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

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Citric Acid and Certain Citrate Salts from the People's Republic of China

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Background

On September 19, 2008, the Department published the Preliminary Determination of this investigation.[1] The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate the benefits from these programs. We have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which also contains the Department's responses to the issues raised in the briefs. We recommend that you approve the positions we have described in this memorandum. Below is a complete list of the issues in this investigation for which we received comments and rebuttal comments from parties:

General Issues

Comment 1 Application of CVD Law to a Country the Department treats as an NME in a Parallel AD Investigation
Comment 2 Double Counting/Overlapping Remedies
Comment 3 Requirement to Provide Evidence of Lower Prices
Comment 4 Proposed Cutoff Date for Identifying Subsidies

[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.

Program Specific Issues

Comment 5 Policy Lending – Whether Policy Lending Program Exists
Comment 6 Policy Lending – Whether CIB is a Government Authority
Comment 7 Benchmark - Whether the Department is Required to Use a Chinese Benchmark
Comment 8 Benchmark - Whether Department Should Make an Inflation Adjustment to Its Regression-based Benchmark Rate
Comment 9 Benchmark - Whether the Department has a Basis for Treating "Medium-term" as Having Terms of Two Years or Less
Comment 10 Benchmark - Whether to Remove Certain Countries from the IMF Data
Comment 11 Benchmark - Whether Negative Inflation-adjusted Interest Rates Should be Excluded from the Regressions
Comment 12 Benchmark - Whether the Regression is Statistically Invalid
Comment 13 Benchmark - Whether the Difference Between Long- and Short-term Interest Rates Cannot be Based on BB-grade
Comment 14 Benchmark - Whether the Adjustment for Long-term Rates should be Additive or Multiplicative
Comment 15 Benchmark - Whether the Discount Rate Computation is Flawed
Comment 16 FIE Tax Programs - Whether FIE Tax Programs are Specific
Comment 17 FIE Tax Programs- Whether They Have Been Terminated

TTCA Specific Issues

Comment 18 Whether the Application of Total AFA is Warranted
Comment 19: Whether the Application of Partial AFA is Warranted
Comment 20 Provision of Plant and Equipment for LTAR – Whether the Department is Required to Issue a Finding
Comment 21 Provision of Plant and Equipment for LTAR – Proposed Methodology for Measuring the Benefit
Comment 22 Provision of Land for LTAR – Whether Land is a Good or a Service
Comment 23 Provision of Land for LTAR – Whether the Use of an External Benchmark is Appropriate
Comment 24 Provision of Land for LTAR – Whether Benchmark is New Factual Information
Comment 25 Whether the Appropriate Benchmark Interest Rate for Floating Loan
Comment 26 Whether To Correct a Clerical Error in TTCA's Subsidy Calculation

Yixing Union Specific Issues

Comment 27 Attribution of Yixing Union and Cogeneration Based on Cross-Ownership
Comment 28 Whether to Apply AFA for Land in the YEDZ for LTAR Program
Comment 29 How to Treat the Transfer of Allocated to Granted Land-use Rights from HPP to Cogeneration
Comment 30 Whether the Department's Finding Regarding Land-use Rights in Yixing City Violates Due Process
Comment 31 Whether the Department's Finding Regarding the Torch Program Violates Due Process

Use of Facts Otherwise Available and Adverse Facts Available

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

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

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

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[3] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[4] In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less."[5]

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[6] The Department considers information to be corroborated if it has probative value.[7] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance

[2] See e.g., Pistachios from the Islamic Republic of Iran IDM, at "Analysis of Programs" and Comment 1.
[3] See Semiconductors From Taiwan - AD, 63 FR at 8932.
[4] See SAA, at 870.
[5] See Rhone Poulenc, 899 F.2d at 1190.
[6] See SAA, at 870.
[7] Id., at 870.

of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[8]

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

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.[9]

Anhui BBCA

As explained in the Preliminary Determination, Anhui BBCA did not provide the requested information necessary to determine a CVD rate.[10] Therefore, pursuant to section 776(a)(2)(A) and (C) of the Act, we determine that it is appropriate to base the CVD rate for Anhui BBCA on facts otherwise available. Moreover, as explained in the Preliminary Determination, by failing to submit a response to the Department's initial questionnaire, Anhui BBCA did not cooperate to the best of its ability in this investigation.[11] Accordingly, we find that an adverse inference is warranted, pursuant to section 776(b) of the Act, to ensure that Anhui BBCA does not obtain a more favorable result than had it fully complied with our request for information.

For the final determination and consistent with the Department's recent practice, we continue to compute a total AFA rate for Anhui BBCA generally using program-specific rates determined for the cooperating respondents or from past CVD cases involving the PRC. Specifically, for programs other than those involving income tax exemptions and reductions, we are applying the highest calculated rate for the identical program in this investigation if a responding company used the identical program. If there is no identical program match within the investigation, we are using the highest non-de minimis rate calculated for the same or similar program in another CVD investigation from the PRC. Absent an above-de minimis subsidy rate calculated for the same or similar program, we are applying the highest calculated subsidy rate for any program otherwise listed, which could conceivably be used by Anhui BBCA.[12]

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[8] Id., at 869.
[9] See Flowers from Mexico, 61 FR 6812.
[10] See Preliminary Determination, 73 FR at 54369.
[11] See Preliminary Determination, 73 FR at 54369.
[12] See CWASPP from the PRC Preliminary Determination (unchanged for the final).

Also, as explained in Lawn Groomers from the PRC, where the GOC can demonstrate through complete, verifiable, positive evidence that non-cooperative companies (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department does not intend to include those provincial programs in determining the countervailable subsidy rate for the non-cooperative companies.[13] In this investigation, the GOC has provided the business licenses of Anhui BBCA and its parent company, which indicate that these companies are located only in Anhui Province.[14] We confirmed this information at verification.[15] Therefore, we are including the Anhui Province programs in the calculation of Anhui BBCA's rate, but not the other sub-national subsidy programs. In addition, information supplied by Petitioners indicates that all of Anhui BBCA's cross-owned affiliates are either located in Anhui Province or outside the PRC. Therefore, we do not reach the issue of attributing subsidies received by these cross-owned affiliates for sub-national subsidy programs, pursuant to 19 CFR 351.525(b)(6)(ii).

For the following ten alleged income tax programs pertaining to either the reduction of the income tax rates or exemption from income tax, we have applied an adverse inference that Anhui BBCA paid no income tax during the POI: (1) "Two Free, Three Half;" (2) Reduced Income Tax Rates for Foreign-investment Enterprises Based on Location; (3) Income Tax Exemption for Export-oriented Foreign-investment enterprises; (4) Reduced Income Tax Rate for High or New Technology Enterprises; (5) Reduced Income Tax Rate for Technology or Knowledge Intensive Foreign-investment Enterprises; (6) Preferential Income Tax Rate for Research and Development at Foreign-investment Enterprises; (7) Preferential Tax Programs for Encouraged Industries; (8) Preferential Tax Policies for Township Enterprises; (9) Local Income Tax Exemption and Reduction Program for Productive Foreign-investment Enterprises; and (10) Reduced Income Tax Rates for Encouraged Industries in Anhui Province. The standard income tax rate for corporations in the PRC is 30 percent, plus a three percent provincial income tax rate. Therefore, the highest possible benefit for these ten income tax rate programs is 33 percent and we are assigning that rate to these ten programs.

This 33 percent AFA rate does not apply to income tax credit or refund programs. For the "Income Tax Credits on Purchases of Domestically Produced Equipment" program, we are using Yixing Union's rate from this investigation, which is 0.11 percent. Neither respondent used the "Tax Benefits to Foreign-investment Enterprises for Certain Reinvestment of Profits" program and the Department has not calculated a rate for this program in any prior investigation. Therefore, we are using the highest non-de minimis rate for any indirect tax program from a CVD investigation of imports from the PRC because there were only de minimis rates for income tax credit or refund programs from prior investigations. The rate we selected is 1.51 percent, respondent GE's rate for the "Value Added Tax and Tariff Exemptions on Imported Equipment" program.[16]

[13] See Lawn Groomers from the PRC Initiation Checklist.
[14] See G2SR (9/2), at Exhibit S2-36.
[15] See National Government Verification Report, at 9.
[16] See CFS from the PRC IDM, at 13-14.

For indirect tax and import tariff programs, we are using TTCA's rate from this investigation for the "Value Added Tax Rebate for Purchases by Foreign-Investment Enterprises of Domestically Produced Equipment" program (0.24 percent) and Yixing Union's rate for "Value Added Tax and Duty Exemptions on Imported Equipment" program (0.38 percent).

Our findings with respect to several loan programs have changed since the Preliminary Determination. As explained in the Department's response to Comment 5 regarding Policy Lending, we are finding that there is no national government policy lending program. Therefore, we are not assigning a rate to Anhui BBCA for this program. With respect to the "Funds Provided for the Rationalization of the Citric Acid Industry" program, we have reviewed the allegation which contends that the program possibly provides loans and/or grants. Again, because we found no evidence of a national government policy to extend loans to the citric acid industry, we are treating this as a grant program for this final determination.

Next, for the loan program "Discounted Loans for Export-Oriented Industries," TTCA and Yixing Union did not use this program. However, the Department calculated a rate for a similar program (i.e., export loan program) in CWLP from the PRC, which was 1.76 percent.[17] Therefore, for this export loan program, we are using this 1.76 percent rate. Similarly, for the loan program "Export Seller's Credit for High and New Tech Products,"[18] which is an export contingent loan program, we are assigning the rate of 1.76 percent ad valorem.

For the "Famous Brands" grant program, we are using Yixing Union's rate from this investigation, which is 0.03 percent ad valorem. Neither respondent used the following grant programs: Funds Provided for the Rationalization of the Citric Acid Industry, State Key Technology Program Fund, National Level Grants to Loss-making State-owned Enterprises, and Provincial Level Grants to Loss-making State-owned Enterprises, and the Department has not previously calculated above de minimis rates for them. Therefore, for these four grant programs, we are using the highest calculated subsidy rate for any program otherwise listed, which could conceivably have been used by Anhui BBCA. The rate was 13.36 percent for the "Government Provision of Land for Less Than Adequate Remuneration" program from LWS from the PRC.[19] As discussed above, we are disregarding several higher calculated subsidy rates as we have determined that the industry under investigation in this proceeding cannot use the products for which these rates were calculated.

[17] See CWLP from the PRC IDM, at 23-24.

[18] This program was previously identified as "Other Policy Bank Loans" at the Preliminary Determination. However, since then, the name of the program has been changed due to the removal of certain business proprietary designations. Therefore, the "Other Policy Bank Loans" program will hereafter be referred to as Export Seller's Credit for High and New Tech Products." See Memorandum to the File, "Removal of Certain Business Proprietary Designations" (April 6, 2009).

[19] See LWS from the PRC IDM, at 14-18.

For both the "Provision of Land for Less than Adequate Remuneration in Anhui Province" program, and "Provision of Land to SOEs for LTAR" program we have determined to use the highest non-de minimis rate for the provision of land from prior determinations, which was 13.36 percent from LWS from the PRC[20].

We are not assigning a rate to Anhui BBCA for the "Provision of TTCA's Plant and Equipment for LTAR" program because the alleged subsidy is specific to TTCA and Anhui BBCA could not have received any subsidies under this program. Therefore, consistent with CWP from the PRC,[21] we are excluding this program in Anhui BBCA's AFA rate.

In the absence of record evidence concerning these programs due to Anhui BBCA's decision not to participate in the investigation, the Department has reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that programs of the same type are relevant to the programs of this case. For the programs for which there is no program-type match, the Department has selected the highest calculated subsidy rate for any PRC program from which Anhui BBCA could conceivably receive a benefit to use as AFA. The relevance of this rate is that it is an actual calculated CVD rate for a PRC program from which Anhui BBCA could actually receive a benefit. Due to the lack of participation by Anhui BBCA and the resulting lack of record information concerning these programs, the Department has corroborated the rates it selected to the extent practicable. On this basis, we determine the AFA countervailable subsidy rate for Anhui BBCA to be 118.95 percent ad valorem.[22]

TTCA

For reasons explained in the Department's Position for Comment 19, we find that the use of "facts otherwise available" is warranted pursuant to section 776(a)(2)(D) of the Act, with regard to certain policy loans because TTCA provided information that could not be verified. Moreover, we find that TTCA did not act to the best of its ability and that an adverse inference is warranted, pursuant to section 776(b) of the Act, to ensure that TTCA does not obtain a more favorable result than had it fully complied with our request for information.[23] On this basis, we are applying the 8.31 percent rate calculated in LWTP from the PRC to the Shandong Province Policy Lending program.

Also, in CWLP from the PRC,[24] we found that the responding firms received both countervailable policy loans and export loans. Similarly, in this investigation we find that TTCA received loans under the Export Seller's Credit for High and New Tech Products lending program, in addition to the loans under the Shandong Province Policy Lending Program. As we were not able to verify that TTCA reported all of its export loans, we are assigning as AFA the 1.76 rate calculated for export loans in CWLP from the PRC.

[20] See LWS from the PRC IDM at 14-18.
[21] See CWP from the PRC IDM at 100.
[22] See Final BPI Memo, at Attachment 1.
[23] See Department's Position for Comment 19.
[24] See CWLP from the PRC

GOC

For reasons explained in the "Analysis of Programs" section I.A below (Programs Determined to Be Countervailable: Energy and Water Savings Grant), we find the use of "facts otherwise available" is warranted, pursuant to section 776(a)(2)(D) of the Act, with regard to the specificity determination for this program because the GOC would not provide requested information and did not provide verifiable program usage data. Because the GOC did not act to the best of its ability by refusing to provide information that would allow for a de facto specificity analysis using accurate and verifiable data, we have employed an adverse inference in selecting from among the facts otherwise available. Accordingly, pursuant to section 776(b) of the Act, we find that this program is de facto specific within the meaning of section 771(5A)(D)(iii) of the Act.

Subsidies Valuation Information

Allocation Period

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 9.5 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture the subject merchandise. Consistent with the Department's practice, we have rounded the 9.5 years up to 10 years for purposes of setting the AUL.[25]

Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard.[26] According to the CVD Preamble, relationships captured by the cross-ownership definition include those where:

[25] See PTF from India (unchanged in final), 72 FR at 43608.
[26] See CVD Preamble, 63 FR at 65401.

> 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.[27]

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.[28]

TTCA

TTCA provided a questionnaire response on behalf of itself and two affiliates.[29] The names and details of TTCA's exact relationship with its affiliates are proprietary and, hence, addressed separately.[30] Therefore, we are identifying the affiliates as "affiliate A" and "affiliate B." TTCA reported that neither of its affiliates produces subject merchandise, supplies any inputs to TTCA, or receives and transfers subsidies to TTCA.[31] As in the Preliminary Determination, we find that affiliate A did not receive any subsidies and, thus, we are excluding affiliate A from the subsidy calculation.

We deferred a finding for affiliate B in the Preliminary Determination because, at that time, we were unable to fully analyze the response for affiliate B. Since that time, we have determined that affiliate B did not supply any inputs to TTCA and did not receive or transfer subsidies to TTCA.[32] Further, no interested party commented otherwise. Therefore, we are excluding affiliate B from the subsidy calculation for this final determination.

Yixing Union

Yixing Union responded to the Department's questionnaire by providing information on the subsidies it received. In its response, Yixing Union identified Yixing Union Cogeneration Co., Ltd. ("Cogeneration") as its parent and a supplier of energy. Based on this information, we requested, and Yixing Union provided, a questionnaire response on behalf of Cogeneration.

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[27] Id.
[28] See Fabrique, 166 F. Supp 2d at 603.
[29] See TQR; and T2SR (8/27), at Exhibit S8.
[30] See TTCA Final Calc Memo, at 2.
[31] See TQR, at 4; and T2SR (8/27), at Exhibit S8, at 4
[32] See TTCA Verification Report, at 5 and 26-29.

As in our Preliminarily Determination,[33] we continue to find that Yixing Union and Cogeneration are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Further, because Cogeneration is the parent of Yixing Union, we are attributing the subsidies received by Cogeneration to Yixing Union pursuant to 19 CFR 351.525(b)(6)(iii). Yixing Union disagrees with our finding that Yixing Union and Cogeneration are cross-owned. For discussion of this issue, please see Comment 27.

Yixing Union also identified several other affiliated companies, but the company reported and we verified that these affiliates do not produce subject merchandise and do not provide inputs to Yixing Union.[34] Therefore, because these companies do not 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 Yixing Union are cross-owned and we are not including these companies in our subsidy calculation.

Benchmarks and Discount Rates

Although the Department is not calculating subsidy rates for any loans in this investigation, the benchmark interest rate is used to compute the discount rate which we are using to allocate benefits over time. Therefore, we discuss the derivation of our benchmark rates below.

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 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.[35] 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."[36]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. However, for the reasons explained in CFS from the PRC[37] and in response to Comment 7 below, 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.

[33] See Preliminary Determination, 73 FR at 54372.
[34] See Yixing Union Verification Report, at 4-5.
[35] See 19 CFR 351.505(a)(3)(i).
[36] See 19 CFR 351.505(a)(3)(ii).
[37] See CFS from the PRC IDM at Comment 10.

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.[38]

We are calculating the external benchmark using the regression-based methodology first developed in CFS from the PRC[39] and more recently updated in LWTP from the PRC.[40] 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 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 IFS.[41] 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.[42] 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: the PRC, Armenia, Azerbaijan, Belarus, Georgia, Moldova, Turkmenistan, and Ukraine. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, Jordan reported a deposit rate, not a lending rate; and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates.[43] 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.[44]

After adjusting the interest rates reported by these countries for inflation, we developed a benchmark interest rate for loans of two years or less, using the regression methodology developed in CFS from the PRC. In a change from the Preliminary Determination, we used the difference between the two-year BB bond rate and the n-year BB bond rate to convert this to a long-tem rate. For a discussion of this issue, please see Comment 14.

The parties raised several additional issues regarding the benchmark and discount rate. These are addressed in Comments 7-15 below.

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[38] See Softwood Lumber from Canada IDM, at Comment 34.
[39] See CFS from the PRC IDM at Comment 10.
[40] See LWTP from the PRC at 20-25.
[41] See http://www.imfstatistics.org, provided in the Yixing Union Final Calc Memo.
[42] See Yixing Union Final Calc Memo.
[43] Id.
[44] Id.

Uncreditworthy Benchmark: Consistent with our Preliminary Uncreditworthiness Memo,[45] we continue to find TTCA uncreditworthy in 2004, 2006, and 2007. To construct the uncreditworthy benchmark rate for those years, we used the long-term benchmark rate described above as the "long-term interest rate that would be paid by a creditworthy company" in the formula presented in 19 CFR 351.505(a)(3)(iii).

Analysis of Programs

I. Programs Determined to Be Countervailable

A. Policy Lending

In the Initiation, the Department stated that we would investigate "loans provided to citric acid producers from SOCBs, including policy banks, based on government plans promoting modernization loans for encouraged projects."[46] Based on the questionnaire responses, we identified three types of policy lending in the Preliminary Determination, a national-level program to encourage and support preferential lending to certain encouraged projects, a provincial-level program to encourage and support preferential lending to key projects and, "other policy bank loans." The latter program is now referred to as the "Export Seller's Credit for High-and New Tech Products" program and is discussed separately, below. In the Preliminary Determination, we found that TTCA, not Yixing Union, received loans under these programs.

Based on our review of the record evidence, including information obtained at verification (i.e., after the Preliminary Determination), we determine that TTCA received countervailable policy loans under the Shandong government's program to support the citric acid industry. Specifically, we find that the Shandong Province Development Plan of Chemical Industry during "Tenth Five-Year Plan" Period ("Shandong Province Tenth Five-Year Chemical Plan") identifies objectives and goals for development of the citric acid industry and calls for lending to support these objectives and goals. This loan program is specific in law because the Government of Shandong Province has a policy to encourage and support the growth and development of the citric acid industry. We further find that the loans provided by policy banks and SOCBs in Shandong Province constitute government-provided loans pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. Finally, as explained under the "Use of Facts Otherwise Available and Adverse Facts Available" section above, we are assigning a countervailing duty rate to TTCA based on adverse facts available, pursuant to section 776(b) of the Act. On this basis, we determine that TTCA received a countervailable subsidy of 8.31 percent ad valorem under this program.

The evidence relied upon by the Department regarding the Shandong policy lending program for the citric acid industry is further discussed in Comment 5.

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[45] See TTCA Preliminary Creditworthiness Memo.

[46] See Initiation, at 17.

With respect to the Export Seller's Credit for High- and New-tech Products program, we continue to find that the loans provided by the GOC under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. Also, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings. Hence this program is specific within the meaning of section 771(5A)(B) of the Act. Finally, for the reasons explained under the "Use of Facts Otherwise Available and Adverse Facts Available" section above, we are assigning a countervailing duty rate to TTCA based on adverse facts available, pursuant to section 776(b) of the Act. On this basis, we determine that TTCA received a countervailable subsidy of 1.76 percent ad valorem under this program.

B. "Famous Brands" Program – Yixing City

According to the Implementing Opinions of City Government on Further Advancing the Brand Construction of Enterprise, the Government of Yixing City provides a lump sum award to enterprises that receive a "famous brands" certificate from either the Famous Brand Promotion Committee of China or the Famous Brand Promotion Committee of Jiangsu. To receive an award, the enterprise must present its "famous brands" certificate from either promotion committee to the Quality and Technology Supervision Bureau of Yixing and the Finance Bureau of Yixing. The Bureaus will then review the submitted certificate and approve the award.

We verified that Yixing Union received a "famous brands" certificate from the Jiangsu Famous Brand Promotion Committee and was granted the lump sum award from the Government of Yixing City during the POI.[47] Consistent with the Preliminarily Determination,[48] we determine that the grant under this program constitutes a financial contribution and also provides a benefit in the amount of the grant.[49]

Regarding specificity, information submitted by the GOC shows that grants provided under the program are available to any enterprise that it certifies as a Famous Product of China or a Famous Product of Jiangsu Province.[50] Further, the GOC reported that eligibility is not limited by law to any enterprise or group of enterprises, or to any industry or group of industries. Therefore, we determine that there is no basis to find this program de jure specific under section 771(5A)(D)(i) of the Act.

In determining whether this program is de facto specific, we examined the factors identified in section 771(5A)(D)(iii) of the Act. The GOC provided program usage data for 2005 through 2007 showing the industries that received the award and the number of companies per industry that received the award.[51] Additionally, we reviewed the Circulars which approved the awards at verification and the GOC explained that it determined the industry category reported in the response according to brand and product name.[52] After reviewing the evidence on the record,

[47] See Yixing Union Verification Report, at 11; Jiangsu Verification Government Report, at 1-3; see also G1SR (9/2) at 8; YQR at 14-15.
[48] See Preliminary Determination, 73 FR at 54377.
[49] See section 771(5)(D)(i) of the Act and 19 CFR 351.504(a).
[50] See G1SR (9/2), at Exhibit S1B-8.
[51] See G1SR (9/2), at Exhibit S1B-11-12.
[52] See Jiangsu Government Verification Report, at 2-3.

we determine that because so few enterprises received the "famous brands" award, the number of recipients is limited and that the program is de facto specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. Consequently, we find the "Famous Brands" program provided a countervailable benefit to Yixing Union.

To calculate the benefit, we divided the amount of the grant by Yixing Union's total sales in the year the benefit was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt. On this basis, we determine that a countervailable subsidy of 0.03 percent ad valorem exists for Yixing Union.

C. Reduced Income Tax Rates to FIEs Based on Location

To promote economic development and attract foreign investment, "productive" FIEs located in coastal economic zones, special economic zones or economic and technical development zones in the PRC receive preferential tax rates of 15 percent or 24 percent, depending on the zone, under Article 7 of the FIE Tax Law.[53] This program was created June 15, 1988, pursuant to the Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Development Zone issued by the Ministry of Finance. The March 18, 1988, Circular of State Council on Enlargement of Economic Areas enlarged the scope of the coastal economic areas and the July 1, 1991, FIE Tax Law continued this policy.

