverse Facts Available in the Preliminary Determination (September 21, 2009)
GOC Rebuttal FIS	Submission of Rebuttal Factual Information (October 15, 2009)
	Petitioners
Petition	Original Petition (April 8, 2009)
U.S. Steel's Pre-Prelim	U.S. Steel's Pre-Preliminary Comments (August 25, 2009)
U.S. Steel Rebuttal Brief	Certain Oil Country Tubular Goods from the People's Republic of China (November 16, 2009)
Petitioners' FIS	Petitioners' Submission of New Factual Information (October 5, 2009)
Maverick NFI	Maverick Tube's New Factual Information Submission (October 5, 2009)
Maverick Pre-Prelim Comments	Maverick's Pre-Preliminary Comments regarding Jianli (August 25, 2009)
Maverick Rebuttal Brief	Certain Oil Country Tubular Goods from the People's Republic of China: Rebuttal Brief (November 16, 2009)
	Changbao
CQR	Changbao's Response to the Department of Commerce's CVD Questionnaire (July 20, 2009)
Changbao Rebuttal Brief	Countervailing Duty Investigation: Certain Oil Country Tubular Goods from the People's Republic of China (C-570-944) – Rebuttal Brief (November 16, 2009)

	TPCO
TPCO Calculation Memo	Memorandum to Susan Kuhbach, "Preliminary Results Calculation Memorandum for (TPCO Group) (September 8, 2009)
TPCO Holding QR	Response of Tianjin Pipe Investment Holding Co., Ltd., to the Department of Commerce's Supplemental Questionnaire (September 1, 2009)
TEDA Holding QR	Response of TEDA Holding Co., Ltd., to the Department of Commerce's Initial Questionnaire (September 21, 2009)
TPCO FIS	TPCO Factual Information Submission (September 17, 2009)
TPCO Case Brief	Certain Oil Country Tubular Goods from the People's Republic of China: Case Brief of TPCO Group (November 9, 2009)
	WSP
WQR	WSP's Original Questionnaire Response (July 20, 2009)
WSQR	WSP's First Supplemental Response (August 24, 2009)
MQR	Mengfeng's Questionnaire Response (August 21, 2009)
	Jianli
JQR	Jianli Original Questionnaire Response (July 20, 2009)
Jianli Pre-Prelim	Jianli Pre-Preliminary Comments (September 1, 2009)
Jianli NFI	Jianli New Factual Information Submission (October 5, 2009)
Jianli Rebuttal Brief	Jianli Group's Rebuttal Brief: Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the People's Republic of China (November 16, 2009)
	Department
Changbao Final Calculation Memo	Memorandum to the File, entitled "Calculations for Jiangsu Changbao Steel Tube Co., Ltd. ("Changbao") and Jiangsu Changbao Precision Steel Tube Co., Ltd. ("Precision")" (November 23, 2009)
Changbao Verification Report	Memorandum to Susah H. Kuhbach, Office Director, entitled "Jiangsu Changbao Steel Tube Co., Ltd. and Jiangsu Changbao Precision Steel Tube Co., Ltd. Verification Report" (October 29, 2009)

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)
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)*
InitQ	Department's Initial Questionnaire, (June 3, 2009)
Jianli Final Calculation Memo	Memorandum to the File, entitled "Calculations for the Final Determination for Zhejiang Jianli Company Limited ("Jianli"), Zhejiang Jianli Steel Tube Co., Ltd. ("Jianli Steel Tube"), Zhuji Jiansheng Machinery Co., Ltd. ("Jiansheng"), and Zhejiang Jianli Industry Group Co., Ltd. ("Jianli Industry") (collectively, the "Jianli Group")" (November 23, 2009)
Jianli Verification Report	Memorandum to Susah H. Kuhbach, Office Director, entitled "Verification Report: Jianli Group" (October 28, 2009)
Lined Paper Memorandum	Memorandum to David M. Spooner, Assistant Secretary for Import Administration, Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China's Status as a Non-Market Economy (August 30, 2006)*
Local Government Verification Report	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, entitled "Verification Report of the Jiangsu Province State Administration of Industry and Commerce and Tianjin Municipality State Administration of Industry and Commerce" (October 29, 2009)
NSA Initiation Memo	Memorandum to Susan Kuhbach, Senior Director, Office 1, entitled "Analysis of Petitioners' New Subsidy Allegations" (September 12, 2008)
NSA Memorandum	Memorandum to Susan Kuhbach, Senior Director, Office 1, entitled "New Subsidy Allegations" (September 18, 2009)
Respondent Selection Memorandum	Memorandum to John Andersen, Acting Deputy Assistant Secretary for Import Administration, entitled "Respondent Selection; Countervailing Duty Investigation of OCTG from the People's