The Department has previously found this program to be countervailable.[54]

Yixing Union is located in a coastal economic development zone and we verified that the company received the reduced income tax rate of 24 percent during the POI.[55] Although TTCA is also a productive FIE and is located in a coastal economic development zone where the income tax rate is 24 percent, we verified that TTCA did not use this program during the POI.[56]

Consistent with the Preliminary Determination,[57] we find that the reduced income tax rate paid by productive FIEs under this program confers a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings.[58] We further determine that the reduction afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Yixing Union as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the company's total sales during that period. To compute the amount

[53] See GQR at Exhibit I-A-39.
[54] See CFS from the PRC, LWRP from the PRC, OTR Tires from the PRC, LWTP from the PRC, and CWASPP from the PRC.
[55] See Yixing Union Verification Report, at 12.
[56] See TTCA Verification Report, at 39-40; see also TTCA Preliminary Calc Memo, at page 7.
[57] See Preliminary Determination, 73 FR at 54377.
[58] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

of the tax savings, we compared the income tax rate Yixing Union would have paid in the absence of the program (30 percent) with the rate it paid (24 percent).

On this basis, we determine that Yixing Union received a countervailable subsidy of 0.17 percent ad valorem under this program.

D. "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 10 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.

The Department has previously found this program to be countervailable.[59]

We verified that Yixing Union was in the last year of the "three half" period under this program during the POI,[60] and that TTCA did not use this program during the POI.[61]

Consistent with the Preliminarily Determination,[62] 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.[63] We also determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, "productive" FIEs and, hence, is specific under section 771(5A)(D)(i) of the Act.[64] The GOC and Yixing Union dispute our finding of specificity for this program. For a further discussion of this issue, see Comment 16.

To calculate the benefit, we treated the income tax savings enjoyed by Yixing Union as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the company's total sales during that period. To compute the amount of the tax savings, we compared the income tax rate Yixing Union would have paid in the absence of the program (24 percent, as described above under "Reduced Income Tax Rates for FIEs Based on Location") with the income tax rate the company actually paid (12 percent).

On this basis, we determine that Yixing Union received a countervailable subsidy of 0.35 percent ad valorem under this program.

E. Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs

Article 73 of the Implementing Rules of the Foreign Investment Enterprise and Foreign Enterprise Income Tax Law authorizes a reduced income tax rate of 15 percent for "productive"

[59] See CFS from the PRC, LWTP from the PRC, and CWLP from the PRC.
[60] See Yixing Union Verification Report, at 12; and Jiangsu Government Verification Report, at 3.
[61] See TTCA Verification Report, at 39-40; see also TTCA Preliminary Calc Memo, at 7.
[62] See Preliminary Determination, 73 FR at 54377-8.
[63] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).
[64] See CFS from the PRC IDM, at Comment 14.

FIEs located in coastal economic zones, special economic zones, or economic and technical development zones if they undertake: (1) technology-intensive or knowledge-intensive projects; (2) projects with foreign investment of $30 million or more and a long payback period; or (3) energy, transportation and port construction projects. Additionally, FIEs that have been established in other zones specified by the State Council and are engaged in projects encouraged by the State may qualify for the reduced income tax rate of 15 percent upon approval by the State Taxation Bureau.

We verified that Cogeneration paid the reduced income tax rate of 15 percent under this program during the POI,[65] and that TTCA did not use this program during the POI.[66]

Consistent with the Preliminary Determination,[67] we determine that the reduction in 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 government and it provides a benefit to the recipient in the amount of the tax savings.[68] We also determine that the reduction afforded by this program is limited as a matter of law to certain enterprises, "productive" FIEs and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit for Yixing Union, we treated the income tax savings enjoyed by Cogeneration 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 consolidated sales of the parent, Cogeneration, and its subsidiaries during the POI, pursuant to 19 CFR 351.525(b)(iii). To compute the amount of the tax savings, we compared the rate Cogeneration 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 Yixing Union to be 1.99 percent ad valorem under this program.

F. Income Tax Credits on Purchases of Domestically Produced Equipment

The Circular of the Ministry of Finance and the State Administration of Taxation of the People's Republic of China on Distribution of Interim Measures Concerning the Reduction and Exemption of Enterprise Income Tax for Investment in Domestic Equipment for Technological Renovation (CAISHUZI (1999) (209)) and Circular of the Ministry of Finance and the State Administration of Taxation on Enterprise Income Tax Credits for Purchases of Domestic Equipment by Foreign Invested Enterprises and Foreign Enterprises (CAISHUI (2000) No. 49) permit FIEs to obtain tax credits of up to 40 percent of the purchase value of domestically produced equipment. Specifically, the tax credit is available to FIEs and foreign-owned enterprises whose projects are classified in either the Encouraged or Restricted B categories of the Catalogue of Industrial Guidance for Foreign Investment. The credit can be taken for

[65] See Yixing Verification Report, at 11-14.
[66] See TTCA Verification Report, at 39-40; see also TTCA Preliminary Calc Memo, at page 7.
[67] See Preliminary Determination, 73 FR at 54378.
[68] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

domestically produced equipment so long as the equipment is not listed in the Catalogue of Non-Duty-Exemptible Articles of Importation.[69]

The Department has previously found this program to be countervailable.[70]

We verified that Cogeneration claimed credits under this program on the tax return filed in 2007,[71] and that TTCA and Yixing did not use this program during the POI.[72]

Consistent with our Preliminary Determination,[73] we find that 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.[74] 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 Cogeneration as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings by the consolidated sales of the parent, Cogeneration, and its subsidiaries during the POI, pursuant to 19 CFR 351.525(b)(iii).

On this basis, we determine that the countervailable subsidy attributable to Yixing Union is 0.11 percent ad valorem under this program.

G. VAT Rebate on Purchases by FIEs of Domestically Produced Equipment

As outlined in GUOSHUIFA (1999) No. 171, Notice of the State Administration of Taxation Concerning the Trial Administrative Measures on Purchase of Domestically Produced Equipment by FIEs, the GOC refunds the VAT on purchases of certain domestic equipment to FIEs if the purchases are within the enterprise's investment amount and if the equipment falls under a tax-free category. Article 3 specifies that this program is limited to FIEs with completed tax registrations and with foreign investment in excess of 25 percent of the total investment in the enterprise. Article 4 defines the type of equipment eligible for the VAT exemption, which includes equipment falling under the Encouraged and Restricted B categories listed in the Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment (No. 37 (1997)) and equipment for projects listed in the Catalogue of Key Industries, Products and Technologies Encouraged for Development by the State. To receive the rebate, an FIE must meet the requirements above and, prior to the equipment purchase, bring its "Registration Handbook for Purchase of Domestically Produced Equipment by FIEs" as well as additional registration documents to the taxation administration for registration. After purchasing the

[69] See GQR, at 70.
[70] See CWLP from the PRC.
[71] See Yixing Union Verification Report, at 14-15; see also Memorandum to the File, "Correction to Appendix 1 of the Second Supplemental Questionnaire for Yixing Union Cogeneration, Co., Ltd." (September 4, 2008).
[72] See TTCA Verification Report, at 39-40; see also Yixing Union Verification Report, at 28-29.
[73] See Preliminary Determination, 73 FR at 54378.
[74] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

equipment, FIEs must complete a Declaration Form for Tax Refund (or Exemption), and submit it with the registration documents to the tax administration.

The Department has previously found this program to be countervailable.[75]

We verified that TTCA received VAT rebates on its purchases of domestically produced equipment under this program,[76] and that Yixing Union and Cogeneration did not receive benefits under this program during the POI.[77]

Consistent with the Preliminary Determination,[78] we find that the rebate of the VAT paid on purchases of domestically produced equipment by FIEs confers a countervailable subsidy. The rebates are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings.[79] We further determine that the VAT rebates are contingent upon the use of domestic over imported goods and, hence, specific under section 771(5A)(C) of the Act.

Normally, we treat exemptions from indirect taxes and import charges, such as VAT rebates, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL.[80]

We requested that TTCA identify the category/kind of equipment for which it received VAT rebates from 2001 through the end of the POI. For one year, the total amount of the VAT rebates approved was less than 0.5 percent of TTCA's total sales for that year. For that year, therefore, we do not reach the issue of whether the VAT rebates were tied to the capital structure or capital assets of the firm. Instead, we expense the benefit to the year in which it is received, consistent with 19 CFR 351.524(a).

In another year, however, the total amount of VAT rebates exceeded 0.5 percent of TTCA's total sales for that year. Based on information submitted by TTCA, the VAT rebates were for capital equipment.[81] Accordingly, we are treating the VAT rebates for this year as a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii).

To calculate the countervailable subsidy for TTCA, we used our standard methodology for non-recurring benefits.[82] Specifically, we used the discount rate described above in the "*Benchmarks and Discount Rates*" section to calculate the amount of the benefit for the POI.

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[75] See CFS from the PRC.
[76] See TTCA Verification Report, at 29; see also Shandong Government Verification Report, at 14-15.
[77] See Yixing Union Verification Report, at 28-29.
[78] See Preliminary Determination, 73 FR at 54378-79.
[79] See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).
[80] See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).
[81] See TQR, at Exhibit 39.
[82] See 19 CFR 351.524(b) and the "Allocation Period" section of this notice, above.

On this basis, we determine that a countervailable subsidy of 0.24 percent ad valorem exists for TTCA.

H. VAT and Duty Exemptions on Imported Equipment

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (*GUOFA* No. 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in production so long as the equipment does not fall into prescribed lists of non-eligible items. Qualified enterprises receive a certificate either from the NDRC or its provincial branch. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. To receive the exemptions, qualified enterprises must adequately document both the product eligibility and the eligibility of the imported article to the local Customs authority.

The Department has previously found this program to be countervailable.[83]

We verified that TTCA, Yixing Union and Cogeneration received VAT and duty exemptions under this program.[84]

Consistent with the Preliminary Determination,[85] we find that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the VAT and tariff savings.[86] We further determine the VAT and tariff exemptions under this program are specific under section 771(5A)(D)(iii)(I) because the program is limited to FIEs and certain domestic enterprises.[87]

Normally, we treat exemptions from indirect taxes and import charges as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits to the year in which they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL.[88]

For TTCA, the total amount of the VAT and tariff exemptions approved in each year was less than 0.5 percent of TTCA's total sales for the respective year. Therefore, we do not reach the issue of whether TTCA's VAT and tariff exemptions were tied to the capital structure or capital assets of the firm. Instead, we expense the benefit to the year in which the benefit is received, consistent with 19 CFR 351.524(a).

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[83] See CFS from the PRC, Tires from the PRC, LWTP from the PRC, and CWASPP from the PRC.
[84] See TTCA Verification Report, at 29-30; and Shandong Government Verification Report, at 15-16; see also Yixing Union Verification Report, at 15-16; and Jiangsu Government Verification Report, at 4-5.
[85] See Preliminary Determination, 73 FR at 54379.
[86] See section 771(5)(D)(ii) of the Act; and 19 CFR 351.510(a)(1).
[87] See CFS from the PRC IDM at Comment 16.
[88] See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

On this basis, we determine that a countervailable subsidy of 0.08 percent ad valorem exists for TTCA.

For Yixing Union, the total amount of the VAT and tariff exemptions approved for some years was less than 0.5 percent of Yixing Union's total sales. Therefore, we have expensed those amounts in the year in which they were received, consistent with 19 CFR 351.524(a). For those years in which the approved VAT and tariff exemptions were greater than 0.5 percent of Yixing Union's total sales for that year, we are treating the exemptions as non-recurring benefits, consistent with 19 CFR 351.524(c)(2)(iii), and allocating the benefits over the AUL.

For Cogeneration, the total amount of the VAT and tariff exemptions approved for some years was less than 0.5 percent of the consolidated sales of the parent, Cogeneration and its subsidiaries in those years. Therefore, we have expensed those amounts in the years in which they were received, consistent with 19 CFR 351.524(a). In other years, the VAT and tariff exemptions approved for Cogeneration were greater than 0.5 percent of the consolidated sales of the parent, Cogeneration, and its subsidiaries. Accordingly, we are treating the exemptions as non-recurring benefits, consistent with 19 CFR 351.524(c)(2)(iii), and allocating the benefit(s) over the AUL.

To calculate the benefit for Yixing Union, we used our standard methodology for non-recurring benefits.[89] Specifically, we used the discount rate described above in the "*Benchmarks and Discount Rates*" section to calculate the amount of the benefit for the POI. First, we divided Yixing Union's VAT and tariff exemptions by Yixing Union's total sales during that period. Next, we divided Cogeneration's VAT and tariff exemptions by the consolidated sales of the parent, Cogeneration, and its subsidiaries during the POI, pursuant to 19 CFR 351.525(b)(iii). Finally, we summed these two rates.

On this basis, we determine that Yixing Union received a countervailable subsidy of 0.38 percent ad valorem under this program.

[89] See 19 CFR 351.524(b).

I. Local Income Tax Exemption and Reduction Program for "Productive" FIEs

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. According to the Regulations on Exemption and Reduction of Local Income Tax of FIEs in Jiangsu Province, a "productive" FIE may be exempted from the three percent local income tax during the "Two Free, Three Half" period.[90] 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.

The Department has previously found this program to be countervailable.[91]

We verified that Yixing Union and Cogeneration were exempted from local income tax during the POI,[92] and that TTCA did not use this program during the POI.[93]

Consistent with our Preliminarily Determination,[94] we find that the exemption from the local income tax received by "productive" FIEs under this program confers a countervailable subsidy. The exemption is a financial contribution in the form of revenue forgone by the government and it provides a benefit to the recipient in the amount of the tax savings.[95] We also determine that the exemption afforded by this program is limited as a matter of law to certain enterprises, "productive" FIEs and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit for Yixing Union, we treated the income tax savings enjoyed by Yixing Union and Cogeneration 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 Yixing Union and Cogeneration would have paid in the absence of the program (i.e., three percent) with the income tax rate the companies actually paid. First, we divided Yixing Union's tax savings received during the POI by Yixing Union's total sales during that period. Second, we divided Cogeneration's tax savings received during the POI by the consolidated sales of the parent, Cogeneration, and its subsidiaries during the POI, pursuant to 19 CFR 351.525(b)(iii). Finally, we summed these two rates.

On this basis, we determine that Yixing Union received a countervailable subsidy of 0.49 percent ad valorem under this program.

[90] See GQR, at Exhibit I-V-3
[91] See CFS from the PRC, Tires from the PRC, and LWTP from the PRC.
[92] See Yixing Union Verification Report, at 11-14.
[93] See TTCA Verification Report, at 39-40.
[94] See Preliminary Determination, 73 FR at 54379-80.
[95] See section 771(5)(D)(ii) of the Act; and 19 CFR 351.509(a)(1).

J. Energy and Water Savings Grant[96]

We verified that TTCA received a non-recurring grant in 2007 from the Anqiu Finance Bureau.[97] At verification, the GOC provided revised usage data for this program that included additional grant recipients.[98] We also learned that the government does not record the industry classifications for grant recipients under this program. Therefore, the GOC's counsel took the recipient data provided by the provincial government and categorized recipients into specific industries.[99] The GOC's counsel explained that they based the industry classification on the recipient's name or information taken from the recipient's web-site.[100]

We started examining the industry classifications performed by the GOC's counsel, but we quickly ascertained that the revised recipient list was too lengthy to perform such an exercise at verification. Consequently, we asked to take the raw recipient data as a verification exhibit because it would allow us to perform further examination at a later time. We also emphasized that this data was needed to verify the usage information for this program given the methods used to report program usage by industry. The GOC, however, would not allow the Department to take the recipient list as a verification exhibit.[101]

We find that the use of facts otherwise available is warranted for this program, pursuant to section 776(a)(2(D) of the Act, because the usage data could not be verified.

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. Because the GOC refused to provide information that would allow for a de facto specificity analysis using accurate and verifiable data, we have employed an adverse inference in selecting from among the facts otherwise available. Accordingly, pursuant to section 776(b) of the Act, we find that this program is de facto specific within the meaning of section 771(5A)(D)(iii) of the Act.

Moreover, consistent with the Preliminary Determination, 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.[102]

To calculate the benefit, we divided the amount received by TTCA's total sales in 2007. On this basis, we determine the countervailable subsidy to be 0.20 percent ad valorem for this program.

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[96] In the Preliminary Determination, this program was called "Anqiu Finance Bureau Grant." For the Final Determination in order to be more descriptive, we are identifying the program as "Energy and Water Savings Grant."
[97] See TTCA Verification Report, at 30; Shandong Verification Report, at 16-17.
[98] See Shandong Government Verification Report, at Exhibit 1; and G1SR (9/2), at page 14.
[99] Id., at Exhibit-1.
[100] Id., at 17.
[101] Id., at 17.
[102] See 19 CFR 351.504(a).

K. Provision of Land in the AEDZ for LTAR

TTCA reported holding land-use rights for five plots located in the AEDZ.[103] Each plot was acquired by different means after the cut-off date of December 11, 2001.[104] For example, land-use rights for plots 1-3 were granted directly from the Anqiu Land Resources Bureau, whereas the land-use rights for plots 4 and 5 were obtained from a party other than the Anqiu Land Resources Bureau.[105] For reasons explained in our Post-Preliminary Analysis, we preliminarily countervailed plots 1-3 but not plots 4 and 5.[106]

In LWS from the PRC, the Department found 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.[107] We 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, pursuant to section 771(5A)(D)(iv) of the Act.[108]

The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks to determine whether a government received adequate remuneration for government-provided goods. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) ("tier one"); (2) world market prices that would be available to purchasers in the country under investigation ("tier two"); or (3) an assessment of whether the government price is consistent with market principles ("tier three").

In LWS from the PRC, we determined that "Chinese land prices are distorted by the significant government role in the market" and, hence, that tier one benchmarks do not exist.[109] We also found that world market prices under tier two benchmarks are not appropriate.[110] Finally, with regard to tier three benchmarks, we 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.[111]

Consistent with LWS from the PRC, we find that the government's provision of land-use rights is a financial contribution within the meaning of section 771(5)(D)(iii) of the Act. With regard to specificity, the provincial government created the AEDZ and the Anqiu Land Resources Bureau approves which enterprises can locate in the AEDZ. Therefore, consistent with LWS

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[103] See TNSAR, at 6.
[104] See Post-Preliminary Analysis, at 4-5; see also CWP from the PRC IDM, at Comment 2.
[105] See Post-Preliminary Analysis, at 4-5.
[106] Id., at 6-7.
[107] See LWS from the PRC IDM, at 14 and Comment 8.
[108] Id., at 14 and Comment 9.
[109] Id., at 15 and Comment 10.
[110] Id., at 15.
[111] Id., at 16 and Comment 10.

from the PRC, we find the provision of the land-use rights in the AEDZ is regionally specific, pursuant to section 771(5A)(D)(iv) of the Act.[112] Finally, consistent with LWS from the PRC,[113] to determine whether a benefit is conferred, we compared the price TTCA paid for its land-use rights with certain industrial land in industrial estates, parks, and zones in Thailand. This comparison shows that TTCA received a benefit.

We have allocated the benefit over the life of the land-use rights using the discount rates described in the "*Benchmarks and Discount Rates*" section above. To determine the subsidy for the POI, we divided the amount allocated to the POI by TTCA's total sales. On this basis, we determine the countervailable subsidy to be 2.09 percent ad valorem for TTCA.

The GOC and TTCA provided comments arguing that: (1) the GOC's provision of land-use rights does not constitute a financial contribution; (2) the Department's use of external benchmarks to determine the adequacy of remuneration is unlawful; and (3) the external benchmark used in the Post-Preliminary Analysis was improperly placed on the record.[114] We have addressed these arguments in the Department's Positions for Comments 22-24.

L. Land-Use Rights Extension in Yixing City

In 1996, HPP (Cogeneration's predecessor) contributed land-use rights as part of its investment in the establishment of a joint venture, Cogeneration. HPP received its shares in the company and continued to hold the land-use rights. In 2003, Cogeneration applied to the Land Resources Bureau to have the land-use rights transferred and received a granted land-use rights certificate. The certificate that was issued set the term of the land-use rights as 50-years from 2003 (i.e., until 2053) rather than 50 years from 1996, the year in which the land-use rights were contributed to the joint venture.

Pursuant to section 771(5)(D)(ii) of the Act, we find that Cogeneration received a financial contribution in the form of revenue foregone by the GOC on the seven additional years included on the land-use rights certificates, and a benefit on the amount of the foregone revenue. Further, because industrial land-use rights in the PRC are granted for 50 years and Cogeneration received its rights for 57 years, we preliminarily find the additional seven years to be specific to Cogeneration within the meaning of section 771(5A)(D)(i) of the Act.

To calculate the benefit, we divided the initial value of the land by 50 years to derive a per-year amount paid for the land-use rights. We then multiplied this amount by seven years and treated the result as a grant. In accordance with 19 CFR 351.524(b)(2), we conducted the "expense" test by dividing the grant amount by Yixing Union's and Cogeneration's total sales in 2003, and found that the benefit was greater than 0.5 percent.[115] Accordingly, we are allocating the benefit

[112] See LWS from the PRC IDM, at 14 and Comment 9.
[113] Id., at 17.
[114] See Comments 22-24.
[115] We note that we did not have inter-company sales between Yixing Union and Cogeneration in 2003 to subtract. However, the result would not have changed.

over the ten-year AUL, using the discount rate described in the "*Benchmarks and Discount Rates*" section above.

Dividing the allocated amount by the consolidated sales of the parent, Cogeneration, and its subsidiaries during the POI, pursuant to 19 CFR 351.525(b)(iii), we determine that Yixing Union received a countervailable subsidy of 0.08 percent ad valorem under this program.

II. Programs Determined to Be Not Countervailable

A. Excessive VAT Rebates on Export

Consistent with the Preliminary Determination, we continue to find that: (1) VAT remission upon export is not excessive and does not confer a countervailable subsidy on the subject merchandise; (2) the VAT exemption on agricultural products does not provide a countervailable subsidy on the subject merchandise; and (3) there is no countervailable subsidy conferred on subject merchandise from the VAT exemption on corn scrap sales.[116]

B. Science and Technology Reward – Anqiu City

Consistent with the Preliminary Determination, we continue to exercise our discretion to not investigate the benefit provided by this non-recurring subsidy because the potential countervailable subsidy is less than .005 percent ad valorem for TTCA.[117]

C. Investment Development Award – Government of Anqiu

Consistent with the Preliminary Determination, we continue to find that there is no basis to conclude that this program is de jure specific under section 771(5A)(D)(i) of the Act. Further, we continue to find that there is an insufficient basis, due to the early stage of this program, to determine whether this program is specific due to: (1) the GOC's apparent lack of discretion; and (2) the reported usage data provides little indication regarding whether the program is specific.

D. Administration Fee Exemption in Anqiu City
E. Exemption of Water and Sewage Fees in Anqiu City

There is no record evidence indicating that the GOC has programs in place in Anqiu City to exempt administrative and water/sewage fees. Consistent with Post-Preliminary Analysis, we find that these programs do not exist.[118]

[116] See Preliminary Determination, 73 FR at 54380-54381.
[117] Id., 73 FR at 54381.
[118] See Post-Preliminary Analysis, at 8.

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

A. Provision of TTCA's Plant and Equipment for LTAR
B. Provision of Land in the Zhuqiao Key Open Park for LTAR

As explained in the Department's Position for Comments 20 and 30, we are deferring any possible further examination of these alleged programs to a future administrative review, pursuant to 19 CFR 351.311(c)(2).

IV. Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI

A. Discounted Loans for Export-Oriented Industries
B. Grants Provided for the Rationalization of the Citric Acid Industry
C. Loans Provided to the Northeast Revitalization Program
D. State Key Technology Renovation Project Fund
E. National Level Grants to Loss-making SOEs
F. Reduced Income Tax Rate for High or New Technology Enterprises
G. Income Tax Exemption Program for Export-Oriented FIEs
H. Tax Benefits to FIEs for Certain Reinvestment of Profits
I. Preferential Income Tax Rate for Research and Development at FIEs
J. Preferential Tax Programs for Encouraged Industries
K. Preferential Tax Policies for Township Enterprises
L. Provincial Level Grants to Loss-making SOEs
M. Reduced Income Tax Rates for Encouraged Industries in Anhui Province
N. Provision of Land for Less Than Adequate Remuneration in Anhui Province
O. Funds for Outward Expansion of Industries in Guangdong Province
P. Income Tax Exemption for FIEs Located in Jiangsu Province
Q. Administration Fee Exemption in the YEDZ
R. Tax Grants, Rebates, and Credits in the YEDZ
S. Provision of Construction Services in the YEDZ for LTAR
T. Grants to FIEs for Projects in the YEDZ
U. Provision of Electricity in the YEDZ for LTAR
V. Provision of Water in the YEDZ for LTAR
W. Provision of Land in the YEDZ for LTAR
X. Provision of Land to SOEs for LTAR
Y. Exemption from Land-use Fees and Provision of Land for LTAR in Jiangsu Province for LTAR
Z. Torch Program – Grant

Analysis of Comments

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

The GOC's Affirmative Comments:

The GOC objects to the initiation and continuation of a CVD investigation involving a country that the Department continues to treat as an NME for purposes of AD investigations because the Department lacks the authority to do so.[119] The GOC contends that the Federal Circuit has ruled that the CVD law cannot be applied to NMEs and that the Department consistently refused to do so for two decades after the Federal Circuit's ruling.[120] According to the GOC, the Federal Circuit did not hold this issue to be within the Department's discretion as the Department believes. Instead, the Federal Circuit made clear, in the GOC's view, that the Department does not have the authority to begin applying the CVD law to the PRC on its own because the Court stated that it is up to the Congress to decide what remedies are appropriate.[121]

According to the GOC, the Department has provided the following legal reasons to support the application of CVD law to the PRC: (1) the PRC's commitment to be bound by the SCM Agreement, (2) certain concessions contained in the PRC's Accession Protocol, and (3) Congressional statements urging the Department to enforce its rights under these agreements.[122] The GOC contends, however, that neither the SCM Agreement nor the PRC's Accession Protocol is part of U.S. domestic law and, therefore, cannot be relied upon as support for any findings or conclusions. These agreements only have legal effect to the extent Congress enacts provisions implementing them in U.S. domestic law.[123] Also, the GOC notes that statements by Congress do not imply the existence of, or any change to, remedies available under U.S. domestic law.

The GOC states that there are two key problems with applying the CVD law to NMEs.[124] First, the Department's reliance on out-of-country benchmarks confirms that it cannot measure subsidies in the PRC. In the Department's Preliminary Results and Interim Analysis, the GOC notes that the Department determined that the government controlled or dominated the loan and land markets in the PRC such that these inputs used by the respondents were not provided at market prices and that no market price benchmark within the PRC could be determined. The GOC argues that if the Department affirms these findings in its final determination, it will have determined that it is unable to measure the alleged subsidies with reference to a market benchmark reflecting supply and demand conditions in the PRC and, thus, there is no way of measuring the deviation or misallocation caused by the government intervention. The GOC

[119] See GOC's CB, at 8-9.
[120] Id., at 10-11, citing Georgetown Steel.
[121] Id., at 10-11, citing Georgetown Steel, 801 F.2d at 1317-1318.
[122] See GOC's CB, at 9, citing SCM Agreement at 264; Accession Protocol, WT/L/432, at Art. 15(b); and CWASPP from the PRC, IDM at Comment 4.
[123] See GOC's CB, at 9, citing Medellin v. Texas.
[124] See GOC's CB, at 10.

contends that this was the key consideration underlying the Department's long-standing practice of not applying the CVD law to NMEs.[125]

The GOC next points to the Georgetown Steel Memorandum and CFS from the PRC, in which the Department purportedly differentiated the PRC's current economy from that of Soviet-style planned economies.[126] However, according to the GOC, that analysis was completely abstract, having nothing to do with any program under investigation and, thus, it is irrelevant to whether subsidies in this investigation can be fairly and accurately measured in the PRC's current economy.[127]

The GOC argues that the Department's explanations of why it cannot use Chinese interest rates or land price benchmarks in the Preliminary Determination and Post-Preliminary Analysis are consistent with the Department's reasoning in Wire Rod from Poland on why it could not apply the CVD law to an NME country, i.e., "that in an NME system the government does not interfere in the market process, but supplants it."[128] The GOC contends that the Department is implicitly determining that it cannot reasonably measure a subsidy because the Chinese government "supplants" the market process and does not simply "interfere."[129]

The GOC states that the Department's calculation of a benchmark interest rate illustrates this point. The Department's calculation of its benchmark interest rate is based on a regression analysis of data from two variables (interest rates and a combined World Bank governance factor) which are not even correlated. According to the GOC, the average interest rate generated by the Department's regression is not an accurate measurement of what the Chinese interest rate would be without government intervention. The GOC contends that interest rates in a given country are affected by factors other than inflation and governance factors, such as the saving rate and monetary policy, and the Department has not attempted to adjust for these factors. Thus, the GOC argues that the Department is only measuring the difference between what the Chinese firms pay in interest and an average of this range of third-country interest rates (generated from the regression analysis).

The GOC states that the Department cannot have it both ways: it cannot find that prices in the PRC are sufficiently market-based that it can measure subsidies, while at the same time finding that it cannot use prices in the PRC to measure subsidies because of the government's significant role in the market.

[125] See GOC's CB, at 10-11, citing Wire Rod from Poland and Wire Rod from Czechoslovakia.
[126] See GOC's CB, at 11-12, citing Georgetown Steel Memorandum, at 5 and 10; and CFS from the PRC.
[127] Id., at 12.
[128] Id., at 11, citing Wire Rod from Poland.
[129] Id., at 12, citing Preliminary Determination, 73 FR at 54373.

The second major problem identified by the GOC in applying the CVD law to NMEs is that it leads to a duplicative remedy and double counting. This argument is addressed in the Department's Position for Comments 2 and 3.

Yixing Union's Affirmative Comments:

Yixing Union agrees with the GOC that Georgetown Steel authoritatively held that the U.S. CVD law does not apply to NMEs, and that the Department has followed a strict policy of not applying CVD law to NMEs until recently.[130] As observed by the Federal Circuit in Georgetown Steel, there were no NMEs when the CVD law was enacted.[131] Therefore, according to Yixing Union, Congress had never confronted the issue of applying CVDs to NMEs and, consequently, the Federal Circuit analyzed the purpose of the law. Yixing Union asserts that based on its review, the Court found unambiguously that the use of the NME surrogate methodology compensates for benefits conferred by subsidies as well as price discrimination.[132]

Like the GOC, Yixing Union contends that Georgetown Steel did not leave the issue of whether the CVD law applies to NMEs to the discretion of the Department. Yixing Union further claims that despite the Department's position that it does have such discretion, the CIT recently found that it was unclear whether the Federal Circuit in Georgetown Steel was deferring to the Department or whether the Court held that there was only one legally valid interpretation.[133] Although an administering agency is entitled to deference,[134] the Federal Circuit has the "final word"[135] and, as explained above, concluded that the CVD law was not intended to apply to NMEs.

Yixing Union further contends that the position taken by the Department in the Georgetown Steel Memorandum, i.e., that the PRC's economy differs from those of the Soviet Union and the German Democratic Republic, does not overcome the Federal Circuit's findings that Congress could not have intended to apply the CVD law to NMEs and that a remedy was available under the AD law. Moreover, according to Yixing Union, there is only one definition of "nonmarket economy" in the law and it applies equally to AD and CVD proceedings.[136] Therefore, Yixing Union contends, if the Department continues to treat the PRC as an NME, it must also do so for CVD purposes, which means that the agency has no authority to conduct this investigation.

Yixing Union notes that subsequent to the Georgetown Steel case, Congress enacted further changes to the CVD law through the Omnibus Trade and Competitiveness Act of 1988 and the URAA. Neither of these pieces of legislation broadened the scope of CVD law to encompass NMEs, according to Yixing Union, and the SAA accompanying the URAA contains language

[130] See Yixing Union's CB, at 10, citing Wire Rod from Poland; Wire Rod from Czechoslovakia; Potassium Chloride from GDR; Oscillating Fans from China; and Georgetown Steel.
[131] See Yixing Union's CB, at 8, citing Georgetown Steel, 801 F.2d at 1314.
[132] See Yixing Union's CB, at 10, citing Georgetown Steel, 801 F.2d at 1318.
[133] Id., at 11, citing GPX v. United States.
[134] Id., at 12, citing Asahi Chemical, 548 F.Supp. at 1264 n.2.
[135] Id., at 12, citing Ithaca College, 623 F.2d at 228.
[136] See section 771(18) of the Act.

evidencing a clear understanding by both the executive branch and Congress that the CVD law does not apply to NMEs.[137] Furthermore, Yixing Union contends, the TRE Act, which was drafted to close the loophole that bars the use of the countervailing duty law against NMEs, such as the PRC, never became law.[138]

If the Department is to fairly administer both the AD and CVD statutes, Yixing Union contends that treatment of the PRC as a market economy for CVD purposes should require it to eliminate the use of NME rules in the application of the AD law. The Department cannot have such contradictory positions and hope to continue its reputation of fairness, says Yixing Union.

TTCA's Affirmative Comments:

TTCA also argues that as a result of Georgetown Steel, only Congress can provide remedies against NME imports beyond those already in place in the AD law and that, to date, Congress has not done so.[139] TTCA concurs in the arguments put forth by the GOC that the Department's rationale for reversing its longstanding position on this issue is without merit.

Petitioners' Rebuttal Comments:

Petitioners disagree with the GOC, TTCA and Yixing Union. Petitioners note that the Department has already addressed this issue in each of the past nine CVD Chinese investigations, including the Preliminary Determination in the current case, and has continued to apply the CVD law to the PRC, a country classified as an NME.[140]

Petitioners argue that no statutory provision prohibits the application of CVD law to NMEs.[141] Pursuant to section 701(a)(1) of the Act, the Department is required to impose CVDs when it determines that "the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States." Section 771(3) of the Act defines a country as "a foreign country, a political subdivision, dependent territory, or possession of a foreign country." In neither of these definitions is "a country" restricted to market economy countries, Petitioners note. Petitioners contend that the Department has adopted this logic in its determinations that apply the CVD law to the PRC.

Petitioners further contend that, contrary to arguments from the GOC regarding amendments to the statute by Congress, Article XVI of the GATT 1994's definition of a countervailable subsidy is not limited to countries that are market economies but applies to all countries, including the

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[137] See Yixing Union's CB, at 14, citing SAA, at 927.
[138] Id., at 14, citing the TRE Act.
[139] See TTCA's CB, at 4-5.
[140] See Petitioners' RB at 7-8, citing Preliminary Determination, 73 FR at 54369, CFS from the PRC IDM, at 16-23, CWP from the PRC IDM, at 18-33, LWS from the PRC IDM, at 28-40; LWRP from the PRC IDM, at 13-17, Magnets from the PRC IDM, at 9-15; OTR Tires from the PRC IDM, at 28-42, LWTP from the PRC IDM, at 28-37; CWLP from the PRC IDM, at 58-62; and CWASPP from the PRC IDM, at Comment 4.
[141] See Petitioners' RB, at 9.

PRC. Also, Petitioners note that the PRC committed to the disciplines established in the SCM Agreement, including allowing other WTO Members to identify and measure subsidy benefits and that prevailing terms and conditions in the PRC may not always be available as appropriate benchmarks.[142]

Petitioners argue that, despite Yixing Union's unfounded assertions to the contrary, Congress has never communicated an intention to permit the Department to apply the CVD law only to market economies.[143] Petitioners note that in the matter of statutory interpretation, the courts have routinely rejected inferences based on Congressional non-action,[144] and Yixing Union has provided no evidence to support its inference. In addition, Petitioners assert that the opposite inference is equally valid, that Congress has not acted because Congress understands that it has already properly vested the Department with the requisite authority. Petitioners note that Congressional action demonstrates that Congress believes that the Department already possesses the authority to apply the CVD law to the PRC, according to 22 USC 6943(a)(1).[145]

Petitioners dispute the GOC's arguments that the Department has no legal authority to rely on provisions of the WTO Agreements because neither the SCM Agreement nor the PRC's Accession Protocol is part of U.S. domestic law. Petitioners argue the Department has not relied on the SCM Agreement or the PRC's Accession Protocol as domestic law but instead has referred to and relied on those documents in order to satisfy its statutory obligation to monitor the PRC's compliance with the WTO Agreement, citing 22 USC section 6943(a)(1).

Petitioners also dispute the GOC's argument that the Federal Circuit, in Georgetown Steel, did not hold the issue of applying the CVD law to the PRC to be within the Department's discretion.[146] Instead, Petitioners contend that the Court did not base its decision on any compulsory interpretation of the statutory language but based its decision on the discretion afforded to the Department and the Department's exercise of that discretion. Without clear Congressional intent, Petitioners contend that the Court deferred to the Department's interpretation, which hinged on the economic realities of the Soviet-bloc economy. Petitioners argue that it is appropriate for the Department to reconsider the issue and apply the CVD law to the PRC, given the PRC's present economy compared to the Soviet-bloc economies in the mid-1980s.

Petitioners argue that although the Federal Circuit has not had an opportunity to revisit the question, the CIT has affirmed the Department's interpretation of the statute to authorize the application of the CVD law to NMEs.[147]

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[142] See Petitioners' RB, at 9-10, citing Accession Protocol, at Article 15.
[143] See Petitioners' RB, at 10.
[144] Id., citing Butterbaugh v. DOJ, 336 F.3d at 1342 ("{C}ongressional 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.").
[145] Id., at 11.
[146] Id., at 12-14.
[147] Id., at 14, citing GOC v. United States, 483 F.Supp. 2d at 1282.

Finally, Petitioners reject the GOC's argument that the Department's use of non-domestic benchmarks to calculate countervailable subsidies for land and preferential lending is evidence that the Department has inappropriately applied the CVD law to the PRC.[148] Specifically, Petitioners contend that the GOC has not cited to any statutory authority or judicial decision that would prohibit the Department from relying on external benchmarks to value certain subsidies, or that would suggest that reliance on a third-country benchmark represented a reason not to apply the CVD law to a particular country. Petitioners note that the statute allows the Department to calculate the adequacy of remuneration by using either domestic or non-domestic values. Petitioners note that the Department has explained that the statutory language does not restrict the market benchmark to the country of export but rather is intended to require that the adequacy of remuneration be determined by reference to comparable market-based transactions.[149] Therefore, Petitioners argue, use of an external market-based benchmark, rather than market prices in the country at issue, is not inconsistent with its statutory mandate and reveals no error in the Department's application of the CVD law to the PRC.

Department's Position:

We disagree with the GOC and the responding companies regarding the Department's authority to apply the CVD law to the PRC. The Department's position on the issues raised are fully explained in CFS from the PRC, CWP from the PRC, LWRP from the PRC, LWS from the PRC, OTR Tires from the PRC, LWTP from the PRC, CWLP from the PRC, and CWASPP from the PRC.[150]

Congress granted the Department the general authority to conduct CVD investigations.[151] 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 . . . ."[152] 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.[153]

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."[154] The Department reached this conclusion, in large part, because both output and input prices were centrally administered, thereby effectively administering profits as

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[148] Id., at 14-16.
[149] Id., at 15, citing Softwood Lumber from Canada IDM, at 19.
[150] See CFS from the PRC IDM, at Comment 1, CWP from the PRC IDM, at Comment 1, LWRP from the PRC IDM, at Comment 1, LWS from the PRC IDM, at Comment 1, OTR Tires from the PRC IDM, at Comment A.1, LWTP from the PRC IDM, at Comment 1; CWLP from the PRC IDM, at Comment 16; and CWASPP from the PRC IDM, at Comment 4.
[151] See e.g., sections 701 and 771(5) and (5A) of the Act.
[152] See section 701(a) of the Act.
[153] See also section 701(b) of the Act (providing the definition of "Subsidies Agreement country").
[154] See Wire Rod from Poland and Wire Rod from Czechoslovakia.

well.[155] The Department explained that "{t}his is the background that does not allow us to identify specific NME government actions as bounties or grants."[156] Thus, the Department based its decision upon the economic realities of Soviet-bloc economies. In contrast, the Department has previously explained that, "although price controls and guidance remain on certain 'essential' goods and services in China, the PRC Government has eliminated price controls on most products . . . ."[157] 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.[158] In doing so, the CAFC recognized that the statute does not speak to this precise issue and deferred to the Department's decision. The Georgetown Steel Court did not find that the CVD law prohibited the application of the CVD law to NMEs, but only that the Department's decision not to apply the law was reasonable based upon the language of the statute and the facts of the case. Specifically, the CAFC recognized that:

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

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

The GOC and the respondents argue that the Georgetown Steel Court found that the CVD law cannot apply to NMEs. In making this argument, the GOC and 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.[159] The Georgetown Steel Court did not hold that the statute prohibited application of the CVD law to NMEs, nor did it hold that Congress spoke to the precise question at issue. Instead, as explained above, the Court held that the question was within the discretion of the Department.

Recently, the CIT concurred, explaining that "the Georgetown Steel court only affirmed {the Department}'s decision not to apply countervailing duty law to the NMEs in question in that

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[155] Id.
[156] Id.
[157] See Georgetown Steel Memorandum.
[158] See Georgetown Steel, 801 F.2d at 1308.
[159] Id.

particular case and recognized the continuing 'broad discretion' of the agency to determine whether to apply countervailing duty law to NMEs."[160] Therefore, the Court declined to find that the Department's investigation of subsidies in the PRC was ultra vires. Moreover, the GPX v. United States decision, cited by Yixing Union, was a decision based on a preliminary injunction motion and was not a final decision on whether the CVD law can be applied to a country classified as an NME, such as the PRC and, therefore, the argument is misplaced.

The GOC's and the responding companies' 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.[161] Given this existing authority, no further statutory authorization is necessary. With regard to Yixing Union's argument concerning the TRE Act, the fact that a provision was considered that would have explicitly given the Department certain authority does not mean that the Department did not already have that authority under prior statutes. As the Supreme Court explained in Solid Waste Agency of Northern Cook Cty. v. U.S. Army Corps of Engineers, "{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."[162] 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."[163] The PRC was designated as an NME as of the passage of this bill, as it is today. Thus, Congress not only contemplated that the Department possesses the authority to apply the CVD law to the PRC, but authorized funds to defend any CVD measures the Department might apply.

[160] See GOC v. United States (citing Georgetown Steel, 801 F.2d at 1318).
[161] See, e.g., section 771(5) and (5A) of the Act.
[162] See Solid Waste Agency of Northern Cook Cty. v. U.S. Army Corps of Engineers, 531 U.S. 159, 170 (2001) (citation omitted).
[163] See 22 U.S.C. § 6943(a)(1) (emphasis added).

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."[164]

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

The Accession Protocol allows for the application of the CVD law to the PRC, even while the PRC remains classified as an NME by the Department. In fact, in addition to agreeing to the terms of the SCM Agreement, specific provisions were included in the Accession Protocol that involve the application of the CVD law to the PRC. For example, Article 15(b) of the Accession Protocol provides for special rules in determining benchmarks that are used to measure whether the subsidy bestowed a benefit on the company.[166] Paragraph (d) of that same Article provides for the continuing treatment of the PRC as an NME.[167] There is no limitation on the application of Article 15(b) with respect to Article 15(d), thus indicating it became applicable at the time the Accession Protocol entered into effect. Although WTO agreements such as the Accession Protocol do not grant direct rights under U.S. law, the Accession Protocol contemplates the application of CVD measures to the PRC as one of the possible existing trade remedies available under U.S. law. Therefore, Congress' directive that the "United States Government must effectively monitor and enforce its rights under the Agreements on the accession of the People's Republic of China to the WTO," contemplates the possible application of the CVD law to the PRC.[168]

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

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[164] See 22 U.S.C. § 6901(8).
[165] See 22 U.S.C. § 6941(5).
[166] See Accession Protocol.
[167] Id.
[168] See 22 U.S.C. § 6941(5).

We agree with the GOC that neither the SCM Agreement nor the PRC's Accession Protocol is part of U.S. domestic law. However, the Accession Protocol, to which the PRC agreed, contemplates the application of CVD measures to the PRC and is relevant to the PRC's and our international rights and obligations. Congress thought the provisions of the Accession Protocol important enough to direct that they be monitored and enforced.

We further disagree with the GOC's and the responding companies' contention that the Department is trying to have it both ways. The Georgetown Steel Memorandum details the Department's reasons for applying the CVD law to the PRC and the legal authority to do so. Contrary to the GOC and Yixing Union's assertions, Georgetown Steel does not rest on the absence of market-determined prices, and the recent decision to apply the CVD law to the PRC does not rest on a finding of market-determined prices in the PRC.

In the case of the PRC's economy today, as the Georgetown Steel Memorandum makes clear, the PRC no longer has a centrally-planned economy and, as a result, the PRC no longer administratively sets most prices. As the Georgetown Steel Memorandum also makes clear, it is the absence of central planning, not market-determined prices, that makes subsidies identifiable and the CVD law applicable to the PRC.[169] The citation to the EIU quote, "market forces now determine the price of more than 90 percent,"[170] 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 China, though generally free to pursue entrepreneurial activities, still conduct all business within the broader, distorted economic environment over which the PRC Government has not ceded fundamental control."[171]

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.[172] 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 the PRC prices or costs will be useful for benchmarking purposes, i.e., are market-determined, and some will not, and the Department will make that determination on a case-by-case basis, based on the facts and evidence on the record. Thus, because of the mixed, transitional nature of China's economy today, there is no longer any basis to conclude, from the existence of some "non-market-determined prices," that the CVD law is not applicable to the PRC.

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[169] See Georgetown Steel Memorandum, at 5.
[170] Id., at 5.
[171] Id., at 5.
[172] See Georgetown Steel Memorandum, at 5; see also Lined Paper Memorandum at 22.

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.[173] We found that these prices were consistent with market principles, within the meaning of 19 CFR 351.511(a)(2)(iii), and were the most appropriate basis for deriving a market-based stumpage benchmark for determining whether the Government of Indonesia provided stumpage for less than adequate remuneration. Furthermore, the Department also used an out-of-country benchmark in Lumber from Canada Investigation.[174] In this case, the Department has followed its established practice of using out-of-country benchmarks where actual transaction prices are significantly distorted because of government involvement in the market. Moreover, a case-by-case approach is what the PRC agreed to in its Accession Protocol,[175] which explicitly provides for use of external benchmarks, where there are special difficulties in applying standard CVD methodology.

On the specific issue of calculation of the benchmark interest rate, refer to the Department's Position at Comments 8-15, respectively.

Comment 2 Double Counting/Overlapping Remedies

The GOC, TTCA, and Yixing Union argue that the application of the NME AD methodology and the market economy CVD methodology lead to duplicative remedies and double counting. By double counting, the GOC, TTCA, and Yixing Union mean that AD and CVD duties provide overlapping remedies for the same conduct.

The GOC's Affirmative Comments:

The GOC contends that the clearest example of double counting occurs with export subsidies.[176] According to the GOC, the reason this would occur is that in competitive markets, export subsidies would be expected to result in a lower export price than a domestic price. To the extent that the export subsidy causes price discrimination, imposition of AD and countervailing duties would double the corrective penalty. Citing Uranium from France AD Final Results, the GOC claims that the Department has accepted this analysis and, consistent with section 772(c)(1)(C), corrects for this double counting.[177] Specifically, the GOC notes that the amount of any countervailable export subsidy is added to the export price and constructed export price, which, in effect, reduces any AD duty by the amount of the export-subsidy-related CVD duty, avoiding double counting. The GOC notes that there is no requirement that the respondent

[173] See CFS from Indonesia IDM, at "GOI's Provision of Standing Timber for LTAR" and Comments 11 and 12.
[174] See Softwood Lumber from Canada IDM, at "Provincial Stumpage Programs"; see also Softwood Lumber from Canada - Amended.
[175] See Accession Protocol, WT/L/432 at para. 15.
[176] See GOC's CB, at 15-16.
[177] See GOC's CB, at 17-18; and TTCA's CB, at 6; both citing Uranium from France AD Final Results, 69 FR at 46505.

provide case-specific evidence of double-counting or explain how it used the subsidy, nor demonstrate that the export subsidy resulted in a lower export price.

Domestic subsidies, at least in market economy cases, do not lead to double counting, according to the GOC.[178] This is because in competitive markets, domestic subsidies would lead the recipient to lower prices in both the home and U.S. markets equally. As a result, the GOC contends, the subsidy does not lead to price discrimination so when the Department imposes CVD duties, it fully offsets the subsidy and, through AD duties, properly offsets any price discrimination.[179] The GOC cites to Uranium from France AD Final Results[180] to argue that the Department has also adopted this economic analysis, where domestic subsidies are assumed to not affect dumping margins because the domestic subsidies lower prices in both the U.S. market and the domestic (home) market equally.