	Republic of China.” (June 3, 2009)
Status of New Subsidy Allegation Memorandum	Memorandum to Susan Kuhbach, Senior Director, Office 1, entitled “Status of New Subsidy Allegations” (October 21, 2009)
Steel Rounds Memorandum	Memorandum to the File, “Additional Information on Steel Rounds” (September 8, 2009)
TPCO Final Calculation Memo	Memorandum to the File, entitled “Final Determination Calculation Memorandum for Tianjin Pipe (Group) Co. (“TPCO Group”), Tianjin Pipe Iron Manufacturing Co., Ltd. (“TPCO Iron”), Tianguan Yuantong Pipe Product Co., Ltd. (“Yuantong”), Tianjin Pipe International Economic and Trading Co., Ltd. (“IETC”), and TPCO Charging Development Co., Ltd. (“Charging”)” (November 23, 2009)
TPCO Verification Report	Memorandum to Susah H. Kuhbach, Office Director, entitled “Verification Report: Tianjin Pipe (Group) Corporation (“TPCO Group”), Tianjin Pipe Iron Manufacturing Co., Ltd. (“TPCO Iron”), Tianguan Yuantong Pipe Product Co., Ltd. (“Yuantong”), Tianjin Pipe International Economic and Trading Co., Ltd. (“TPCO International”), and TPCO Charging Development Co., Ltd. (“Charging”) (collectively, “TPCO”)” (October 29, 2009)
WSP Final Calculation Memo	Memorandum to the File, entitled “Final Determination Calculation Memorandum for Wuxi Seamless Oil Pipe Co., Ltd. (“Wuxi”)” (November 23, 2009)
WSP Verification Report	Memorandum to Susah H. Kuhbach, Office Director, entitled “Wuxi Seamless Oil Pipe Co., Ltd., Jiangsu Fanli Steel Pipe Co., Ltd., and Mengfeng Special Steel Co., Ltd. Verification Report” (November 2, 2009)

* 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)
Alaka	Alaka v. Attorney General, 456 F.3d 88 (3d Cir. 2006)
Alaska Hunters	Alaska Professional Hunters Assn. v. FAA, 177 F.3d 1030 (D.C. Cir. 1999)
Allegheny Ludlum	Allegheny Ludlum Corp. v. United States, 112 F. Supp.2d 1141 (CIT 2000)
Allied Signal	Allied Signal Aerospace Co. v. United States, 996 F.2d 1185 (Fed. Cir. 1993)
American Spring	American Spring Wire Corp. v. U.S., 569 F. Supp 73 (CIT 1983)
Asociacion Colombiana	Asociacion Colombiana de Exportadores de Flores v. United States, 40 F.Supp. 2d 466 (CIT 1999)
Bell Atlantic	Bell Atlantic Telephone v. FCC, 131 F.3d 1044 (D.C. Cir. 1997)
Bethlehem	Bethlehem Steel Corp. v. United States, 140 F. Supp. 2d 1354, 1362 (CIT 2001)
Butterbaugh v. DOJ	Butterbaugh v. Department of Justice, 336 F.3d 1332 (Fed. Cir. 2003)
Chenery Corp.	SEC v. Chenery Corp., 332 U.S. 194 (1947)
Chevron	Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)
China - Measures Related to the Exportation of Various Raw Materials, WTO Requests for Consultation by the European Communities	China - Measures Related to the Exportation of Various Raw Materials, Requests for Consultation by the European Communities, WT/DS395/1 (June 25, 2009). See Exhibit 5 to U.S. Steel's October 5, 2009, Submission of New Factual Information.
China - Measures Related to the Exportation of Various Raw Materials, WTO Requests for Consultation by Mexico	China - Measures Related to the Exportation of Various Raw Materials, Requests for Consultation by Mexico, WT/DS398/1 (August 26, 2009). See Exhibit 6 to U.S. Steel's October 5, 2009, Submission of New Factual Information.
China - Measures Related to the Exportation of Various Raw Materials, WTO Requests for Consultation by the United States	China - Measures Related to the Exportation of Various Raw Materials, Requests for Consultation by the United States, WT/DS394/1 (June 25, 2009). See Exhibit 4 to U.S. Steel's October 5, 2009, Submission of New Factual Information.
Fabrique	Fabrique de Fer de Charleroi, S.A. v. United States, 166 F. Supp. 2d. 593 (CIT 2001)
Georgetown Steel	Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986)