In contrast to the situations described above, the GOC claims that double counting exists in concurrent AD and CVD investigations against NMEs because normal value is not based on home market prices or costs, but instead on surrogate values unaffected by any subsidies in the PRC.[181] Thus, while the prices charged by the NME producer will decrease in response to the domestic subsidy, the GOC contends that normal value will remain unchanged because normal value is based on inputs, G&A expenses, financial expenses, and profit based on unsubsidized third-country surrogate values. Double counting necessarily arises, according to the GOC, because the Department measures the alleged subsidy with reference to market benchmarks and at the same time measures dumping using a factors of production analysis based on third country prices for many of the same inputs.

The GOC further cites to The Law and Economics of Simultaneous Countervailing Duty and Anti-dumping Proceedings[182] to explain the price effects of export and domestic subsidies, and the interrelationship of AD and CVD remedies for both types of subsidies in market economy and NME cases.

TTCA's Affirmative Comments:

TTCA restates several of the arguments made by the GOC. In support of its claim that the statute does not authorize the Department to assess duplicative remedies for the same injurious conduct, TTCA points to Wheatland Tube.[183]

[178] See GOC's CB, at 16-18.
[179] See GOC CB at 17, where the GOC explains that the same result occurs when normal value is based on constructed value.
[180] See GOC's CB, at 18, citing Uranium from France AD Final Results, 69 FR at 46505.
[181] See GOC's CB, at 18-20.
[182] See GOC's CB, at 20-21, citing B. Kelly article, Issue 1 at 41; and GAO Report, at 4, 28, and 48.
[183] See TTCA's CB, citing Wheatland Tube, 495 F.3d, at 1363.

Yixing Union's Affirmative Comments:

Yixing Union also restates many of the arguments made by the GOC contending that where there are simultaneous filings under both the CVD and AD law, and corresponding affirmative determinations, there will be double counting unless the Department makes an adjustment. Yixing Union additionally claims that the role of double counting is widely recognized. In support, Yixing Union points to the GAO Report, which states that the Department would have to adjust AD duties to avoid double counting.[184] Also, the TRE Act directed the Department to ensure that double counting did not exist.[185] Yixing Union acknowledges that the TRE Act did not become law, but the proposed provision, in Yixing Union's view, illustrates the general understanding that action must be taken to avoid double counting.[186] Yixing Union contends that the easiest way to make that adjustment is to terminate the CVD investigation.

Petitioners' Rebuttal comments:

Petitioners contend that the GOC's argument that the Department should reduce the AD margin by whatever CVD rate is determined in the CVD case is not supported by the statute. Petitioners note that the GOC does not cite to any statutory support for its argument and states that the statute only authorizes an adjustment to the export price or constructed export price to offset an export subsidy, not domestic subsidies.[187]

The respondents' citation to Uranium from France AD Final Results, Petitioners note, omits the most relevant part of the Department's determination – its interpretation of the statute. Specifically, the Department found that no adjustment to export price and constructed export price is appropriate for domestic subsidies. In addition, Petitioners cite to CFS from the PRC AD Final, where the Department stated that when it has considered the issue of whether to adjust export price or constructed export price for domestic subsidies, the Department has sometimes presumed that, whatever the effect, if any, of domestic subsidies upon the prices subsequently charged by their recipients, that effect would be the same for domestic prices and export prices.[188]

In addition, Petitioners argue that the Department is only authorized to make an offset to export subsidies in the AD proceeding and not the CVD proceeding, which is consistent with Department practice in CFS from the PRC and CWLP from the PRC. However, Petitioners note that no party has raised this issue in the accompanying AD case.

[184] See Yixing Union's CB, at 19, citing GAO Report, at note 55.
[185] See Yixing Union's CB, at 19-20, citing TRE Act.
[186] See Yixing Union's CB, at 19-20.
[187] See Petitioners' RB, at 17, citing section 772(c)(1)(C) of the Act.
[188] See Yixing Union's RB, at 18, citing CFS from the PRC AD Final IDM, at 15.

Department's Position:

The parties have not cited to any statutory authority that would allow us to terminate this CVD investigation to avoid the alleged double counting or to make an adjustment to the CVD calculations to prevent double counting. If any adjustment to avoid a double remedy is possible, it would only be in the context of an AD investigation and no party raised this claim in the companion AD investigation of citric acid. We note that this decision is consistent with the Department's decision in LWRP from the PRC IDM, at Comment 2.

Comment 3 Requirement to Provide Evidence of Lower Prices

The GOC's and TTCA's Affirmative Comments:

Citing positions taken by the Department in CFS from the PRC AD Final, Tires from the PRC AD Preliminary Determination, and LWRP from the PRC regarding double counting (e.g., that no double counting had been demonstrated; that the GOC had presented no evidence that domestic subsidies lowered domestic and export prices pro rata, or that U.S. law inherently assumed this to be the case; and that the issue of double counting had to be raised in the AD case), the GOC argues that the Department has imposed false burdens of proof on the respondents that do not exist in the law and are flatly contradicted by the Department's analysis in Uranium from France Final AD Results.[189]

According to the GOC, the issue is not whether or to what extent domestic subsidies lower prices in any market, there is no basis for the Department to require evidence of that effect.[190] Instead, the GOC contends that the AD and CVD laws presume that the subsidy allows the foreign seller to lower prices in both markets by the amount of the subsidy with the result that no dumping margin is created by the subsidy. However, the GOC argues that there is no basis for presuming that the domestic subsidy does not create a dumping margin in an NME case.

The GOC argues that the Department has previously taken steps to prevent duplicative remedies without requiring any specific evidence and the Department has no basis for imposing any different burden in this investigation.[191] TTCA contends that the statute does not authorize the Department to assess duplicative remedies for the same injurious conduct, and the Department and the courts have repeatedly affirmed this fundamental principle. The GOC and TTCA point to several cases (e.g., SSWR from Korea, Welded Pipe from Thailand, Uranium from France AD Final Results) as instances where the Department refused to collect a double remedy in the form of section 201 duties and AD duties[192] and note that the Federal Circuit upheld the Department

[189] See CFS from the PRC AD Final IDM, at Comment 2; Tires from the PRC AD Preliminary Determination, 73 FR 9287; LWRP from the PRC IDM, at Comment 2, GOC's CB, at 21-22, Uranium from France AD Final Results, 69 FR 46505.
[190] See GOC's CB, at 22-23.
[191] See GOC's CB, at 23-25.
[192] See SSWR from Korea; see also Welded Pipe from Thailand, 69 FR 61649 and IDM at 3-4; Uranium from France AD Final Results.

without requiring any more than a conceptual depiction of the double counting problem.[193] The GOC additionally cites to Uranium from France AD Final Results,[194] where the Department rejected arguments that countervailing duties should be treated as a cost in AD cases, and the Department addressed and resolved the issue without any particular case-specific factual evidence of double counting. According to the GOC, the Department's conclusion in Uranium from France AD Final Results[195] ("domestic subsidies are assumed not to affect dumping margins, because they lower prices in both the U.S. and the domestic market of the exporting country equally") cannot be reconciled with the Department's statement in CFS from the PRC AD Final[196] ("we find the assertion that the AD law embodies the presumption that domestic subsidies automatically lower {domestic and export} prices, pro rata, to be baseless").

The GOC states that it is not seeking an adjustment to U.S. price, normal value, or the resulting antidumping margin but the GOC is contending that the entirety of any subsidy determined to exist already is captured by the Department's NME antidumping methodology.[197] The GOC argues that Congress did not intend, and due process does not permit, a wholesale double remedy.

The GOC also argues that the Department's refusal to address the double counting problem – because its existence had not been demonstrated with evidence - fails for legal reasons.[198] First, to the extent that the Department believes that this is a factual matter, the Department failed to investigate the issue, according to the GOC. The GOC argues that AD and CVD investigations are investigative in nature, not adjudicatory, and that respondents have no burden of proof to establish double counting any more than petitioners have a burden to establish the absence of double counting.[199]

Second, the GOC believes the Department has created a rebuttable presumption that double counting does not exist.[200] The GOC contends that the Department has done so without providing the required advance notice to the parties in the current CVD and AD cases, without identifying the evidence that would be needed to rebut the presumption, and has failed to provide the opportunity to present that evidence or otherwise to protect their interests.[201]

Third, the GOC contends that the Department lacks any factual or evidentiary basis for the presumption.[202] As argued above, economic theory and the structure of the AD statute as recognized by the Department in Uranium from France AD Final Results both recognize that the

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[193] See Wheatland Tube Co. v. United States, (Fed. Cir. 2007).
[194] See Uranium from France AD Final Results. See also U.S. Steel.
[195] See Uranium from France AD Final Results.
[196] See CFS from the PRC AD Final IDM, at Comment 2.
[197] See GOC's CB, at 25.
[198] See GOC's CB, at 25-26.
[199] See Freeport, 776 F.2d 1034 (Fed. Cir. 1995); Timken v. U. S., 166 F. Supp. 2d 629-630 (CIT 2001); Wieland-Werke AG, 4 F. Supp. 2d 1212 (CIT 1998); Rhone-Poulenc CIT 1996, 927 F. Supp. 451 (CIT 1996).
[200] See GOC's CB at 26-27.
[201] See Transcom, 294 F. 3d 1371 (Fed. Cir. 2002); British Steel, 879 F. Supp. 1254 (CIT 1995) (affirmed in part sub nom LTV Steel Co. Inc. v. United States, 174 F.3d 1359 (Fed. Cir. 1999)). Compare ITA Policy Bulletin No. 05.1 (bulletin stating NME presumption of state control and specifying requirements to rebut presumption.)
[202] See GOC's CB at 27-28.

expected effect of a domestic subsidy is to reduce U.S. price, but the Department has impermissibly presumed the converse. The GOC acknowledges the Department's power to create a presumption but the presumption must rest on a sound factual connection between the proven and inferred facts. The GOC argues this standard is not met here because there is no economic or rational basis to presume that any domestic subsidy found to have been conferred did not affect that producer's U.S. price and did not thereby create double counting.[203]

Fourth, the GOC argues that the presumption the Department has created is adverse to respondents and was applied by the Department without any attempt to gather evidence to make this determination.[204] Consequently, in the GOC's view, the Department is violating the statutory requirement that the Department cannot make adverse inferences unless a respondent fails to cooperate.[205]

Petitioners' Rebuttal comments:

Petitioners state that the GOC's entire argument is based on an unfounded assumption that domestic subsidies lower prices in the home market in the same way as the U.S. market.[206] However, Petitioners contend that the Department, in CFS from the PRC AD Final, Line Pipe from the PRC, LWTP from the PRC, Tires from the PRC, and LWRP from the PRC, has consistently found that the assertion that the AD law embodies the presumption that domestic subsidies automatically lower domestic and export prices, pro rata, to be baseless. Also, Petitioners state that the Department's decision to collect third country data to establish benchmarks for loans and to determine whether goods or services were provided for adequate remuneration does not establish that the Department has made any assumption about the impact of subsidies on prices.

Petitioners state that it has been the Department's practice to require the GOC or the foreign producers/exporters to provide record evidence indicating that such double counting exists. Yet, Petitioners note that the GOC and respondents have once again failed to provide such evidence. Without any evidence of actual double counting, the Department is unable to make the necessary adjustment to correct for any such double counting that may have occurred.

First, Petitioners rebut the GOC's contention that the Department's decision to not offset the AD margin constitutes an adverse presumption against the respondents and is in violation of statutory requirements by arguing that the Department does not have the statutory authority to adjust the AD or CVD rates in order to offset domestic subsidies against the dumping margins.[207] Therefore, Petitioners argue that there is no presumption to rebut.

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[203] See NLRB, 442 U.S. 787 (1979); United Scenic Artists, 762 F.2d 1034 (D.C. Cir. 1985); British Steel 1996 CIT, 929 F. Supp. 454-55 (CIT 1996); Sec of Labor, 151 F.3d 1100 – 01 (D.C. Cir. 1998) (quoting Chemical Mfrs. Ass'n v. Dep't of Transp., 105 F.3d 705 (D.C. Cir. 1997) (quoting NLRB v. Curtin Matheson Scientific, Inc. 494 U.S. 775 (1990); and National Mining Ass'n v. Babbitt, 172 F.3d 911 (D.C. Cir. 1999).

[204] See GOC's CB at 28-29.

[205] See Nippon Steel, 337 F.3d 1381 (Fed. Cir. 2003) and Dorbest, 462 F. Supp. 2d 1317 (CIT 2006).

[206] See Petitioners' RB at 19-20.

[207] See Petitioners' RB at 20.

Second, Petitioners then argue that the GOC has not provided an explanation as to why its "presumption" about the effect of domestic subsidies on domestic and U.S. prices holds true generally or with respect to the PRC.[208]

Third, Petitioners rebut the GOC's argument that the Department failed to provide adequate notice of its "presumption" and did not give the GOC and the respondents an adequate opportunity to the Department's new practice.[209] However, Petitioners note that the Department has conducted nine Chinese CVD investigations and has not altered its position regarding the issue of double counting such that advance notice to the parties would be required.

Fourth, Petitioners rebut the GOC's argument that the Department failed to investigate whether double counting exists.[210] Petitioners argue that the GOC did not identify any additional information that the Department could have collected or that it failed to consider.

Fifth, Petitioners rebut the GOC's statement that the Department's approach is inherently punitive and thus violates the statute.[211] However, Petitioners argue that the GOC fails to articulate how assuming that there is no double counting is any more punitive to respondents than assuming that there is double counting would be punitive to respondents.

Finally, Petitioners submit that because the Department has no statutory authority to amend the CVD rates, the GOC's and the respondents' only resource is to ask the Department to adjust the AD margins, which neither did in the AD investigation.[212]

Department's Position:

As noted in response to Comment 2 above, any claims regarding double counting are properly raised in an AD investigation. Therefore, this issue is not relevant in this CVD investigation. We disagree with the GOC's position that this is not an issue for the AD case. The GOC's position that the entirety of the subsidy is already captured by the NME AD methodology is tantamount to saying that no CVDs can be applied to imports from a country treated as an NME. We have already explained in our response to Comment 1 that the Department may apply the CVD law to China.

[208] See Petitioners' RB at 20.
[209] See Petitioners' RB at 20-21.
[210] See Petitioners' RB at 21.
[211] See Petitioners' RB at 21-22.
[212] See Petitioners' RB at 22.

Comment 4 Proposed Cutoff Date for Identifying Subsidies

Petitioners' Affirmative Comments:

Petitioners argue that the Department should not adopt the December 11, 2001, cut-off date for determining whether to countervail potential subsidies in the PRC.[213] Petitioners assert that Section 701(a) of the Act is unequivocal. According to Petitioners, the statute does not afford the Department discretion with respect to its treatment of countervailable subsidies that otherwise meet the statutory criteria, including those conferred prior to December 11, 2001. Moreover, Petitioners contend that the Department's position in OTR Tires regarding the administrative feasibility of identifying countervailable subsidies in the PRC on a "program-by program, company-by-company" approach, does not relieve the Department of its obligation under the Act.[214]

Petitioners further argue that the cut-off date conflicts with the Department's regulations and prior practice because the Department has long recognized that non-recurring subsidies should be countervailed over the entire AUL of an industry's assets.[215] Petitioners also argue that, in CFS from the PRC, the Department cited reforms, such as, foreign-trading rights and the abolition of central planning for labor allocation, as evidence of the PRC's transition away from a Soviet-style economy.[216] Noting that these reforms occurred well before the PRC's accession, Petitioners argue that application of the CVD law to the PRC does not support the use of the PRC's accession as a cut-off date.

Petitioners proffer that, if the Department continues to employ a cut-off date, the Department should consider two alternative dates:[217] (1) May 28, 1997, the date on which the WTO working party on the accession of the PRC circulated a revised draft protocol containing provisions regarding the countervailability of subsidies in the PRC;[218] or (2) November 15, 1999, the date on which the PRC's bilateral accession agreement with the United States was signed.[219]

The GOC's Affirmative Comments:

The GOC argues that the Department's cut-off date should be changed to January 1, 2005, the start of the period of investigation in CFS from the PRC.[220] The GOC asserts that this date is more appropriate because in that case, the Department determined that economic and market conditions had changed sufficiently to permit identification of subsidies. The GOC claims that

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[213] See Petitioners' CB at 7-8.
[214] See Petitioners' CB at 9, citing OTR Tires from the PRC IDM, at 63.
[215] See Petitioners' CB, at 8-11.
[216] See Georgetown Steel Memorandum, at 6.
[217] See Petitioners' CB, at 11-12.
[218] See Petitioners' CB, at 12, citing China: Status of Accession Working Party at point 9, available at *www.wto.org*.
[219] See Petitioners' CB, at 12, citing Press Release: Director Moore Welcomes U.S. - China Deal, But Cautions More Work Remains on China's Entry (November 15, 1999), available at *www.wto.org*.
[220] See GOC's CB, at 29.

the Department lacks evidence to establish that subsidies were also identifiable before the period of investigation in CFS from the PRC.

Petitioners' Rebuttal Comments:

In rebuttal, Petitioners argue that the Department should reject the GOC's proposed cut-off date for two reasons.[221] First, citing their case brief, Petitioners reiterate that the use of a cut-off date is inconsistent with the statute and the Department's regulations. Accordingly, if the Department abandons the cut-off date in this case, the Department would not need to consider the alternative date advanced by the GOC. Second, Petitioners argue that the Department has justified use of its cut-off date as a measure of when "{t}he changes in {China's} economy that were brought about by {WTO-related} reforms permit the Department to determine whether countervailable subsidies were being bestowed on Chinese producers."[222] According to Petitioners, when identifying the current cut-off date, the Department considered evidence pre-dating the period of investigation in CFS from the PRC, contrary to the GOC's contentions. Petitioners assert that the Department's analysis of the Chinese economy in CFS from the PRC relies heavily on evidence of market reforms dating as far back as the 1990s.[223]

Petitioners further argue that the GOC's evidentiary criticism of the Department's chosen "cut-off" date is also refuted by the commitments made by the GOC when negotiating the PRC's accession to the WTO. Petitioners argue that to attain WTO membership, the PRC was required to "notify the WTO of any subsidy within the meaning of Article 1 of the SCM Agreement, granted or maintained in its territory, organized by specific product, including those subsidies defined in Article 3 of the SCM Agreement."[224] Therefore, according to the Petitioners, even the GOC had acknowledged the existence of identifiable subsidies within the PRC and assumed an obligation to report these subsidies to the WTO upon accession.

Finally, Petitioners argue that the alternative "cut-off" date advanced by the GOC has no bearing on the citric acid industry or this investigation. According to Petitioners, this is a random date selected by the GOC for the sole purpose of minimizing the countervailing duty liability applicable to respondents.

The GOC's, TTCA's and Yixing Union's Rebuttal Comments:

Rejecting Petitioners' argument that the statute and regulations mandate that the Department reject any cut-off date, the GOC contends that Petitioners ignore the fact that the Department has only recently determined that the PRC's economy is now sufficiently market-oriented to be subject to the market-economy-based CVD law.[225] The GOC also notes that with respect to the Department's regulations regarding non-recurring subsidies, no party has adopted the position that the Department's AUL methodology for calculating the POI benefit of non-recurring

[221] See Petitioners' RB, at 22-25.
[222] LWTP from the PRC IDM, at 41.
[223] See Georgetown Steel Memorandum, at 6
[224] Accession Protocol, at 10.1
[225] See GOC's RB, at 5-8.

subsidies should not be used. As a result, the GOC contends, the technical application of the Department's AUL methodology is not at issue. According to the GOC, the issue is the point in time at which the PRC transitioned to a market economy, sufficient to permit the measure of any government distortion. The GOC notes that Petitioners' arguments do not address this core issue primarily because the Department has repeatedly ruled that it is impossible to calculate countervailable subsides for NME countries.[226] The GOC contends that there is no basis to jettison a cut-off date or move it backwards in time. Moreover, the GOC argues that the Department has rejected the very same arguments advanced by Petitioners in this case.[227]

Yixing Union agrees with the GOC's position highlighted in its rebuttal brief filed in this proceeding.[228]

TTCA argues that the Department has the legal authority to establish a cut-off date after which it can identify and measure alleged subsidies in the PRC.[229] This authority is supported by Georgetown Steel. TTCA contends that the CVD law can only be applied to market economies and that once the Department determines that the Chinese economy has become market-based, subsidies can be measured only after that time and not before. Therefore, TTCA argues that the Department's use of a cut-off date is correct.

Department's Position:

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

We have selected this date because of the reforms in the PRC's economy in the years leading up to its WTO accession and the linkage between those reforms and the PRC's WTO membership.[230] 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.[231] Additionally, the PRC's Accession Protocol contemplates application of the CVD law. While the Accession Protocol, itself, would not preclude application of the CVD law prior to the date of accession, the Accession Protocol's language in Article 15(b) regarding benchmarks for measuring subsidies and the PRC's assumption of obligations with respect to subsidies provide support for the notion that the PRC economy had reached the stage where subsidies and disciplines on subsidies (e.g., countervailing duties) were meaningful.

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[226] See GOC's RB, at 6-7, citing Georgetown Steel U.S. Reply Brief, Case No. 85-2805 at 11.
[227] See e.g., CWP from the PRC, LWS from the PRC, and LWTP from the PRC.
[228] See Yixing Union's RC, at 2.
[229] See TTCA's RB, at 2-3.
[230] See Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001).
[231] See Georgetown Steel Memorandum.

Petitioners contend that section 701(a) of the Act directs the Department to determine and countervail subsidies without exception. This argument ignores that the imposition of CVDs requires the Department to be able to identify and to measure subsidies. The Department addressed the virtually identical concern in Wire Rod from Czechoslovakia.[232] Specifically, we examined whether "any political entity is exempted per se from the countervailing duty law" and found that none were, but then went on to address the additional question of whether the law could be applied to NME countries like Czechoslovakia. We concluded that state intervention in that economy, such as government control of prices, did "not allow us to identify specific NME government actions as bounties or grants."

The Department's analytical approach in Wire Rod from Czechoslovakia was upheld by the CAFC in Georgetown Steel.[233] As discussed in response to Comment 1, the Court found that the Department had the discretion not to apply the CVD law where subsidies could not meaningfully be identified or measured. For the reasons explained above, we have determined that the economic changes that occurred leading up to and at the time of WTO accession permit us to identify and measure countervailable subsidies bestowed upon Chinese producers. In this regard, the Department is not providing the PRC with special/preferential treatment nor is the Department expanding the criteria for a subsidy beyond those found in the statute. Rather, the Department is simply acknowledging its ability to identify and measure subsidies as of December 11, 2001, based on the economic conditions in the PRC. Therefore, the Department is fully within its authority in not applying the CVD law to the PRC prior to December 11, 2001.[234]

We acknowledge that there was not a single moment or single reform law that suddenly permitted us to find subsidies in the PRC. Many reforms, including the reforms cited in Petitioners' case brief, were put in place before the PRC acceded to the WTO. On the other hand, the Department has identified certain areas such as in the credit and land markets where the PRC economy continues to exhibit nonmarket characteristics. These examples only serve to demonstrate that economic reform is a process that occurs over time. This process can also be uneven: reforms may take hold in some sectors of the economy or areas of the country before others. We have rejected the approach of making specific findings for specific programs, opting instead for a uniform date of application based on the economic changes that have occurred across the entire Chinese economy. The cumulative effects of the many reforms implemented prior to the PRC's WTO accession give us confidence that by the end of 2001, subsidies in the PRC could be identified and measured.

[232] See Wire Rod from Czechoslovakia, 49 FR at 19371.
[233] See Georgetown Steel, 801 F.2d at 1318.
[234] See Georgetown Steel.

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.

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

For these reasons, and consistent with in CWP from the PRC and other recent the CVD investigations of imports from the PRC, the Department finds that it can determine whether the GOC has bestowed countervailable subsidies on Chinese producers from the date of the PRC's WTO accession.[235]

Comment 5 Policy Lending – Whether Policy Lending Program Exists

Petitioners' Affirmative Comments:

Petitioners note that the Department preliminarily countervailed only a few loans provided to TTCA for certain specific technological modernization projects. Now that the record is fully developed, Petitioners urge the Department to find that the GOC has a national policy of promoting the citric acid industry which is implemented at the provincial level and, as a result of this policy, all loans to both TTCA and Yixing Union were provided pursuant to a preferential lending program.[236]

Citing CFS from the PRC and OTR Tires from the PRC, Petitioners contend that the Department generally applies a two-step analysis with respect to policy lending. First, the Department examines whether the GOC carries out an industrial policy that encourages and supports the industry in question, especially through preferential lending.[237] In this connection, according to Petitioners, the Department will look to national level plans and administrative measures. Second, the Department examines the GOC's ability to carry out the objectives of the policy by looking at such things as whether the local governments implemented the policies, particularly through the provision of preferential loans or through instructions to banks to make such

[235] See CWP from the PRC IDM, at Comment 2; LWRP from the PRC IDM, at Comment 4; LWTP from the PRC IDM, at Comment 2; and LWS from the PRC IDM, at Comment 2.
[236] See Petitioners' CB, at 49,
[237] See Petitioners' CB, at 49-51, citing CFS from the PRC IDM, at 49; and OTR Tires from the PRC IDM, at 98.

loans.[238] With respect to the first step in the analysis, Petitioners assert that it is not necessary to find a state plan for the investigated product per se.[239] However, where there is a plan for the investigated product, particularly involving preferential lending, Petitioners claim there is strong evidence for finding a program of preferential lending to the industry.[240] Petitioners further assert that the Department has referred to the NDRC's "Catalogue for the Guidance of Industrial Structure Adjustment" ("Structural Adjustment Catalogue") as highly indicative of whether a national level policy exists for an investigated industry.[241]

Petitioners contend that employing this analytical framework in this investigation will demonstrate that there is a national plan and provincial plans in the Shandong and Jiangsu provinces targeting the citric acid industry for preferential loans.

At the national level, Petitioners assert that the chemical industry, which includes citric acid producers, is a "pillar industry" and, consequently, five-year plans have been established for it at the national level. In the "Eleventh Five-Year Plan for the Chemical Industry,"[242] citric acid which is a "fine chemical" is targeted because the plan call for faster development of certain types of fine chemicals such as "food additives," "feed additives," and "biochemical products," and citric acid can be used for all of these purposes. Petitioners also point to the "Catalogue of Key Industries, Products, and Technologies Encouraged for Development by the State"[243] and the "Catalogue for the Guidance of Foreign Investment Industries"[244] which specifically target and promote food and feed additives, and biochemical products, and to the NDRC's Director "Catalogue on Readjustment of Industrial Structure,"[245] which lists biochemical products and fine chemical products. To augment these catalogues, Petitioners claim that the GOC issued the "Decision of the State Council on Promulgating the 'Interim Provisions on Promoting Industrial Structure Adjustment' for Implementation (No. 40 (2005) of the State Council)" ("Decision No. 40")[246] which, inter alia, guides financial resources, including bank loans, to favored industries.

Petitioners next assert that the Department should find a policy of preferential lending to the citric acid industry because of measures taken by the Shandong government to target this industry. Among these are provincial five-year plans which comply with the national government's directives to develop "pillar industries" and to support leading enterprises. Petitioners cite to the Outline of the Tenth-Five Year Plan (Jihua) of Shandong Province, which emphasized the development of fine chemicals and food and feed additives.[247] That plan also referred to expanding investment in "key construction, high-tech projects and technology reform" and to utilizing financial resources to "support {the} development of strategic

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[238] Id., at 49-51, citing CFS from the PRC IDM, at 49; and OTR Tires from the PRC IDM, at 98.
[239] Id., at 49-51, citing OTR Tires from the PRC IDM, at 98.
[240] Id., at 51, citing CFS from the PRC IDM, at 54.
[241] Id., at 51, citing CFS from the PRC IDM, at 52-53 and OTR Tires from the PRC IDM, at 13.
[242] Id., at 54, citing Petition, at Exhibit IV-5.
[243] Id., at 55, citing Petition, at Exhibit IV-35.
[244] Id., at 56, citing Petition, at Exhibit IV-7.
[245] Id., at 56, citing Petition, at Exhibit IV-6.
[246] Id., at 57, citing GQR, at 1-A-1.
[247] Id., at 57, citing G1SR (9/2), at Exhibit S1-2-d, at 12.

advantageous industries and hi-tech industries."[248] Petitioners further cite to the Shandong Tenth Five-Year Chemical Plan, which states that Shandong province will focus on developing fine chemicals, including food and feed additives and biochemical products.[249] According to Petitioners, this plan also specifies that all levels of government in the province should use financial and banking measures to support "advantageous products."[250] Finally, with respect to Shandong, Petitioners point to banking documents on the record to demonstrate that banks considered national and provincial plans in providing loans to TTCA.[251] On their last point, Petitioners argue that the situation is analogous to that in OTR Tires from the PRC, where the Department found the GOC's industrial plans singled out a specific company.[252]

Petitioners make similar assertions regarding Jiangsu Province, pointing to its Tenth and Eleventh Five-year Plans,[253] the Jiangsu Province Guideline of the Development Programs of the Chemical Industry during the 'Eleventh Five-Year Plan' Period ("Jiangsu Province Eleventh Five-Year Chemical Plan")[254] and the Catalogue of Industries Guiding Industrial Structure Adjustment in Jiangsu Province.[255] According to Petitioners, these plans support the development of fine chemicals and single out food additives among the biological chemical products to be developed.[256] Petitioners also point to language in Jiangsu Province's Eleventh Five-Year Chemical Plan which talks about guiding commercial banks to make loans[257] and to Yixing Union's bank documents as evidence that the banks considered industrial policies in providing loans to the company.[258] Petitioners again liken this situation to that in OTR Tires from the PRC, and assert that the Department should conclude that Jiangsu Province implemented a preferential lending program which benefited the citric acid industry.[259]

The GOC's Rebuttal Comments:

The GOC states that Petitioners have failed to recognize the limited scope of the Department's initiation with respect to so-called "policy lending." According to the GOC, after reviewing the information submitted by Petitioners, the Department limited its initiation to "loans provided to citric acid producers from SOCBs, including policy banks, based on government plans promoting modernization loans for encouraged products."[260] Thus, the GOC contends, the Department did not initiate an investigation of all financing provided by SOCBs to the citric acid

[248] Id., at 57, citing G1SR (9/2), at Exhibit S1-2-d, at 41-42.
[249] Id., at 60, citing G1SR (9/2), at Exhibit S1-2-f, at 18, 19 and 21.
[250] Id., at 61, citing G1SR (9/2), at Exhibit S1-2-f, at 22.
[251] Id., at 61, 63-65, citing Shandong Government Verification Report, at 8; G1SR (9/2), at Exhibits S1-8-d, at page 2; S1-7-a-1, at 1; S1-7-a-2 , at 1; S1-7-b, at 15; S1-7-a-1, at 17; S1-7-a-2, at 22; and G2SR (9/2), at Exhibits: S2-35-1, at 6 and 17; S2-35-2, at 5 and 16.
[252] Id., at 67, citing OTR Tires from the PRC IDM, at 14 and 99.
[253] Id., at 65, citing G1SR (9.2), at Exhibits S1-2-a and S1-2-b.
[254] Id., at 66, citing G1SR (9/2), at Exhibit S1-2-c.
[255] Id., at 66, citing Petition, at Exhibit IV-79.
[256] Chemical Industry Plan at 22
[257] Id., at 66, citing G1SR (9/2), at Exhibit S1-2-c, at 12
[258] Id., at 68-69, citing G1SR (9/2), at Exhibits S1-2-c, at 7, 9, 10, 12 and 19; S1-2-a, at 32; S1-2-b, at 57; S1-9-a, at 19; Y2SR, at question 16; Yixing Union Verification Report, at 27; YQR, at Exhibit 4.
[259] See OTR Tires from the PRC IDM, at 14 and 99-100.
[260] Initiation Checklist at page 17

industry. Moreover, the Department never expanded the scope of its investigation into preferential lending programs, according to the GOC.

Even if the Department were persuaded by Petitioners' arguments, the GOC claims that the Department's regulations and due process considerations would preclude the Department from including loans other than modernization loans in this investigation now.

Finally, the GOC disagrees that Petitioners have identified information that would support a finding of de jure specificity under section 771(5A)(D)(i) of the Act. According to the GOC, most of the information cited by Petitioners was considered by the Department at the time of its initiation and, as discussed above, the Department already found it insufficient to justify investigating all loans to the citric acid industry. The GOC further contends that Petitioners exaggerate and mischaracterize information in attempting to show that the various plans relate to citric acid or that citric acid production is being promoted. Thus, the GOC argues, Petitioners have not sufficiently supported their argument and the Department should reject it for the final determination.

TTCA restates the GOC's claims regarding Petitioners' failure to show that SOCB loans are specific to the citric acid industry and that the provincial plans and loan documents cited by Petitioners support their sweeping assertions.

Yixing Union's Rebuttal Comments:

Yixing Union argues the Department has not found that the company benefited from any preferential lending program in this investigation and that Petitioners are rearguing issues that have already been resolved against them. With respect to Petitioners' claims regarding actual loans to Yixing Union, the company claims that Petitioners cannot point to any language indicating that the loans were given to promote modernization. Instead, in Yixing Union's view, the documents merely state that the company is a producer of citric acid.

The GOC's Affirmative Comments:

The GOC states that although the Department determined to investigate preferential loans "based on government plans promoting modernization loans for encouraged projects,"[261] and preliminarily found two loans to TTCA to be countervailable, there is no evidence that any loans actually provided to TTCA were provided pursuant to any government loan program or that they would not have been provided by the banks but for government action. Thus, according to the GOC, the record evidence does not support the Preliminary Determination in relation to the "Government National Preferential Lending Program" and the "Provincial Preferential Lending Program."

[261] See Initiation Checklist, at 17

The GOC contends that there is no evidence indicating that the loans in question were made under a program that the Department has determined to be specific. In other words, the GOC charges that the Department found there was a policy to "encourage" certain modernization activity and that a loan was made, but then assumed a casual nexus between the policy and the loan. Moreover, even if the Department were to find a policy of encouraging modernization activity that was limited to a specific group of enterprises or industries it would also need to find that the loans were made under that program, i.e., that they were policy loans. The GOC refers to British Steel[262] to argue that the Department must show that the policy caused the loan to be provided.

The GOC continues by making specific factual arguments about the record evidence relied upon by the Department in preliminarily determining that the particular loans to TTCA were countervailable. Because we are finding in this final determination that Shandong Province provides policy lending through SOCBs to the citric acid industry and are applying AFA to measure the benefit to TTCA, we are not addressing the evidence related to our preliminary determination.

TTCA restates the GOC's arguments that the record does not support the Dreliminary Determination that the GOC promoted a modernization program specific to the citric acid industry or that loans received by TTCA were made pursuant to that policy.

Petitioners' Rebuttal Comments:

Petitioners restate their position that evidence supports their claim that the GOC maintains a broad policy lending program to support the citric acid industry. In the alternative, however, Petitioners contend that the record contains substantial support for the Department's finding that the GOC has a policy to promote specific modernization projects through preferential lending. To support this, Petitioners also discuss information relied upon by the Department in preliminarily determining that the particular loans to TTCA were countervailable.

As explained above, the Department is not relying on that evidence for this final determination and, hence, is not addressing Petitioners' comments regarding that evidence.

Department's Position:

In their affirmative argument, Petitioners provide their description of the analytical framework used by the Department in prior investigations to determine whether the GOC has a program of policy lending to support a particular industry. In several respects we agree with Petitioners' description of the framework. In general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals. Where such plans or policy directives exist, then we will find a policy lending program that is specific to the named industry (or producers that fall under that

[262] See British Steel plc v. United States, 879 F. Supp 1254, 1325-26 (CIT 1995), reversed on other grounds LTV Steel Co., Inc. v. United States, 174 F.3d 1359 (Fed. Cir. 1999).

industry).[263] Once that finding is made, the Department relies upon the analysis undertaken in CFS from the PRC[264]to further conclude that national and local government control over the SOCBs results in the loans being a financial contribution by the GOC.[265]

In this investigation, after reviewing the information submitted in support of the petition, the Department concluded that Petitioners had not provided sufficient evidence regarding their allegation of policy lending to the citric acid industry. Instead, the information they submitted supported investigating a narrower claim, i.e., "loans provided to citric acid producers from SOCBs, including policy banks, based on government plans promoting modernization loans for encouraged products."[266] Petitioners have re-argued much of the same information that was submitted in the petition. Looking at that information we conclude, as we did at the time of initiation, that the evidence does not indicate that a national level plan exists that includes directives to provide financing for the citric acid industry. Information submitted since the initiation relating to a national level plan or policy to support citric acid, Decision No. 40, does refer to financing. However, the Industrial Restructuring Catalogue which relates to Decision No. 40, talks about the production of new biochemical products. Accepting that citric acid is a biochemical product, it could not have been considered a new biochemical product when Decision No. 40 and the Catalogue on Readjustment of Industrial Structure were issued in December 2005. This is because, according to information submitted in the petition, the PRC's citric acid industry started in 1963 and it underwent rapid development from 1985 – 1989.[267] Thus, we disagree with Petitioners that the national government has a policy lending program in place for the citric acid industry.

Turning next to Jiangsu Province, we have reviewed the evidence submitted in the GOC's and Yixing Union's various questionnaire responses, and cited by Petitioners regarding that province's plans and directives. Petitioners claim that the Jiangsu Tenth Five-Year Plan targets fine chemicals for development. We acknowledge that fine chemicals are mentioned in the plan, but they are listed as part of the petrochemical sector, which would not appear to include citric acid, and Petitioners do not point to any evidence in the plan of financing to support industrial activities. Petitioners additionally point to the province's Eleventh Five-Year Plan, which is more relevant to our POI, and which talks about "steering economic structure," but Petitioners do not identify any reference to citric acid or fine chemicals in that plan. The Catalogue of Industries Guiding Industrial Structure Adjustment in Jiangsu Province referred to by Petitioners identifies "new type biochemical products, special fine chemical products," but given the age of the citric acid industry in the PRC as noted above, it does not seem that citric acid could be considered "new," nor is there any evidence that it is "special."

[263] See CFS from the PRC IDM, at 49; and LWTP from the PRC IDM, at 98.
[264] See CFS from the PRC IDM, at Comment 8
[265] See OTR Tires from the PRC IDM, at15; and LWTP from the PRC IDM, at 11.
[266] See Initiation Checklist, at 17.
[267] Petition at exhibit I-13.

Petitioners' references to the Jiangsu Eleventh Five-Year Chemical Plan similarly fail to establish a program of policy lending to the citric acid industry. Petitioners quote the plan as encouraging "biology chemicals" to achieve a "different" level of development, but the reference is actually to accomplishments in the previous five-year period.[268] Another quotation of the plan regarding the development of "biological chemicals" appears to refer to the technology for producing, inter alia, citric acid (e.g., large fermentation equipment) rather than to the production of citric acid. This also appears to be the case with the financing allegedly referenced in the plan, which talks about "expanding the financial channel" and actively guiding commercial banks to provide loans to "scientific enterprises" and building a "scientific financial support system." Finally, we agree with Yixing Union that nothing in its loan documents supports a finding of policy lending to the citric acid industry in Jiangsu or that the company received modernization loans as an encouraged industry.

With respect to Shandong Province and loans to TTCA, as noted above, when government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals, the Department has previously found that the GOC has a program of policy lending to support a particular industry. In point of fact, this exact framework exists in Shandong Province for the citric acid industry pursuant to the Shandong Tenth Five-Year Chemical Plan. First, the Shandong Tenth Five-Year Chemical Plan specifically encourages the development of citric acid, under the biochemical industry, by stating:

> advantaged products and backbone enterprises as the stresses, speed up the renovation of traditional biochemical products with high technology, develop with great efforts new biochemical technology and further improve the general level of the whole province's biochemical industry.[269] (emphasis added)

Further, the Shandong Tenth Five-Year Chemical Plan states that each level of government should strictly follow industrial policies by, inter alia, utilizing the economic levers such as finance and banking.[270] This information was not considered by the Department in the Preliminary Determination because the GOC withheld vital information, which was only discovered at verification.

The GOC first characterized the status of the Shandong Tenth Five-Year Chemical Plan as never being finalized or issued.[271] In fact, when asked to explain how the provincial government assisted the chemical industry in accomplishing certain goals and objectives mentioned in the Shandong Tenth Five-Year Chemical Plan, the GOC did not respond to our questions but, instead, stated that the Shandong Tenth Five-Year Chemical Plan was never finalized, and the government did not assist the chemical industry.[272] Consequently, for the Preliminary

[268] See G1SR (9/2), at Exhibit S1-2-c at 2.
[269] See G1SR (9/2), at S1-2-f, at 21 (emphasis added).
[270] See G1SR (9/2), at S1-2-f, at 22.
[271] See G1SR (9/2), at 3; and G2SR (9/2), at 16.
[272] See G2SR (9/2), at 16.

Determination, we did not consider the Shandong Tenth Five-Year Chemical Plan, in part due to the GOC's response that it was not completed.

Subsequent to the Preliminary Determination, the GOC clarified the status of the Shandong Tenth Five-Year Chemical Plan as being prepared in draft form and circulated to members of the chemical industry and relevant local government agencies for review and comment.[273] The GOC again emphasized that the Shandong Tenth Five-Year Chemical Plan was not completed.[274] However, at verification, the GOC re-characterized the status of the Shandong Tenth Five-Year Chemical Plan yet again, by explaining that it was actually completed but not issued.[275] We also learned that that the purpose of the Shandong Tenth Five-Year Chemical Plan was different from the national chemical plan in that the Shandong Tenth Five-Year Chemical Plan was intended to be issued to the local/municipal levels of government to be used as a reference in their work, and not to be issued to the public.[276] We saw at verification that the Shandong Tenth Five-Year Chemical Plan was indeed not issued to the public because it was not included in the published book of five-year plans issued by the Shandong DRC for the tenth-five year period.[277]

The existence of a policy lending program to the citric acid industry under the Shandong Province Tenth Five-Year Chemical Plan was further substantiated by another previously unknown piece of information. At verification, we inspected a loan origination document which states that because the food-use citric acid industry "has characteristics of capital and technology concentration and belongs to high and new technology … the State always takes positive policy to encourage its development."[278] It is important to note that in its questionnaire to the GOC, the Department asked that the GOC provide copies of all loan origination documents and the GOC did not provide this document in its response.[279] Instead, it only came to light at verification. Therefore, at the Preliminary Determination, we were unable to consider these facts in relation to the development goals mentioned in the Shandong Province Tenth Five-Year Chemical Plan. Had the GOC provided more accurate information regarding the status of the Shandong Province Tenth Five-Year Chemical Plan and the fact that evidence indicates that TTCA received a loan pursuant to the plan, the Department would have known to ask further questions about how the Shandong Province Tenth Five-Year Chemical Plan was used by the relevant local government agencies.

Given this new information, we find that the Shandong Province Tenth Five-Year Chemical Plan provides for policy lending to citric acid producers in Shandong Province. We further find that the loans provided by policy banks and SOCBs in the Shandong Province constitute government-provided loans pursuant to section 771(5)(D)(i) of the Act. Finally, this loan program is specific in law because the Government of Shandong has a policy in place to encourage and support the development of the citric acid industry. As explained elsewhere, we

[273] See G4SR, at 3.
[274] Id., at 3.
[275] See Shandong Government Verification Report, at 12.
[276] Id., at 13.
[277] Id., at 13.
[278] Id., at 8.
[279] See First Supplemental Questionnaire Issued to the GOC, at 2, question 7.

are assigning an AFA rate to TTCA for its loans because we were not able to verify that all of its loans had been reported to the Department.[280]

In its affirmative comments, the GOC argues that even where the Department finds that loans have been made to a specific industry under a particular policy it must additionally find that the policy caused the loan to be provided. In this investigation, the loan origination document quoted above provides such a connection with the Shandong Province Tenth Five-Year Plan. More generally, however, we disagree that the Department is required to investigate and make such a finding in our CVD investigations of imports from the PRC. As explained above, once we identify government plans or other policy directives laying out objectives or goals for developing or promoting an industry and the plans or directives call for lending to support the objectives or goals, the Department relies upon the analysis undertaken in CFS from the PRC[281]to further conclude that national and local government control over the SOCBs results in the loans being a financial contribution by the GOC, and that the relevant loans are provided pursuant to the government plans. This is not to say that the Department will never revisit its findings regarding industrial policies and how those policies are carried out by local governments and SOCBs, but until such time as new information causes us to conclude that significant and fundamental changes have occurred in the PRC, we do not intend to investigate anew in each proceeding the "link" between government plans and directives and the lending actions of SOCBs in the PRC.

Comment 6 Policy Lending – Whether CIB is a Government Authority

GOC's and TTCA's Affirmative Comments:

The GOC and TTCA contend that the loan provided by CIB to TTCA is not countervailable because CIB is not a government authority. In support, they state that CIB became a publicly listed company on February 5, 2007, and became known as Industrial Bank Co., Ltd.[282] Next, they identify that the aggregate state-ownership in CIB was 46.35 percent as of February 2007.[283] Finally, they charge that CIB's articles of association make clear that the Boards of Directors and Supervisors are elected by majority vote of all shareholders, and that government shareholders have no special rights or controls.[284] Consequently, the GOC and TTCA argue that the CIB was not a government authority at the time the loan was made and, thus, there is no financial contribution with regard to the loan countervailed under the national government policy lending program.

[280] See Department's Position for Comment 19.
[281] See CFS from the PRC IDM, at Comment 8.
[282] See GOC's CB, at 41; see also TTCA's CB, at 10.
[283] Id.
[284] Id.

Petitioners' Rebuttal Comments:

Petitioners disagree with the GOC's and TTCA's contention that CIB is not a government authority.[285] According to Petitioners, the Department does not limit its definition of "authority" to entities in which a government has a majority ownership. Rather, depending on the circumstances, the Department may consider entities in which the government holds a minority interest to be authorities.[286] Therefore, Petitioners argue the mere fact that the CIB was not majority-owned by the GOC does not preclude the Department from finding CIB to be an authority.

Next, Petitioners state the fact that CIB became publicly listed did not reduce the GOC's actual influence over the bank. Rather, Petitioners contend the public offering equally diluted the influence of the GOC vis-à-vis the other major private shareholder.[287] Consequently, Petitioners argue the GOC did not relinquish its effective control over the bank and, thus, CIB should be considered an authority capable of providing a financial contribution.

Department's Position:

As explained in the Department's position for Comment 19, we are drawing an adverse inference with respect to the benefit TTCA received from policy lending. Since we are no longer basing our computation of the subsidy rate for policy lending on the particular loans received by TTCA, the issue of whether CIB is a government authority is moot.

Comment 7 Benchmark - Whether the Department is Required to Use a Chinese Benchmark

The GOC's Affirmative Comments:

Citing 19 CFR 351.505(a), the GOC claims that no language in the regulation is capable of being construed as authorizing the Department to use an out-of-country interest rate as a loan benchmark. The GOC posits that as TTCA received other loans, the Department must, under its own regulations, use the interest paid by TTCA on its other bank loans as the benchmark. The GOC claims that these loans are non-specific, not provided at the direction of the government, and are "commercial" within the meaning of the regulation and the ordinary meaning of the term. Furthermore, the regulation contains no requirement that the loan be "market-determined," or that the interest rate be free of distortion. The GOC cites to several instances where the Department has determined that non-specific, government-provided loan rates can serve as benchmarks even where they are given at below-market rates.[288]

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[285] See Petitioners' RB, at 36.
[286] Id., citing OTR Tires from the PRC, IDM, at Comment C.1; and Steel Sheet and Strip from Korea, 64 FR at 30642.
[287] Id., at 37.
[288] See, e.g., Flowers from Colombia, 60 FR at 42542; Industrial Steel Industries, Inc. v. United States, 967 F. Supp. 1338, 1357-58 (CIT 1997); Phosphoric Acid from Israel, 52 FR 25447, 25448-9, 25452, and Flowers from Ecuador, 52 FR 1361,1364, 1366-7.