Gerald Metals	Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997)
GOC v. United States	Gov't of the People's Republic of China v. United States, 483 F. Supp. 2d 1274 (CIT 2007)
GPX v. United States	GPX International Tire Corporation v. United States, F.Supp.2d, 2008 WL 4899523 (CIT 2008).
GPX	GPX v. United States, Slip Op. 2009-103 (CIT Sept. 18, 2009)
Hebei New Donghua	Hebei New Donghua Acid Co. v. United States, 374 F.Supp.2d 1333 (CIT 2005)
Hynix	Hynix Semiconductor Inc. v. United States, 391 F. Supp. 2d 1337 (CIT 2005)
Inland Steel 1997	Inland Steel Indus., Inc. v. United States, 967 F. Supp. 1338, 1357-58 (CIT 1997)
Lumber from Canada NAFTA Panel	Lumber from Canada NAFTA Panel, USA-CDA-2002-1904-03 (May 23, 2005)
Mannesmannrohren-Werke	Mannesmannrohren-Werke AG v. United States, 77 F. Supp 2d 1302 (CIT 1999)
McCarthy	SEC v. McCarthy, 322 F.3d 650 (9th Cir. 2003)
Merrill Lynch v. Curran	Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran, 456 U.S. 353 (1982)
Mittal Steel	Mittal Steel Galati v. United States, 502 F.Supp.2d 1295 (CIT 2007)
Motor Vehicle Mfr. Ass'n	Motor Vehicle Mfr. Ass'n of United States v. State Farm Auto Ins. Co., 463 U.S. 29 (1983)
Nippon Steel	Nippon Steel v. United States, 337 F. 3d 1373, (Fed. Cir. 2003)
Royal Thai Gov't	Royal Thai Gov't v. United States, 441 F.Supp.2d 1350 (CIT 2006)
Rust v. Sullivan	Rust v. Sullivan, 500 U.S. 173 (1991)
Saarstahl	Saarstahl A.G. v. United States, 78 F.3d 1539 (Fed. Cir. 1996)
Shinyei	Shinyei Corp. of Am. v. United States, 355 F.3d 1297 (Fed. Cir. 2004)
Steel Co.	Steel Co. v. Citizens for a Better Environment, 523 U.S. 83 (1998)
Solid Waste	Solid Waste Agency of Northern Cook Cty. v. U.S. Army Corps of Engineers, 531 U.S. 159 (2001)
Torrington	Torrington Co. v. United States, 772 F. Supp. 1284, 1288 (CIT 1991)
Usinor 1995	Usinor Sacilor v. United States, 893 F. Supp. 1112, 1135 (CIT 1995)
Wheatland Tube	Wheatland Tube Co. v. United States, 495 F.3d 1355 (Fed. Cir. 2007)

<u>WTO Lumber Panel</u>	<u>United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada</u>, Report of the Appellate Body, WT/D5257/AB/R (January 19, 2004)

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**
	Ammonium Nitrate - Ukraine
Ammonium Nitrate from Ukraine	Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Solid Agricultural Grade Ammonium Nitrate From Ukraine, 66 FR 13286 (March 5, 2001) ("Ammonium Nitrate from Ukraine").
Application of CVD Law	Application of the Countervailing Duty Law to Imports from the People's Republic of China: Request for Comment, 71 FR 75507 (Dec. 15, 2006)
	Castings from India
Castings from India	Certain Iron-Metal Castings from India, 62 FR 32297 (June 13, 1997)
	CVD Preamble
CVD Preamble	Countervailing Duties; Final Rule, 63 FR 65348, 65357 (November 25, 1998)
	CVD Proposed Regulations
CVD Proposed Regulations	Notice of Proposed Rulemaking and Request for Public Comments (Countervailing Duties), 54 FR 23366 (May 31, 1989)
	CVD Regulations
CVD Regulations	Countervailing Duty Regulations, 63 FR 65377 (Nov. 25, 1998)
	Carbon Steel Wire Rod – Czechoslovakia
Wire Rod from Czechoslovakia	Carbon Steel Wire Rod from Czechoslovakia: Final Negative Countervailing Duty Determination, 49 FR 19370 (May 7, 1984)
	Carbon Steel Wire Rod - Germany
Wire Rod from Germany	Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Germany, 67 FR 55802 (August 30, 2002) ("Steel Wire Rod from Germany").
	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)
	Chrome Plated Lug Nuts - PRC
Lug Nuts from China	Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition: Chrome-Plated Lug Nuts and Wheel