Citing the Preliminary Determination, the GOC takes issue with several assertions made by the Department with regard to the Chinese banking sector.[289] First, the fact that Chinese banks are subject to a deposit rate cap and a lending rate floor is irrelevant under the Department's regulations. According to the GOC, the existence of minimum and maximum rates does not render loans non-commercial or government-directed. Second, the Department's contention that loan benchmarks "must be market based" has no legal basis according in the Act or the Department's regulations.[290]

The GOC also takes issue with the Department's assertion that Chinese interest rates are not reliable due to the pervasiveness of the GOC's intervention in the banking sector. The GOC finds this assertion ludicrous as interest rates, particularly short-term rates, are a function of government intervention through banking regulation, monetary policy, and government macroeconomic policy (noting the U.S. government's role in its short-term interest rates). The GOC argues the Department must explain why some government actions influencing interest rates are non-distorting and others are because there is no such thing as an interest rate benchmark not distorted by government intervention.[291]

In the alternative, the GOC states that to the extent that a respondent does not have comparable loans, the Department must follow its regulations and utilize a national average rate. The GOC claims that such a rate can be based on SHIBOR and offers adjustments to these rates so that they may be used in calculations for the final determination.[292]

TTCA's Affirmative Comments:

TTCA argues that the Department's failure to use a Chinese interest rate benchmark is contrary to the Department's regulations and past cases. Because the responding companies have non-specific loans that are not provided at the government's direction, those loans should be used as benchmarks.

Petitioners' Rebuttal Comments:

Petitioners counter that the GOC has made similar arguments about the Department's authority to use external benchmarks in other investigations and the Department has rejected them. Citing CWASPP from the PRC, where the Department recently described the distortions created by the GOC's intervention in the banking sector, Petitioners note that the Department has regularly used an external benchmark when government intervention has so distorted the domestic market that it is impossible to use domestic benchmarks.[293]

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[289] See Preliminary Determination, 73 FR at 54373.
[290] Id.
[291] See GOC CB, at 45, footnote 21.
[292] See GOC CB, at 46 and GQR, at I-22-I-27 and Exhibit I-A-30.
[293] See Softwood Lumber from Canada - 1st AR IDM, at Comment 10; see, also, CFS from the PRC IDM, at Comment 10; and LWS from the PRC, IDM, at Comment 20.

Petitioners assert that the GOC has not provided evidence that the banking sector in the PRC has changed and is not distorted. Citing CFS from the PRC, OTR Tires from the PRC, and the Preliminary Determination, Petitioners argue the Department has continued to find interest rates in the PRC to be distorted.[294] Thus, without evidentiary support to the contrary, the Department should continue to use an external benchmark for interest rates.

Department's Position:

The Department has fully addressed the arguments raised by the GOC regarding the Department's rationale for relying on an external benchmark and its authority to do so in prior cases and the Preliminary Determination.[295] Consequently, the Department continues to find that: loan benchmarks must be market-based; Chinese interest rates are not reliable as benchmarks because of the pervasiveness of the GOC's intervention in the banking sector; and SHIBOR is not a market-determined rate.[296]

Comment 8 Benchmark - Whether Department Should Make an Inflation Adjustment to Its Regression-based Benchmark Rate

Petitioners' Affirmative Comments:

Petitioners state that the Department's reasoning in selecting an external benchmark recognizes the role of the GOC in the PRC banking sector and the resulting distortions.[297] However, Petitioners argue, the Department reintroduces these distortions in its external benchmark by basing its benefit calculation on inflation-adjusted interest rates. Therefore, for the final determination, Petitioners urge the Department to eliminate the inflation adjustment.

Petitioners claim that neither section 771(5)(E)(ii) of the Act nor the Department's regulations call for an inflation adjustment. In OTR Tires from the PRC, Petitioners state, the Department referenced 19 CFR 351.505(a)(2) and claimed the adjustment was analogous to comparing interest rates in the same currency.[298] However, Petitioners assert the Department's reasoning in OTR Tires from the PRC is wholly unsubstantiated and argue that if it were true, then the regulations would have referenced these preferences. Moreover, Petitioners disagree with the Department's observation in OTR Tires from the PRC that the adjustment does not optimally correct or control for differences among interest rates in multiple countries, though, due to limiting factors, the Department was only able to perform the inflation adjustment.[299] Although the Department attempted to further explain this adjustment in OTR Tires from the PRC,[300]

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[294] See CFS from the PRC IDM, at 67-68, OTR Tires form the PRC IDM, at 101 and 105, and Preliminary Determination, at 73 FR 54372-74.
[295] See CFS from the PRC IDM, at Comment 10, LWTP from the PRC IDM, at Comment 8, CWLP from the PRC IDM, at 15, and the Preliminary Determination, 73 FR at 54372-74.
[296] Id.
[297] See Petitioners' CB, at 13, citing Preliminary Determination, 73 FR at 54373.
[298] Id., at 14, citing OTR Tires from the PRC IDM, at 110.
[299] Id., at 15, citing OTR Tires from the PRC IDM, at 109–110.
[300] Id., at 15, citing OTR Tires from the PRC IDM, at 110.

Petitioners argue the Department has not yet provided evidence to support it in the above case or this investigation.

Finally, citing CFS from the PRC, Petitioners claim the Department has recognized the importance of insulating the interest rate from the reintroduction of Chinese-specific distortions.[301] Given this, Petitioners argue the Department's priority in protecting against PRC-specific distortions far outweighs any advantage achieved by its inflation adjustment. Petitioners further argue their position by noting several distortions that are reintroduced into the external benchmark rate by including the inflation adjustment, such as alleged suppression of the CPI in the PRC because of price controls.[302] Thus, Petitioners assert the exclusion of the inflation adjustment would be consistent with CFS from the PRC and would rectify the Department's dissimilar approaches to removing PRC-specific distortions from its external interest rate benchmark.[303]

The GOC's and TTCA's Rebuttal Comments:

If the Department continues to use third-country interest rates as the basis for its benchmark, the GOC contends that Petitioners' argument is without merit. The GOC argues Petitioners have not presented new arguments that would detract from the Act, the Department's regulations, CFS from the PRC, or the premise that the Department must use a comparable rate.[304] Moreover, the GOC argues that Petitioners' citation to the Act and the Department's regulations as not permitting inflation adjustments is misplaced because neither the Act nor the regulations authorize the use of an external benchmark interest rate for loans denominated in other currencies. Assuming the Department does have this authority, however, the GOC asserts that the adjustment is necessary and Petitioners do not dispute that inflation rates are a factor in interest rates.

Finally, the GOC states that Petitioners' assertion that price controls have the effect of lowering the PRC's CPI is irrelevant and notes the Department has not found that the PRC's purported price controls confer a countervailable subsidy. Hence, Petitioners' observations are without merit. Accordingly, the Department, if it continues to use an external benchmark interest rate based on nominal rates, should continue to adjust for inflation.

Department's Position:

Petitioners claim that the Department's prior explanations of why an inflation adjustment is necessary are not sufficient to support the adjustment. First, they claim that the statute and regulations does not "speak to" such an adjustment. While this is true, Petitioners do not and cannot point to any language in the statute or regulations that precludes such an adjustment. Moreover, as the Department explained in OTR Tires from the PRC[305] the adjustment is

[301] See CFS from the PRC IDM, at 71.
[302] See Petitioners' CB, at 16-17.
[303] See CFS from the PRC, IDM at 71.
[304] See section 771(5)(E)(ii) of the Act, 19 CFR 351.505(a)(1), 19 CFR 351.505(a)(2)(ii) and CFS from the PRC IDM, at Comment 10.
[305] See OTR Tires from the PRC IDM, at 109-110

consistent with the intent of our regulation describing what constitutes a "comparable commercial loan." See 19 CFR 351.505(a)(2)(i). Under that regulation, the Department normally seeks to use a benchmark denominated in the same currency as the loan being countervailed. In OTR Tires from the PRC, the Department was measuring the subsidy conferred by RMB-denominated loans using interest rates from many countries, i.e., loans denominated in many currencies. Given the importance we place on using benchmarks denominated in the same currency as the loan in question and the fact that we are not able to do so in the Chinese investigations, it was appropriate to consider making adjustments to the external benchmark.

Petitioners next dismiss the Department's explanation of why it is important to make an adjustment when comparing prices (including interest rates) across countries, claiming that relating inflation rates and currency conversions is an "apple-to-oranges" comparison. However, Petitioners do not elaborate on why our explanation in OTR Tires from the PRC fails and we believe that the rationale is clearly explained there.[306]

Petitioners further challenge the inflation adjustment because it reintroduces Chinese distortions into the benefit calculation and because, as the Department acknowledged in OTR Tires from the PRC, the inflation adjustment is a rough proxy using for exchange rate-adjusted nominal rates. Petitioners are correct that making inflation adjustments requires use of the Chinese inflation rate. However, we have concluded that the need to adjust for making cross-border comparisons (through the inflation adjustment) outweighs the need to eliminate all possible Chinese distortions from the calculation. Similarly, while making the inflation adjustment may not be the perfect solution to the problem of cross-border comparisons, we maintain that the adjustment is the best means of achieving an appropriate comparison, as required under the Act and the Department's regulations. Thus, we do not agree with Petitioners that lacking a perfect adjustment, no adjustment should be made.

Comment 9 Benchmark - Whether the Department has a Basis for Treating "Medium-term" as Having Terms of Two Years or Less

In the Preliminary Determination, the Department made modifications to its benchmark by treating the interest rates obtained from the IMF Statistical Yearbook as "medium-term" rates and then applying the benchmark derived from those rates to loans with terms of two years or less.[307]

[306] Id.

[307] See Preliminary Determination, 73 FR at 54373.

The GOC s Affirmative Comments:

The GOC argues because the Department provided no explanation, its treatment of these interest rates as corresponding to loans of two years or less appears to be purely arbitrary. The GOC concurs with the Department's assessment that the actual term structure is indeterminate, but believes that should lead the Department to apply the benchmark derived from those interest rates to both short- and long-term loans. Alternatively, if the Department continues to treat the IMF rates as corresponding to two years or less, the GOC urges the Department to adjust the rate downward when used as a benchmark for short-term loans, just as the Department applies an upward adjustment when the rate is applied to long-term loans. The GOC contends that simply calling the rate "short-term" does not mask the fact that it is a mix of short- and long-term rates.

TTCA's Affirmative Comments:

TTCA argues that the Department should adjust the derived benchmark downward when applying it to short-term loans.

Petitioners' Rebuttal Comments:

Petitioners counter that the Department should not have considered the GOC's argument for the Preliminary Determination and, moreover, should revert to its prior practice. Citing the Preliminary Determination, Petitioners assert that the basket of countries either reported short-term rates or have loan markets where short-term rates predominate. Thus, Petitioners argue that the adjustment attributes more of the underlying rates to the "medium-term" lending than may actually exist and is likely skewing the benchmark more so than no adjustment at all.

Department's Position:

In the Preliminary Determination, the Department cited several factors that need to be considered when considering an appropriate term to place on the regression-based benchmark rate. These factors are: data available on the term structure of the loans underlying the IMF interest data; the fact that we could not find a definition of "medium-term" to which countries reporting interest rate data to the IMF must adhere; and, based on a review of the 2008 IFS country notes and EIU Country finance reports, the likelihood that a majority of the countries in the basket either report loans with terms of one year or less, or have loan markets where short-term lending predominates.[308] Based on these factors and our analysis of the GOC's pre-preliminary comments, the Department determined it would apply the regression-based benchmark to loans of two years or less. Petitioners seem to argue that the final factor, the likely predominance of short-term rates, means that we should return to our prior practice and treat the derived benchmarks as a short-term, i.e., one-year rate. The GOC, on the other hand, seems to argue that because we don't know the terms of the underlying loans, we must treat the benchmark as applying equally to short-, medium-, and long-term loans. We disagree with both of these positions. Rather, our treatment of "medium terms" loans here reflects an appropriate and

[308] See Preliminary Determination, 73 FR at 54373.

balanced position. Therefore, in recognition of the fact that the underlying loans have a range of terms, while at the same time taking into account that they are not long-term loans, we have continued to apply the benchmark to loans of two years or less and to make an upward adjustment when we need to convert the benchmark into a long-term benchmark.

Also, we are not making a downward adjustment to the benchmark in those situations where it is being applied to short-term (one-year) loans as suggested by the GOC and TTCA. As noted above, information shows that the majority of countries within the basket reported loans with terms of one year or less. Therefore, in our view, a downward adjustment would likely overcompensate for any difference between one- and two-year term loans.

Comment 10 Benchmark - Whether to Remove Certain Countries from the IMF Data

The GOC's and TTCA's Affirmative Comments:

The GOC and TTCA argue that the interest rates of certain countries should be excluded from the benchmark calculation because their rates include rates for bank products other than business loans. In particular, Paraguay should be excluded because it includes personal and development loans and Peru should be excluded because it includes overdrafts and credit card rates.[309] The GOC asserts these are higher rate products and skew the business loan benchmark.

Petitioners' Rebuttal Comments:

Petitioners argue the Department's calculated rate is an average, not a modal. Moreover, according to Petitioners, the regression analysis "smooths out" any differences among data points and they point to various countries with high and low interest rates (e.g., Thailand and Vanauatu) to demonstrate their claim. Therefore, Petitioners contend, no adjustment is warranted.

Department's Position:

Although information indicates that the interest rates reported by Peru and Paraguay include business and other types of loans, we believe it is likely that several other countries mix different bank products because 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.[310] As the IFS rates are the best data the Department has to measure external rates, excluding all countries whose rates may include other types of loans is not practicable. Therefore, we have continued to include these countries in our regression-based benchmark rate for the final determination.

[309] See GOC Pre-Preliminary Comments, at Attachment C.
[310] Id., at Attachment B.

Comment 11 Benchmark - Whether Negative Inflation-adjusted Interest Rates Should be Excluded from the Regressions

The GOC's and TTCA's Affirmative Comments:

The GOC and TTCA argue the Department should not exclude negative inflation-adjusted interest rates from its calculation. Pointing to negative real interest rates in Japan and the United States, the GOC asserts that these rates are not statistical anomalies, nor are they a basis for finding that the rates are not market-based.

Petitioners' Rebuttal Comments:

Petitioners argue average benchmark interest rates should reflect usual commercial conditions. Notwithstanding whether negative rates are "statistical anomalies" or "not market based," they simply do not reflect usual commercial conditions for the purpose of constructing a loan benchmark in a CVD proceeding. The examples cited by the GOC do not reflect normal commercial conditions, according to Petitioners. Therefore, the negative rates should continue to be excluded.

Department's Position:

The Department understands that negative inflation-adjusted rates are not common, tend to be anomalous and, moreover, are not sustainable commercially. Thus, we have continued to exclude them in calculating our regression-based benchmark rate.

Comment 12 Benchmark - Whether the Regression is Statistically Invalid

The GOC's and TTCA's Affirmative Comments:

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

The GOC further asserts the Department has yet to provide any evidence that the composite GI or any the five underlying GI factors has any correlation with interest rates. Citing the Drazen Report, the GOC also contends that there is neither theoretical nor empirical justification for using GNI as a proxy for the level of market interest rates.[311] The Department's own regression calculation demonstrates that there is no statistically significant relationship between the average GI and the inflation-adjusted rate, according to the GOC. As evidence of this, the GOC has calculated a measure of correlation, which shows for each year the Department calculated an interest rate, there is no statistically significant relationship between the governance factors and

[311] See GQR, at Exhibit I-A-27, Allan Drazen, Benchmark Interest Rates for PRC, ("Drazen Report") at 21.

interest rates. In the absence of any correlation, the GOC claims that the Department's analysis is utterly meaningless and, moreover, is little different from the simple mean of the countries' rates.[312]

The GOC also argues that the benchmark has nothing to do with the economic conditions in the PRC and is not in any statistical sense a predicted interest rate for the PRC if it were a market economy. Furthermore, the benchmark is not free of government distortion. The GOC asserts that the benchmark rate merely reflects the economic conditions, monetary policies and government influence of 30–33 other countries. In its comparison, all the Department has established is that lending rates in the PRC are lower than the average rates of these countries with dissimilar policies to the PRC.

Finally, the GOC claims the Department has repeated its assertion that the quality of a country's institutions is a key factor in interest rate formation and has yet to provide evidentiary support.[313] The GOC requests the Department to explain its basis and include the evidence in the record if it continues to rely on this finding.

Petitioners' Rebuttal Comments:

Petitioners claim the Department already rejected the GOC's argument in the Preliminary Determination and note the Department has already explained its rationale in LWRP from the PRC.[314] Petitioners further argue that the Department has pointed to evidence for its rationale and it continues to hold in this case, i.e., that countries with lower GNI tend to have higher interest rates than countries with higher per capita GNI.[315] As the information is the same as in LWRP from the PRC, Petitoners contend the Department should reject the GOC's argument and continue to use its regression analysis for the final determination.

Department's Position:

We disagree with the GOC's argument that the assumptions underlying the benchmark calculation are flawed and that there is no relationship between GNI and interest rates. We have explained our rationale for this and the GOC has not provided new arguments to the contrary.[316] The Department has also previously addressed the decision to use as a best comparison, the group of lower-middle income countries as reported by the World Bank and our rationale for considering institutions as a key factor in interest rate formation.[317]

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[312] See GOC CB, at 53.

[313] See e.g., Preliminary Determination, 73 FR at 54374, CWASPP from the PRC, at Comment 10, and LWRP from the PRC at Comment 12.

[314] See Preliminary Determination, 73 FR at 54373-74 (citing LWRP from the PRC, at 44) and LWRP from the PRC IDM, at 44-45.

[315] See TTCA Preliminary Calc Memo, at Attachments 8a to 8c.

[316] See CFS from the PRC at Comment 10, OTR Tires from the PRC at Comment E.4., LWRP from the PRC, at Comment 12, LWTP from the PRC, at Comment 9, CWLP from the PRC IDM, at 13, CWASSP from the PRC, at Comment 10, and the Preliminary Determination, 73 FR at 54372-74.

[317] See CFS from the PRC at Comment 10. See, also, CFS from the PRC Amended Prelim, 72 FR at 17487-17489

Comment 13 Benchmark - Whether the Difference Between Long- and Short-term Interest Rates Should be Based on BB-grade

The GOC's and TTCA's Affirmative Comments:

The GOC and TTCA argue that the Department's computation of an adjustment between short- and long-term rates using U.S. dollar BB rates is arbitrary and inappropriate. Citing the Preliminary Determination, the GOC posits the Department attempts to capture an average investment risk in the PRC, but asserts that it has no basis to suggest such a risk would correspond to only investment-grade companies and, thus, use the highest non-investment grade.[318]

The GOC notes a Standard & Poor's ("S&P's") BB rating is equivalent to a Moody's Ba rating, which is a below-investment grade rating and used for speculative, low grade bonds. Thus, it is an inappropriate rating to use for creditworthy companies. Citing 19 CFR 351.505(a)(3)(iii), the GOC notes that the Department's regulations require calculations for uncreditworthy companies that consider the differences of the probability of default by creditworthy and uncreditworthy companies using Moody's data. The rated bonds under consideration for a creditworthy company are Aaa to Baa. Thus, the GOC argues, there is no reason or basis for the Department to use a bond rate below that category to compute its short- to long-term adjustment for creditworthy companies in the PRC. The GOC asserts, therefore, the Department should consider using a weighted average of bonds from Aaa to Baa (or AAA to BBB- on the S&P's scale) in computing the short- to long-term adjustment for creditworthy companies.[319]

Finally, the GOC argues that the Department should not be using U.S. bond rates to compute the adjustment. The GOC notes that the relationship between the short- and long-term interest rates reflects factors within the United States and has no bearing on PRC interest rates. Similarly, the GOC asserts that the U.S. bonds have no relationship to the short-term benchmark rate computed by the Department using interest rates from lower middle income companies, which is the rate the adjustment is applied to.

Petitioners' Rebuttal Comments:

Citing the Preliminary Determination, Petitioners contend the Department has already addressed the GOC's arguments and should reject these arguments for the final determination on the same basis.[320] Moreover, Petitioners note that the Department invited comments on whether to base the adjustment on an average of AAA to B minus rates in the Preliminary Determination and the GOC did not submit comments. Thus, as the practice is a reasonable methodology, Petitioners assert the Department should continue to use it for the final determination.

Department's Position:

[318] See Preliminary Determination, 73 FR at 54374.
[319] See GOC's CB, at 56.
[320] See Preliminary Determination, 73 FR at 54374.

The Department has fully addressed the arguments raised by the GOC regarding the Department's use of a U.S. corporate BB bond rate to derive a long-term external benchmark in LWTP from the PRC and the Preliminary Determination.[321] As noted by Petitioners, the Department sought comments on a possible change in the adjustment,[322] but did not receive any. Consequently, we have continued to base the adjustment on the corporate BB bond rate for this final determination.

Comment 14 Benchmark - Whether the Adjustment for Long-term Rates should be Additive or Multiplicative

The GOC's and TTCA's Affirmative Comments:

In computing a long-term interest rate benchmark, the GOC argues that the Department's methodology of computing the ratio between the short- and long-term bonds and multiplying that ratio by the short-term interest rate benchmark is flawed. Instead, the GOC contends, the Department should compute the spread by taking the difference between the long- and short-term rate and add that spread to the short-term interest rate benchmark.

The GOC notes short-term rates reflect, among other factors, current inflation rates, default risk, and governmental monetary policy, while long-term rates reflect, among other factors, expectations of the economy, future inflation, and default risk. The GOC further states that generally borrowers pay a premium on longer-term debt, known as a "term-premium," and this is expressed as an absolute amount, or spread, measured in terms of basis points.[323] Thus, there is no economic or financial basis for the Department to compute its differential in terms of a ratio.

Citing LWRP from the PRC, the GOC states the Department has attempted to explain its use of a ratio by asserting that a lender will demand a mark-up for long-term rates that is tied to a short-term rate and explaining that it is hard to understand why the mark-up should be the same when differences in short-term rates reflect differences in baseline risk levels. The Department also presented a compounding formula to demonstrate why a ratio must be used rather than a spread.[324] The GOC asserts, however, that the Department provided no support for its assertions and differences in baseline risk across countries are already reflected in the short-term rates used by the Department to compute the benchmark. Moreover, in the GOC's view, the compounding formula is irrelevant, as there is no dispute that the mark-up should be applied on a compounded basis.

Finally, the GOC suggests that the Department inherently understands the principle the GOC is advancing because the Department does not calculate ratios between nominal and real interest rates. Instead, the Department adds or subtracts the inflation rate.

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[321] See LWTP from the PRC Prelim, 72 FR at 13856, LWTP from the PRC IDM, at Comment 8, and the Preliminary Determination, 73 FR at 54374.
[322] See Preliminary Determination, 73 FR at 54374.
[323] See GOC's CB, at 58.
[324] See LWRP from the PRC IDM, at Comment 12.

TTCA's Affirmative Comments:

TTCA also contends that the Department's long-term benchmark adjustment is flawed. TTCA states that it does not make sense to calculate the difference between two rates as a ratio because the rates themselves are ratios. Instead, according to TTCA, the mark-up should be calculated and applied on an additive basis.

Petitioners' Rebuttal Comments:

Citing the Preliminary Determination, Petitioners contend the Department has already addressed the GOC's arguments and, therefore, should reject these arguments for the final determination.[325] Moreover, citing LWRP from the PRC, Petitioners argue the Department has explained its reasoning and the defects in the additive spread approach.[326] Thus, the Department should continue to use its ratio adjustment for the final determination.

Department's Position:

In LWRP from the PRC and CWMP from the PRC, the Department explained that it used a ratio adjustment in its long-term loan benchmark computation out of concern that the long-term mark-up reflects differences in short-term rates and the differences in base-line investment risk that might be implied.[327] However, upon examination of the U.S. corporate bond rate data and the ratio and spread computations, the Department finds no basis to think that yield curves would necessarily steepen as the short-term rate increases. Consequently, there is no a priori reason to believe that employing a ratio to calculate the long-term mark-up necessarily leads to a more accurate long-term benchmark interest rate. As such, the Department is changing its methodology to use a long-term mark-up 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.

Comment 15 Benchmark - Whether the Discount Rate Computation is Flawed

The GOC's Affirmative Comments:

Citing 19 CFR 351.524(d)(3), the GOC argues the Department's regulations do not authorize it to use an external benchmark as a discount rate. Moreover, the GOC notes that both TTCA and Yixing Union have reported long-term loans that were not found to be countervailable and the Department does not have the discretion not to use these rates.

The GOC also finds the Department's computation of the discount rate flawed for the same reasons that its interest rate computations are flawed. In addition, the GOC argues that the Department erred in applying its "bump-up ratio" (the long-term adjustment) to the short-term benchmark and to the PRC's inflation rate. The GOC argues there is no reason to "bump-up" an

[325] See Preliminary Determination, 73 FR at 54374.
[326] See Petitioners' RB, at 47-48; see also, LWRP from the PRC IDM, at 44.
[327] See LWRP from the PRC IDM, at Comment 12 and CWLP from the PRC IDM, at Comment 14.

inflation rate as it does not change whether the lender issues a short- or long-term loan, nor does it have anything to with the difference between short-term and long-term U.S. dollar bond rates, no matter the future expectations of the PRC's inflation rate.

Petitioners' Rebuttal Comments:

Citing LWRP from the PRC, Petitioners note the Department has stated that the selection of a discount rate does not in any meaningful way differ from the selection of a commercial benchmark rate to calculate the benefit from government-provided loans.[328] As such, for all of the same reasons provided in regards to the external benchmark interest rates, Petitioners argue the Department should reject the GOC's arguments and continue to use an external benchmark rate for the discount rate for the final determination.

Department's Position:

In LWRP, the Department explained that the Department's regulations at 19 CFR 351.524(d)(3) expressed a preference for discount rates to be based on the actual cost of long-term fixed-rate loans taken out by the firm, or an average of such loans in the country, but that it does not differ in any meaningful way from the selection of a commercial benchmark rate for purposes of allocating a subsidy over time.[329] Moreover, as further noted in the "Subsidies Valuation Information – Benchmark and Discount Rate" section above and Comment 7, we have determined that the role of the PRC government in the banking sector distorted all lending rates in that country. Consequently, we have rejected all internal PRC rates as benchmarks. Therefore, pursuant to 19 CFR 351.524(d)(3)(i)(C), we determine that it is appropriate to continue to use an out-of-country long-term lending benchmark as the discount rate for allocating the benefits over time. Finally, as the Department has adopted an additive long-term adjustment, the GOC's argument regarding applying a "bump-up" to the inflation rate is moot.

Comment 16 FIE Tax Programs - Whether FIE Tax Programs are Specific

The GOC's Affirmative Comments:

The GOC contends that subsidies that are neither geographically limited nor limited by industry or enterprise cannot be found "specific" under section 771(5A) of the Act.[330] Consequently, the GOC disagrees with the Department's specificity decision in CFS from the PRC, arguing that the presence of foreign investment (such as in Yixing Union and Cogeneration) is not a factor that limits the benefit to specific enterprises or industries.[331] The GOC points to 19 CFR 351.502(e), in which the Department states that the size of enterprises, such as small- and medium-sized firms, does not provide a basis for finding specificity and urges the Department to draw a parallel conclusion that programs limited to a particular corporate structure or to enterprises with particular types of investors are not de jure specific.

[328] See LWRP from the PRC IDM, at 43.
[329] Id.
[330] See GOC's CB, at 61-62.
[331] Id., at 61-63.

Yixing Union's Affirmative Comments:

Yixing Union argues that a subsidy which is broadly available and widely used throughout an economy is not considered specific. According to Yixing Union, more than half of the industries investigated in the PRC have benefited from the "Two Free, Three Half" program; Reduced Income Tax Rates to FIEs Based on Location; and programs granting preferential tax benefits for "productive" FIEs. Yixing Union argues that these programs are now so broad-based and benefit such a multitude of industries and producers, the Department should find that they are no longer specific within the meaning of the statute.

Yixing Union contends that in order to find specificity under section 771(5A)(D)(i) of the Act, the Department must show that access to the subsidy was expressly limited to an enterprise or group of enterprises or industries. Yixing Union believes that the Department has failed to do so. As support for its claim, Yixing Union notes that the "Two Free, Three Half" program was countervailed in seven out of ten investigations, and was considered in cases covering such diverse industries as paper, pipe, citric acid, and lawn groomers.[332]

Yixing Union cites to Article 72 of the Implementing Rules of Foreign Investment Enterprise and Foreign Enterprise Income Tax Law,[333] and notes that there are ten industry categories that "productive" FIEs may qualify under, these include: (1) machinery, manufacturing and electronics; (2) energy; (3) metallurgical, chemical and building materials; (4) light industries, textiles and packaging; (5) medical apparatus and pharmaceuticals; (6) agriculture, forestry, animal husbandry, fisheries and water conservancy; (7) construction; (8) communications and transportation; (9) scientific and technological development, geological surveying and industrial information consultancy and maintenance services; and (10) other industries determined by the State Council. Yixing Union argues that this list hardly seems limited, and contends that the list of industries is too large to be considered a "group" because it encompasses so many industries.

Citing the SAA, Yixing Union further argues that the purpose of the specificity test is to "winnow out" widely available subsidies used throughout an economy and that the programs in the current investigation are clearly "spread throughout the economy."[334] Additionally, Yixing Union cites to the CVD Preamble which discusses PPG Industries, to argue that the Department should look at the makeup of the users, and reiterates that the industries using the GOC's FIE programs are too numerous and diverse to constitute a group.

Finally, Yixing Union cites to Roses, in claiming that specific subsidies are those that are given to a "discrete class of grantees."[335] In addition to the "Two Free, Three Half" program discussed above, Yixing Union points out that the Reduced Income Tax Rates to FIEs Based on Location program has been countervailed in 80 percent of the PRC CVD cases and benefits to productive

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[332] See Yixing Union's CB, at 25; see also CFS from the PRC; LWS from the PRC; CWLP from the PRC; Preliminary Determination; Lawn Groomers from the PRC; OTR Tires from the PRC; LWTP from the PRC; Magnets from the PRC; LWRP from the PRC; and CWP from the PRC.

[333] See GQR, at Exhibit I-A-40.

[334] See Yixing Union's CB, at 25-26 and SAA, at 929.

[335] See Yixing Union's CB, at 28.

FIEs have been countervailed in 60 percent of all the PRC CVD investigations, thus far. Therefore, according to Yixing Union, these programs should not be deemed specific by any reasonable standard, including that in Roses.[336]

Petitioners' Rebuttal Comments:

Petitioners agree with the Department's Preliminary Determination that FIE tax programs are de jure specific. Petitioners argue that the Department has found in numerous cases, such as OTR Tires from the PRC and LWTP from the PRC that it is not the corporate structure that makes enterprises eligible for tax benefits, it is the fact that they have foreign investment which restricts the availability to all enterprises and makes the tax subsidies de jure specific as a matter of law.[337] Therefore, these benefits are not generally available and are limited to particular enterprises.

Additionally, Petitioners challenge Yixing Union's assertion that tax subsidies to FIEs are no longer de facto specific. Petitioners argue that because the Department has already made a de jure specificity finding, it does not need to further examine whether the program is also de facto specific under section 771(5A)(D)(iii) of the Act. Petitioners cite to CWASPP from the PRC, where the Department stated that once the de jure prong of the specificity test has been met, "further inquiry into the actual use of the subsidy is unnecessary."[338] Moreover, Petitioners contend that Yixing Union's argument is without statutory basis because Yixing Union merely cites to the statutory language requiring that a subsidy be specific, without addressing the Department's justification that these programs are only available only to FIEs, limiting eligibility, and hence, are specific.

Department's Position:

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

To the extent that the GOC is arguing that the Department cannot find specificity based on the form of a corporation, we have not done so for the reasons explained in CFS from the PRC.[339]

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[336] Id., at 28.
[337] See Petitioners' RB, at 50-51.
[338] Id., at 51.
[339] See CFS from the PRC IDM, at Comment 14.

With respect to the arguments raised by Yixing Union, we first note that our specificity finding with respect to the "Reduced Income Tax Rates for FIEs Based on Location," is based on the regional specificity of the program, pursuant to section 771(5A)(D)(iv) of the Act. Therefore, we are limiting our response to those programs for which we have found specificity on the basis of section 771(5A)(D)(i) of the Act, i.e., de jure specific by virtue of being limited to foreign invested enterprises.

Our finding is that FIEs constitute a group of enterprises for specificity purposes. We note that section 771(5A)(D) of the Act defines "enterprise or industry" to include a group of such enterprises or industries. Much of Yixing Union's argument is misplaced because it focuses on the industries containing FIEs, not on whether FIEs can be classified as a "group."

We do not dispute that subsidies that are available to and used by numerous and diverse enterprises and industries are not specific. The FIE tax subsidies in question, however, are limited by law to firms that have foreign investment. This de jure limitation to a specified group of enterprise is a sufficient basis to find specificity under the Act. Moreover, while we acknowledge that the language in the CVD Preamble discussing PPG Industries v. United States refers to numerous and diverse industries, and that FIEs may in fact operate in numerous and diverse industries in the PRC, the preambular language cannot be read to mean that where the law limits a subsidy to a specific group of recipients, the subsidy is not specific because the limited recipients operate in many industries. Also, in our view, the Roses decision cited by Yixing Union supports our finding because FIEs are a discrete class of enterprises that benefit from a variety of subsidy programs. [340]

Yixing Union has cited to the fact that numerous respondents in our PRC CVD investigations have benefitted from subsidies limited to FIEs to support its claim that the FIE subsidies are used by numerous firms in numerous industries. However, this may instead support the conclusion that FIEs make up a large share of the companies exporting to the United States. Regardless, to the extent that Yixing Union is advancing this argument to demonstrate that the FIE subsidies are not de facto specific, since we have made a finding of de jure specificity under subsection (i) of 771(5A)(D) of the Act, we do not examine whether the program is specific under subsection (iii). We also note that this is consistent with the SAA, which states that once the de jure prong of the specificity test has been met, "further inquiry into the actual use of the subsidy is unnecessary."[341]

Comment 17 FIE Tax Programs- Whether They Have Been Terminated

The GOC's Comments:

The FIE Tax Law was repealed effective January 1, 2008.[342] The GOC argues that certain programs related to the FIE Tax Law (i.e., "Two Free, Three Half," Local Income Tax Exemption and Reduction for "Productive" FIEs, and Income Tax Exemption for FIEs Located

[340] See Roses, 14 CIT at 455.
[341] See SAA, at 930.
[342] See Preliminary Determination, 73 FR at 54383.

in Jiangsu Province) were all terminated prior to the Preliminary Determination, and that for the latter two programs, there is no possibility of any company receiving residual benefits beyond the date of the Preliminary Determination. Therefore, the GOC contends that there have been "program-wide" changes and that cash deposit rates established for these programs should be set to zero for the final determination, pursuant to 19 CFR 351.526.

With regard to the "Two Free, Three Half" program, the GOC makes a slightly different argument. The GOC argues that neither respondent (as opposed to all enterprises) can receive residual benefits pursuant to this program. Therefore, because the "Two Free, Three Half" program was terminated effective January 1, 2008, and the respondents will receive no residual benefits under this program, the Department should also set the cash deposit rate to zero for this program.

Petitioners' Rebuttal Comments:

Petitioners dispute the GOC's claim that the respondents were ineligible to receive benefits under the Two Free Three Half program in 2007 because Yixing Union received benefits pursuant to the program according to its 2006 tax return, which was filed in 2007. Petitioners mention that there is a gap in time from the time taxes are incurred, versus when they are actually paid or revenue is foregone. Consistent with 19 CFR 351.509(b), for direct tax programs, benefits are received on the date the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission, which is normally the date on which it filed its tax return. Moreover, Petitioners argue that certain proprietary information contained in Yixing Union's 2007 tax return filed in 2008 contains further evidence that the deposit rate should not be zero. This information is summarized in the Final BPI Memo, at Comment B. Since it appears that residual benefits can continue under this program, Petitioners argue that the program should continue to be countervailed.[343]

With respect to the GOC's argument that additional tax benefits to FIEs have been terminated, Petitioners note that the Department rejected the GOC's claim in its Preliminary Determination. Petitioners further note that the GOC has provided no new argument or any factual information which would alter the Department's decision and accordingly, the Department should reject the GOC's claims. Moreover, Petitioners point to the Notice of the State Council on the Implementation of the Transitional Preferential Policies in Respect of Enterprise Income Tax (No. 39 of the State Council), which states that enterprises that previously benefited from tax deductions and exemptions may continue to enjoy these benefits. Finally, Petitioners argue that setting the cash deposit rate to zero would be contrary to the Department's regulations, because residual benefits would be allowed to continue for a transitional period based on record evidence. Therefore, in accordance with 19 CFR 351.526(d)(1), Petitioners submit that the Department should continue to countervail the tax programs in the final determination.

Department's Position:

[343] See Petitioners' RB, at 51-52.

The Corporate Income Tax Law[344] allows FIEs to continue to receive benefits from the "Two Free, Three Half" program beyond the termination date. The GOC makes note of this fact in its response.[345] Thus, even assuming benefits to the two cooperating respondents under this program have been exhausted, residual benefits exist for other users. Consequently, the termination of this program does not meet the standard for making an adjustment to the deposit rate.[346]

Regarding the Local Income Tax Exemption and Reduction for "Productive" FIEs program, we stated in our Preliminary Determination that we were unable to determine that the program did not provide for residual benefits because the GOC did not provide any laws on the record to support its claim.[347] The GOC has not provided the Department with any new information concerning the program since the Preliminary Determination. Thus, we continue to determine that the criterion under 19 CFR 351.526(d)(1) has not been met, and we are not adjusting the deposit rate to reflect the termination of the program.

For the Income Tax Exemption for FIEs Located in Jiangsu Province program, the benefits received under this program have already been captured under the Local Income Tax Exemption and Reduction for "Productive" FIEs program, and the "Two Free, Three Half" program. Therefore, no rate has been determined for this program and we have continued to find this program "not-used."[348]

Comment 18 Whether the Application of Total AFA is Warranted

Petitioners' Affirmative Comments:

Petitioners argue that the Department should apply total AFA when calculating TTCA's final CVD rate, pursuant to section 776(b) of the Act, because TTCA failed to act to the best of its ability in complying with the Department's requests for information. Petitioners contend that in determining whether an interested party has acted "to the best of its ability," the Department should assess whether the party has put forth "maximum efforts" toward providing full and complete answers to all inquires in an investigation.[349]

Citing Nippon Steel, Petitioners contend that the Department only needs to show that: (i) a "reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations;" and (ii) the respondent's failure to promptly produce the data is due to the respondent's lack of cooperation by either failing to keep and maintain the requisite records, or failing to exert maximum efforts towards investigating and extracting the requisite data from its records.[350]

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[344] See GQR, at Exhibit I-A-42.
[345] See G1SR (8/27), at 10.
[346] See 19 CFR 351.526(d)(1).
[347] See Preliminary Determination, 73 FR at 54383.
[348] Id., 73 FR at 54383.
[349] See Petitioners' CB, at 19, citing Nippon Steel, 337 F.3d at 1382; NSK, 481 F.3d at 1361; Yantai Timken, 521 F. Supp. 2d at 1373; and Gerber Food, 491 F. Supp. 2d at 1343.
[350] Id., at 19-20, citing Nippon Steel, 337 F.3d at 1382.

Petitioners also point out that in Tissue Paper from the PRC, the Department evaluated the "totality of the circumstances" to determine whether "problems {in the respondent's data} are pervasive enough to preclude the Department from using any of {its} data to calculate an accurate" CVD rate.[351]

In the instant investigation, Petitioners identify three specific circumstances that, in their view, should result in the application of total AFA: (1) TTCA failed to produce reliable financial statements; (2) TTCA failed to demonstrate that it has a reliable financial recording system; and (3) TTCA failed to allow verification of significant portions of its funding and capital expenditures.[352]

Unreliable Financial Statements

Petitioners emphasize that, because the Department cannot conduct its own audit of the respondent's financial statements, reliable audited financial statements serve a crucial role in verifying the information submitted by respondents.[353] Petitioners also highlight past instances where the Department concluded that responses are not reliable if responses cannot be reconciled to reliable financial statements.[354] In the instant investigation, Petitioners identify certain proprietary information obtained at verification which Petitioners believe confirms that TTCA's financial statements are unreliable. Because a significant portion of Petitioners' comments contain proprietary information, we have summarized these comments separately.[355]

Petitioners also identify an instance at verification when TTCA did not provide the Department with TTCA's "Annual Inspection Report" as requested, because TTCA claimed that a file copy was not retained.[356] Petitioners state that the requested document would necessarily contain TTCA's financial statements, and that the document, at a minimum, could have been obtained from the SAIC if only TTCA was willing to send a company representative to retrieve the requested document. Petitioners also point to the GOC's refusal to allow the Department to verify TTCA's "Annual Inspection Report" filed at the SAIC. Consequently, Petitioners argue that TTCA's failure to cooperate at verification also demonstrates that TTCA's financial statements are unreliable. If TTCA's financial statements are unreliable, the Department cannot verify and, therefore, cannot rely on TTCA's responses, contend Petitioners.

Unreliable financial recording system

Petitioners claim that TTCA's underlying financial records are unreliable because of three specific instances in which TTCA disregarded basic accounting principles by not properly recognizing certain liabilities.[357] The first instance relates to certain disputed water resource fees

[351] Id., at 21, citing Tissue Paper from the PRC AFA Memo, at 17.
[352] Id., at 18.
[353] Id., at 21, citing Steel Plate from Sweden - AD, 62 FR at 18398.
[354] Id., at 22, citing Bedroom Furniture from the PRC – AD, 72 FR at 46962; Fish Fillets from Vietnam IDM, at 14-15; and LWS from the PRC – AD, 73 FR at 5805.
[355] See Final BPI Memo, at Comment A.
[356] See Petitioners' CB, at 26, citing TTCA Verification Report, at 8.
[357] Id., at 27-28, citing TTCA Verification Report, at 14-37.

assessed by the Anqiu Water Resources Bureau, which TTCA did not record as contingent liabilities. In Petitioners' view, TTCA's explanation for not recording the outstanding water resource fees (that TTCA believed the fees were not TTCA's responsibility) is unacceptable.[358] Petitioners point out that recognition of liabilities does not hinge on whether TTCA believes liabilities to be its own. Rather, basic accounting principles required TTCA to recognize such liabilities until the disputed fees were properly resolved.

The second instance relates to TTCA's involvement in a complicated land transaction. As part of this land transaction, Petitioners point out that TTCA obtained a series of short-term loans that were rolled over for three years, and at no time during the three years, did TTCA recognize any of the loans as liabilities on its balance sheet. Instead, TTCA debited and credited its cash account to record the first loan and subsequent roll-over loans.[359] Again, Petitioners believe that TTCA's explanation for the accounting treatment used by the company was unacceptable.[360] Petitioners submit that recognition of such liabilities is not a choice for a debtor.

The third instance relates to another loan, which was obtained to finance a new production line. Petitioners note that instead of initially recording the loan as a liability, TTCA again debited and credited its cash account, and provided the loans proceeds to a then unaffiliated input supplier to construct the new production line (the unaffiliated input suppler was eventually acquired by TTCA).[361] Further, Petitioners note that TTCA did not even record the transfer of loan proceeds to the unaffiliated input supplier as an account receivable. Petitioners emphasize the importance of this particular unrecorded liability because it represented a significant portion of TTCA's liabilities and total revenue for the particular year.

Petitioners contend that the aforementioned examples of TTCA's failure to recognize liabilities demonstrate that TTCA's underlying financial records are unreliable, and that there are almost certainly more such examples of undetected discrepancies. Consequently, Petitioners argue that, as the Department has previously found where a respondent's submitted information cannot be tied to reliable financial statements or a reliable financial recording system, the Department must conclude that any submitted data by TTCA are also unreliable.[362]

Failure to Allow Verification of Funding and Capital Expenditures

Finally, Petitioners charge that TTCA impeded verification of the sources of the company's funding and capital expenditures.[363] First, Petitioners identify the Department's request at verification for TTCA to identify the sources of its increased registered capital in 2005 and 2007, which in turn was used to fund capital expenditures.[364] Petitioners contend that TTCA's explanation, that its shareholders raised personal funds and, in certain instances, shareholders

[358] Id., at 28, citing TTCA Verification Report, at 36-37.
[359] Id., at 28-29, citing TTCA Verification Report, at 21-22.
[360] Id., at 29, citing TTCA Verification Report, at 21-22.
[361] Id., at 29, citing TTCA Verification Report, at 17-18.
[362] Id., at 31, citing Bedroom Furniture from the PRC – AD, 72 FR at 46962.
[363] Id., at 31, citing TTCA Verification Report, at 4-5, 18 and 25.
[364] Id., at 31.

obtained personal loans from banks, is not credible.[365] Consequently, Petitioners argue that TTCA prevented the Department from verifying the true source of the funds used to increase registered capital.[366]

Second, Petitioners state that TTCA failed to identify all of the company's so-called "secondary shareholders."[367] Petitioners believe that TTCA's assertions that neither TTCA nor its auditors retained documentation identifying something as fundamental as TTCA's company ownership contributions is suspect.[368] Instead, Petitioners argue that TTCA simply refused to account for its shareholders and their corresponding capital contributions, which impeded the Department's verification.[369]

Third, Petitioners identify two instances at verification in which the Department requested TTCA to demonstrate the source of funding for two capital improvement projects (i.e., a 2007 motor energy savings project and a new production line) and, in addition, provide schedules detailing the corresponding expenditures for the projects.[370] Petitioners note that the Department highlighted at verification that the project feasibility studies for the two projects identified specific amounts for the expenditure required to complete the capital improvement projects.[371] Next, Petitioners highlight that the Department underscored the importance of the requested information particularly in light of TTCA's accounting treatment with respect to not initially recording liabilities for certain loans.[372] Petitioners note that instead of providing the requested documentation, TTCA simply chose to provide statements explaining funding sources.[373] Petitioners charge that TTCA's refusal is significant because the funds obtained from unknown sources comprise significant portions of basic line items on the financial statements (i.e., the funding amounts are material).[374]

Petitioners contend that the aforementioned instances of TTCA impeding verification leaves the Department guessing as to the sources of a significant amount of TTCA's funding. Further, Petitioners state that it is entirely possible that this funding was secured from unreported bank loans or direct capital injections from the GOC.[375] Consequently, Petitioners argue that the Department must not reward TTCA for its intentional failure to cooperate to the best of its ability in this investigation and, thus, total AFA should be applied to the company.[376]

TTCA's Rebuttal Comments:

[365] Id., at 32, citing TTCA Verification Report, at 4.
[366] Id., at 32.
[367] Id., at 32.
[368] Id., at 32-33, citing TTCA Verification Report, at 4-5.
[369] Id., at 33.
[370] Id., at 33 and 35.
[371] Id., at 33 and 35, citing TTCA Verification Report, at 25-26.
[372] Id., at 33 and 35, citing TTCA Verification Report, at 25-26.
[373] Id., at 33 and 35, citing TTCA Verification Report, at 25-26.
[374] Id., at 34-35.
[375] Id., at 35.
[376] Id., at 36.

TTCA disagrees with Petitioners' argument that the application of total AFA is warranted. First, TTCA believes that there is no evidence to support the application of facts otherwise available, pursuant to section 776(2)(A)-(D) of the Act.[377] Next, TTCA contends that the Department may not apply an adverse inference, pursuant to section 776(b) of the Act, for a respondent merely failing to respond to requests for information.[378] TTCA further believes that the courts have made it clear that the statute's requirement that a respondent act "to the best of its ability" is not a requirement of perfection.[379] Consequently, TTCA argues that Petitioners have failed to demonstrate that TTCA did not act to the best of its ability.[380]

Unreliable Financial Statements and Unreliable financial recording system

TTCA disagrees with Petitioners' arguments that TTCA's financial statements are somehow unreliable. TTCA notes that the Department's exhaustive verification of TTCA's accounting system, books, records, financial reports and audited financial statements demonstrates the reliability of TTCA's financial statements.[381] In support, TTCA cites to numerous passages from the TTCA Verification Report where the Department confirmed that TTCA's financial statements conformed to the company's entire internal accounting system.[382] TTCA further believes that TTCA fully cooperated in the investigation by: (1) providing the Department with audited and verifiable financial statements; (2) expressing exceptional candor by describing in detail the background of its financial statements preparation and role of its outside auditors; (3) arranging for TTCA's auditors to participate in the verification; and (4) arranging for a representative from the local State Tax Authority to confirm the accuracy and genuineness of TTCA's financial statements and tax return.[383]

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[377] See TTCA's RB, at 4.
[378] Id., at 5, citing Mannesmannrohren-Werke, 77 F. Supp. 2d at 1313-14.
[379] Id., at 5, citing Nippon Steel, 337 F.3d at 1382.
[380] Id., at 6.
[381] Id., at 6-9.
[382] Id., at 7, citing TTCA Verification Report, at 6-7.
[383] Id., at 6, 8 and 9.