	Locks From the People's Republic of China, 57 FR 10459 (March 26, 1992)
Lug Nuts from China Initiation	Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks From the People's Republic of China, 57 FR 877 (January 9, 1992)
	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)
CWLP from the PRC – Preliminary	Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China; Preliminary Affirmative Countervailing Duty Determination, 73 FR 52297 (September 9, 2008)
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)
Citric Acid Prelim	Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 73 FR 54373
	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)
	Coated Free Sheet Paper – Korea

CFS from Korea	Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea, 72 FR 60630 (Oct. 25, 2007)
	Cold-Rolled Carbon Steel Flat Products – Korea
CR Steel from Korea	Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea, 67 FR 62102 (October 3, 2002)
	Corrosion-Resistant Carbon Steel Flat Products – Korea
CORE Korea 2006	Preliminary Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 53413 (September 11, 2006)
	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)
	Hot-Rolled Carbon Steel Flat Products – India
Hot-Rolled Steel from India	Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 49635 (September 28, 2001)
Hot Rolled from India 2007	Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 74 FR 20923 (May 6, 2009)
	Hot-Rolled Carbon Steel Flat Products – Thailand
Hot-Rolled Steel from Thailand	Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (October 3, 2001)
	Kitchen Appliance Shelving & Racks – PRC
KASR from the PRC	Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009)
KASR from the PRC AD Final	Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 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)
	Leather from Argentina
Leather from Argentina	Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Leather from Argentina, 55 FR 40212 (October 2, 1990)
	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)
	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 40485 (July 15, 2008)
	Oil Country Tubular Goods – PRC
Preliminary Determination	Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, 74 FR 47210 (September 15, 2009)
AD Preliminary Determination	Certain Oil Country Tubular Goods from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination, 74 FR 59117 (November 17, 2009)
	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 24018 (June 5, 1992)

	Pasta – Italy
Pasta from Italy	Certain Pasta from Italy: Final Results of the Eleventh (2006) Countervailing Duty Administrative Review, 74 FR 5922 (February 3, 2009)
	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)
	Polyethylene Terephthalate Film, Sheet, and Strip -India
PET Film from India	Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India, 67 FR 34905 (May 16, 2002)
	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 – 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)
Lumber from Canada 03-04	Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 73448 (Dec. 12, 2005)
Softwood Lumber Prelim CVD Determination	Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 57 FR 8800 (Mar. 11, 1992)
	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 Plate in Coils - Belgium
SSPC from Belgium	Final Affirmative Countervailing Duty Determination; Stainless Steel Plate in Coils from Belgium, 54 FR 15567 (March 31, 1999)
	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 Products from Belgium

Certain Steel Products from Belgium	Certain Steel Products from Belgium, 47 FR 39304 (September 7, 1982)
	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)
	Stainless Steel Bar from India
Stainless Steel Bar from India – 2009 Administrative Review	Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review, 74 FR 47198 (September 15, 2009) and accompanying Issues and Decision Memorandum
	Sulfanilic Acid – Hungary
Sulfanilic Acid from Hungary	Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary, 67 FR 60223 (September 25, 2002)
	Textiles - PRC
Textiles	Initiation of Countervailing Duty Investigations; Textiles, Apparel, and Related Products From the People's Republic of China, 48 FR 46600, (October 13, 1983)
	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)
	Uranium – Germany, the Netherlands, and the UK
Low Enriched Uranium from Germany, the Netherlands, and the UK	Notice of Final Affirmative Countervailing Duty Determinations: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom, 66 FR 65903 (December 11, 2001)

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

Short Cite	Full Name
Accession Protocol	
APA	Administrative Procedures Act, 5 USC section 500 et seq.
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)
GAO Report: Challenges	United States Government Accountability Office, Challenges and Choices to Apply Countervailing Duties to China, GAO-06-608T (Apr. 2006)
GAO Report: Eliminating	United States Government Accountability Office, Eliminating Nonmarket Economy Methodology Would Lower Antidumping Duties for Some Chinese Companies, GAO-06-231(Jan. 2006)
Omnibus Trade and Competitiveness Act of 1988	Omnibus Trade and Competitiveness Act of 1988, Pub.L.No. 100-418, 102 Stat. 1007
Report on the Accession of China	Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001).
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
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