Next, TTCA disputes Petitioners' contention that TTCA failed to provide the Department with a copy of its Annual Inspection Report.[384] TTCA believes that Petitioners fail to acknowledge that TTCA fully responded to the Department's request by explaining that the Annual Inspection Report was not kept in the normal course of its business.[385] Finally, TTCA addresses the business proprietary information discovered at verification, which Petitioners believe also demonstrates the unreliability of TTCA's financial statements. TTCA's rebuttal comments are also summarized at Comment A of the Final BPI Memo.

Failure to Allow Verification of Funding and Capital Expenditures

TTCA disagrees with Petitioners' assertions that TTCA impeded the verification of its funding and capital expenditures.[386] TTCA states that Petitioners' criticisms of TTCA's documentation of its capital increases over the years are unfounded.[387] In support, TTCA notes that the Department found that "{t}he shareholder amounts and percentages listed in the capital verification report agreed to the shareholder listing provided in" TTCA's questionnaire response.[388] Next, TTCA identifies that the "Equity Investor Log," which the Department extensively verified, conformed to the capital contribution list provided in TTCA's questionnaire response.[389] Finally, TTCA states that its explanation of the role of registered shareholders and secondary shareholders was comprehensive, accurate and conformed exactly to the underlying documents of the company.[390] Consequently, TTCA argues that the increase of registered capital was fully verified by the Department.[391]

With regard to Petitioners' contention that TTCA failed to provide information relating to two capital improvement projects, TTCA contends that the Department fully verified all outstanding loans reported to the Department in the "*Loan Schedule*," as complete and accurate.[392] TTCA provides a more in-depth description of the verification of the *Loan Schedule* in its rebuttal arguments in Comment 19, below. Therefore, TTCA argues that TTCA's funding for its major capital projects is no mystery.[393]

Department's Position:

We disagree with Petitioners that it is appropriate to apply total AFA to TTCA. However, we agree there are specific instances where the application of partial AFA to TTCA is warranted.[394] The totality of the circumstances do not lead us to conclude that conditions set by section 776(b)

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[384] Id., at 10, citing Petitioners' CB, at 26.
[385] Id., at 10-11.
[386] Id., at 12.
[387] Id., at 13.
[388] Id., at 13, citing TTCA Verification Report, at 4.
[389] Id., at 13, citing TTCA Verification Report, at 4.
[390] Id., at 13, citing TTCA Verification Report, at 4-5.
[391] Id., at 13.
[392] Id., at 13.
[393] Id., at 14.
[394] See Department's Position for Comment 19.

of the Act for the application of total AFA are met here. At verification, we extensively tested the company's accounting records and we are satisfied that with the exception of possibly unreported loans, TTCA's accounting records support the financial statements initially submitted to the Department prior to verification and provide a reliable basis for verifying the company's responses.[395]

We disagree with Petitioners that the circumstances in this investigation are the same as those in Bedroom Furniture from the PRC-AD, Fish Fillets from Vietnam and LWS from the PRC-AD. In Bedroom Furniture from the PRC-AD, the Department found that information submitted by the respondent could not be tied to reliable financial statements or a reliable financial recording system.[396] In contrast, as explained above, we were satisfied with the reliability of the company's financial recording system and the financial recording system supported the submitted financial statements. In Fish Fillets from Vietnam, the Department was addressing a different issue, whether to use information from a surrogate country producer's financial statements to value an input into the Vietnamese producer's normal value, and the surrogate country producer's information was not subject to verification.[397] Thus, while the Department questioned the reliability of data in the surrogate country producer's financial statements, the Department did not comment on the reliability of the financial statements and the underlying accounting records. Finally, in LWS from the PRC-AD, the Department did not grant the responding company a separate rate in part because of the company's unreliable financial statements. The Department explained that the particular types of information that required support from the financial statements were retention of proceeds and disposition of profits.[398] In the instant investigation, we are not relying on TTCA's financial statements for those purposes. More to the point, however, as mentioned above, we were able to satisfy ourselves as to the reliability of the financial statements submitted prior to verification by TTCA to the Department.

Although we are not applying total AFA in this investigation, the respondent parties in our proceedings should be aware of and must understand the importance of credible financial reporting systems in the Department's verification process. Information in questionnaire responses is tied to a respondent's financial reporting system and if the system is not credible or reliable, neither is the response. When this occurs, the Department has no choice but to apply AFA.

A financial statement prepared by qualified, independent auditors is an important tool for the Department at verification. A common means of verifying a particular piece of information is to trace it through the respondent's accounting system to its audited financial statements. This does not mean that the Department requires audited financial statements before it will conduct verification or that every piece of information in a questionnaire response must reconcile to the financial statements. However, given the importance such financial statements play in our verification, parties who anticipate difficulties in using their financial statements as a verification

[395] See TTCA Verification Report.
[396] See Bedroom Furniture from the PRC-AD, 72 FR at 46962.
[397] See Fish Fillets from Vietnam IDM, at 14-15.
[398] See LWS from the PRC-AD, 73 FR at 5805.

tool should notify the Department in advance of verification of the expected problems so that the Department can prepare for verification accordingly. Learning of such difficulties at verification, rather than in advance of verification, can result in the termination of verification and the application of total AFA.

Comment 19: Whether the Application of Partial AFA is Warranted

Petitioners' Affirmative Comments:

Petitioners suggest that, should the Department decide that only partial AFA is warranted, the Department should apply adverse inferences in assigning rates to the following programs: (1) preferential lending; (2) provision of plant and equipment for LTAR; (3) provision of land for LTAR; and (4) certain subsidies discovered at verification that should be considered as grants.

Policy Lending

Petitioners contend that the Department should apply AFA when determining the benefit TTCA received from preferential lending because the Department can have no confidence in the loan information reported by TTCA. In support, Petitioners point to: (1) TTCA classified long-term loans as short-term loans; (2) split portions of the same loan into long- and short-term liability accounts; and (3) most notably, failed to recognize loan liabilities when incurred.[399]

Petitioners emphasize the last point by identifying two previously mentioned instances when TTCA did not recognize loan liabilities. The first instance relates to TTCA's involvement in a complicated land transaction where, as part of this land transaction, TTCA obtained a series of short-term loans that were rolled over for three years. Petitioners note that at no time during the three years did TTCA recognize any of loans as liabilities on its balance sheet.[400] The second instance identified by Petitioners relates to a long-term loan used to finance a new production line. Petitioners note that again, TTCA did not record the loan as a liability on its balance sheet.[401] Petitioners contend that in light of these omissions TTCA failed to reconcile its loans to its financial records and failed to provide critical information about its loan history.[402] Consequently, Petitioners argue that Department should employ AFA when determining the benefit TTCA received from preferential lending.

To determine the benefit, Petitioners believe that the Department should use the highest calculated preferential lending rate from LWTP from the PRC - Amended Final, 8.31 percent, and assign it to each of the loan programs applied to TTCA in the Preliminary Determination, as well as the other loan programs alleged in this investigation.[403]

[399] See Petitioners' CB, at 37, citing TTCA Verification Report, at 14-22.
[400] Id., at 37, citing TTCA Verification Report, at 21-22.
[401] Id., at 37, citing TTCA Verification Report, at 18.
[402] Id., at 38.
[403] Id., at 38-39, citing LWTP from the PRC - Amended Final.

Provision of Plant and Equipment for LTAR

Petitioners state that the Department should utilize AFA when determining the benefit TTCA received for this program because TTCA failed to provide requested information. Specifically, Petitioners contend that TTCA did not identify the sources of funding that increased its registered capital in the beginning of 2005.[404] Instead, Petitioners assert that TTCA's explanation for the sources of funding, that its shareholders raised personal funds and, in certain instances, shareholders obtained personal loans from banks, is not credible.

Next, Petitioners contend that TTCA admitted at verification that it did not properly record all of the transactions related to its plant and equipment. Specifically, Petitioners point to TTCA's failure to record certain disputed water resource fees assessed by the Anqiu Water Resources Bureau as contingent liabilities. Petitioners believe that these liabilities are related to TTCA's plant and equipment.[405] Petitioners argue that TTCA's failure to record these liabilities demonstrates that the Department does not know whether TTCA exercised similar discretion in reporting other information relating to TTCA's plant and equipment.

Finally, Petitioners note that when applying an AFA rate, the Department usually selects the highest rate calculated for "the same or similar program in another China CVD investigation."[406] Because the Department has not previously investigated the provision of plant and equipment for LTAR, Petitioners assert that the Department should use the subsidy rate determined in the Department's privatization analysis in OTR Tires from the PRC.[407] Petitioners explain that although a privatization analysis and the provision of plant and equipment for LTAR are not identical programs, the subsidy rate which results from a CIO may be considered similar to the subsidy rate which results from the provision of plant and equipment.[408] The result of this approach yields a program rate of 13.44 percent.

Provision of Land for LTAR

First, Petitioners re-emphasize TTCA's involvement in a complicated land transaction where, as part of this land transaction, TTCA obtained a series of short-term loans that were not initially recorded as liabilities until years later.[409] Petitioners contend that because of TTCA's accounting treatment with regard to these loans, the Department has no way of knowing whether additional parcels of land were obtained by TTCA in the same manner and remain hidden.

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[404] Id., at 39-40.
[405] Id., at 40.
[406] Id., at 41, citing Preliminary Determination, 73 FR at 54370.
[407] Id., at 40, citing OTR Tires from the PRC IDM, at 18-21.
[408] Id., at 41.
[409] Id., at 42, citing TTCA Verification Report, at 21.

Next, Petitioners identify a specific loan that was used to finance a new production line, and was not initially recorded as a liability in TTCA's financial accounting records.[410] Petitioners note that TTCA provided the loan proceeds to a then unaffiliated input supplier to construct the new production line. Petitioners state that when asked, TTCA could not definitively say whether the loan proceeds were also used by the unaffiliated input supplier to purchase two plots of land reported by TTCA in TNSAR.[411] Petitioners believe that TTCA sidestepped answering the Department's questions and, thus, the Department cannot confirm the source of the funding of two plots of land. Petitioners argue that because TTCA refused to provide this information, the Department does not have the necessary information to calculate a subsidy rate for this program. To determine the benefit, Petitioners believe that the Department should use the highest calculated land rate from LWS from the PRC, 13.36 percent.[412]

Grants

Petitioners contend that, as AFA, it is reasonable for the Department to conclude that TTCA received direct cash grants provided by the GOC as evidenced by: (1) TTCA's 2007 motor energy savings project; (2) TTCA's new production line; and (3) a bank approval document.[413] First, Petitioners contend that there is a link between an "energy savings award" provided by the Shandong DRC to TTCA, which Petitioners note was discovered at verification, and certain unidentified funding used to construct the 2007 motor energy savings project. Petitioners note that the project feasibility study completed for the 2007 motor energy savings project identified a specific amount for the capital expenditure required to complete the project.[414] Petitioners note, however, that at verification, TTCA would not provide the funding source for the capital expenditure, and would only state that TTCA did not obtain any loans to fund the capital expenditure.[415] Petitioners theorize if TTCA did not obtain financing through loans, then TTCA obtained financing through the "energy savings award" issued by the Shandong DRC.

Petitioners state that when asked to provide evidence demonstrating that energy savings award was granted in 2008 (i.e., outside the POI), the GOC could not provide documentation.[416] Petitioners believe that the Department is presented with a situation where: (1) TTCA has not identified the funding source for the capital expenditures used to construct the 2007 funding motor energy savings project; and (2) the GOC refused to confirm that it disbursed the energy savings award to TTCA outside the POI. Consequently, Petitioners argue that, as AFA, it is reasonable for the Department to conclude that TTCA's 2007 energy savings project was funded by GOC capital injections in the form of cash grants.

[410] Id., at 42.
[411] Id., at 42-43, citing TTCA Verification Report, at 37-38.
[412] Id., at 43-44, citing LWS from the PRC IDM, at 14-18.
[413] Id., at 44-47.
[414] Id., at 45, citing TTCA Verification Report, at 26.
[415] Id., at 45, citing TTCA Verification Report, at 26.
[416] Id., at 45, citing Shandong Government Verification Report, at 7.

Second, Petitioners contend that a similar fact pattern also exists with respect to TTCA's capital expenditures used to construct a new production line.[417] Petitioners state that TTCA failed to provide any documentation to substantiate the sources of the funding used to construct this project, other than one particular loan. Therefore, Petitioners argue that, as AFA, it is reasonable to infer that TTCA may have received grants to make up the difference in funding for its production line.

Third, Petitioners believe that a loan approval document identifies that TTCA received a benefit from a certain subsidy program. Petitioners note that when the Department asked at verification for evidentiary support demonstrating that the subsidy identified in the loan document was provided outside the POI, the GOC claimed that it was unaware of the existence of the subsidy program.[418] Petitioners contend that the Department has no indication of whether the subsidy program impacted TTCA's financial condition. Petitioners argue that the Department should, as AFA, assume that the source of any missing or substantiated funding is the GOC and the GOC provided this funding via direct cash grants.

To determine the benefits received by TTCA with regard to each of the purported grants, Petitioners submit the following: (1) for TTCA's 2007 motor energy savings project, the entire amount identified in project feasibility study to complete the project; (2) for TTCA's new production line, the difference between the loan funding and the total funding needed to complete the project; and (3) for the subsidy amount identified in the loan approval documents, the Department should treat the entire amount as a grant.[419]

TTCA's Rebuttal Comments:

Policy Lending

TTCA disagrees with Petitioners' argument that the Department should apply partial facts available for policy lending by asserting that its full cooperation with the Department does not even approach the kind of "non-cooperation" or impeding an investigation that justify even partial AFA.[420] First, TTCA argues that the instances cited by Petitioners, where certain long-term loans were classified as short-term loans or where loans were split between long- and short-term liability accounts, were the result of accounting errors that were fully verified by the Department.[421]

Next, TTCA points to the extensive testing performed at verification in relation to the *Loan Schedule*, which TTCA believes confirms no amounts were unaccounted for. TTCA asserts that each figure was fully tied to the relevant bank documents and to TTCA's accounting records.[422] In support, TTCA first points out the Department's testing of the *Loan Schedule* against TTCA's

[417] Id., at 45, citing TTCA Verification Report, at 18.
[418] Id., at 46, citing G1SR, at Exhibit S1-7-a-1, at 26.
[419] Id., at 47.
[420] See TTCA's RB, at 20, citing Nippon Steel, 337 F.3d at 1382-83; Goldlink, 431 F. Supp. 2d at 1329-30; Pac. Giant, 223 F. Supp. 2d at 1342.
[421] Id., at 16-17, citing TTCA Verification Report, at 15-16.
[422] Id., at 15-16 and 20.

2007 Statement of Cash Flow, which TTCA believes further confirms the accuracy of the *Loan Schedule*.[423] Second, TTCA identifies an extensive reconciliation for a particular bank from 2001-2007 to TTCA's financial statements.[424]

With regard to the complicated sequence of steps involving the two loans which were not initially recorded as liabilities, TTCA acknowledges the complex nature of the methods used to record the loans, but believes that the loans were fully explained and documented at verification.[425] Further, TTCA contends that the TTCA Verification Report documents that TTCA fully accounted for each step in the sequence of events, and there is no indication whatsoever that the Department found any discrepancies or irregularities.[426] Consequently, TTCA disagrees with Petitioners' comments that TTCA failed to reconcile its loans or provide critical information.[427]

Provision of Plant and Equipment for LTAR

TTCA disagrees with Petitioners' argument that partial AFA should be applied to plant and equipment for LTAR because the Department has already concluded there was insufficient time remaining in this investigation to fully analyze this program.[428] TTCA also believes that the Department was justified in deferring analysis of this program, as evidenced by the complicated transaction at issue before the Department. Finally, TTCA contends that the Department fully verified its shareholder contributions and increase of registered capital.[429] Consequently, TTCA believes that Petitioners' claimed justifications for partial AFA are entirely without merit.

Provision of Land for LTAR

TTCA disagrees with Petitioners' contention that the Department does not have the necessary information to calculate a subsidy rate for this program. In support, TTCA states that the Department fully verified the amount paid to purchase the land-use rights in question.[430] Next, TTCA contends that Petitioners' suggestion that TTCA's inability to identify how loan proceeds were used by an unaffiliated input supplier somehow invalidates the prices paid for TTCA's land-use rights is absurd.[431] Therefore, according to TTCA, no basis exists for partial AFA for this program.

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[423] Id., at 17, citing TTCA Verification Report, 18-19.
[424] Id., at 18, citing TTCA Verification Report, at 19-20.
[425] Id., at 18-19, citing TTCA Verification Report, at 17-18 and 21-22.
[426] Id., at 19.
[427] Id., at 20, citing Petitioners' CB, at 38.
[428] Id., at 21, citing Post-Preliminary Analysis, at 3.
[429] Id., at 22.
[430] Id., at 23, citing TTCA Verification Report, at 37.
[431] Id., at 23.

Grants

TTCA disagrees with Petitioners' contention that there is any basis to conclude that TTCA received direct cash grants. First, TTCA believes that Petitioners' focus on the uncovered "energy savings award" as evidence that TTCA received unidentified direct cash grants is misguided because the Department's verification report documents that all payments TTCA received pursuant to this award were made outside the POI.[432] Second, TTCA contends that the Department devoted a considerable amount of time at verification confirming TTCA's non-use of alleged programs and non-receipt of other subsidies.[433] TTCA states that, as a result of this testing, the Department did not find any unreported subsidies. Consequently, TTCA argues that there is no basis for the application of AFA for allegedly unreported "cash grants."

Department's Position:

Policy Lending

As an initial matter, pursuant to section 776(a)(2)(D) of the Act, we find that the use of "facts otherwise available" is warranted with regard to policy lending because TTCA provided information that could not be verified. In response to our questionnaire, TTCA provided the *Loan Schedule*, which purported to identify all loans outstanding during the POI.[434] At verification, while testing the *Loan Schedule*, we discovered two examples of bank loans obtained by TTCA that were not initially recorded as liabilities in TTCA's accounting records.[435] TTCA's management demonstrated and explained that both loans were initially recorded in TTCA's accounting records using offsetting entries to a cash account (i.e., debiting and crediting cash) because management did not consider the loans to be TTCA's liabilities.[436] Management also explained, and we verified, that after certain events occurred, management eventually recorded the loans as liabilities in TTCA's accounting records.[437]

In response to our questions at verification, TTCA's management explained that the *Loan Schedule* submitted in its questionnaire response was created by reviewing the short- and long-term loan accounts.[438] Consequently, we agree with TTCA that the two loans, which were initially recorded in a cash account but were subsequently recorded as liabilities, were properly included in the *Loan Schedule*.[439] However, TTCA's management did not review TTCA's cash accounts to ensure that any loans recorded using offsetting entries in a cash account and not recorded in liability accounts were also included in the *Loan Schedule*.[440] We did not have the

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[432] Id., at 24, citing TTCA Verification Report, at 40; and Shandong Government Verification Report, at 7.
[433] Id., at 25, citing TTCA's Verification Report, at 40.
[434] See TQR, at Exhibit 35.
[435] See TTCA Verification Report, at 17-18 and 21-22.
[436] Id., at 18 and 21.
[437] Id., at 17 and 22.
[438] Id., at 14.
[439] Id., at 17-18 and 21-22.
[440] As noted above, we identified two such examples of loans, which were not initially recorded in a liability account. See TTCA Verification Report, at 17-18 and 21-22.

time to conduct an examination of TTCA's cash accounts at verification to determine the completeness of the *Loan Schedule* (i.e., whether any loans were improperly excluded). Consequently, we find that TTCA's *Loan Schedule* could not be verified as to its completeness and, thus, the use of facts available is warranted, pursuant to section 776(a)(2)(D) of the Act.

Section 782(d) of the Act provides that if the Department finds that a party's response is deficient, the Department will provide the party an opportunity to remedy or explain the deficiency. Further, section 776(b) of the Act states that if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.[441]

At verification, we asked TTCA's management to demonstrate the source of funding for the two specific capital improvement projects (i.e., the aforementioned 2007 motor energy savings project and a new production line). We additionally requested that management provide schedules detailing the corresponding expenditures for both projects.[442] One project in particular was partially funded by one of the loans not initially recorded as a liability. In point of fact, the loan accounted for approximately half of the total funds estimated to be necessary to complete the project.[443]

We explained at verification that we were requesting this information to demonstrate that there were no outstanding loans relating to these capital improvement projects that were improperly excluded from the *Loan Schedule*. This was particularly important in light of management's practice of not initially recording a liability for certain loans.[444] We further explained to TTCA's management that we did not have time to examine TTCA's cash accounts to determine whether any loans used to fund the capital improvement projects were recorded using offsetting entries to a cash account and, thus, possibly improperly excluded from the *Loan Schedule*.[445]

Despite our request, which explicitly stated the importance of TTCA's full cooperation to determine the completeness of the *Loan Schedule*, TTCA's management did not provide the requested schedule and did not demonstrate the source of the funding.[446] Instead, TTCA's management provided only an oral statement explaining the source of the funding.[447] Consequently, we find that TTCA did not: (1) demonstrate the source of the funding required to develop the capital improvement projects; (2) provide the requested schedule detailing the corresponding capital expenditures for the projects; and (3) examine cash accounts when preparing the *Loan Schedule* to ensure all loans were properly reported to the Department. TTCA's failure to provide the requested schedule of capital expenditures is a failure to satisfactorily remedy the deficiency in its *Loan Schedule* (i.e., due to the inability to verify the *Loan Schedule's* completeness). Further, we find that TTCA did not act to the best of its ability

[441] See e.g., Wire Rod from Brazil, 67 FR at 55794-96.
[442] See TTCA Verification Report, at 25-26.
[443] Id., at 25.
[444] Id., at 25-26.
[445] Id., at 25-26.
[446] Id., at 25-26.
[447] Id., at 25-26.

and that an adverse inference is warranted with regard to policy lending, pursuant to section 776(b) of the Act.

Petitioners argue that we should use the highest calculated rate for policy lending taken from LWTP from the PRC, 8.31 percent, and assign it to each of the loan programs applied to TTCA in the Preliminary Determination, as well as the other loan programs alleged in this investigation.

In our Initiation Notice, we identified four alleged lending programs: Government Policy Lending; Funds Provided for the Rationalization of the Citric Acid Industry; Discount Loans for Export-oriented Industries; and Loans Provided to the Northeast Revitalization.[448] In the Preliminary Determination, we grouped the countervailable loans provided to TTCA into these groups: National-government Policy Lending; Shandong Province Policy Lending; and Export Seller's Credit for High-and New Tech Products.[449]

In the final determination, we are finding that there is no national-government policy lending to the citric acid industry.[450] Therefore, there is no basis to assign a rate to TTCA for this program. Moreover, the alleged program providing funds for the Rationalization of the Citric Acid Industry, it is not clear from the Petition whether such funds are in the form of loans or grants.[451] The only reference in the Petition supporting evidence relating to loans is an NDRC directive to banks to stop making loans to "backward" producers.[452] Because we found no evidence of a national-government policy to extend loans to the citric acid industry, we have no basis to assign a rate to TTCA for this program.

Given TTCA's location in Shandong Province, there is no basis to assume, adversely or otherwise, that it received loans under the Northeast Revitalization program.[453] Similarly, evidence submitted in the Petition shows that companies must have, inter alia, export sales of more than $200 million to receive discounted loans for export oriented industries.[454] Based on verified sales data, TTCA would not qualify for this program.[455] Therefore, there is no basis to assume that the company received loans under these programs. Consequently, we have not assigned rates to these alleged subsidies.

Finally, as explained in the "Analysis of Programs" section above, we are finding that the sub-national development policies in Shandong Province provide policy lending support to the citric acid producers in Shandong Province.[456] Therefore, we are applying the 8.31 percent rate calculated in LWTP from the PRC to the Shandong Province Policy Lending to the Citric Acid Industry program.

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[448] See Initiation Checklist, at 14-19.
[449] See Preliminary Determination, 73 FR at 54374-76.
[450] See Department's Position for Comment 5.
[451] See Petition, Vo. IV, at 19-20.
[452] Id., at Exhibit IV-10.
[453] Petition, Vol. IV, at 23 identifies three provinces as the target of the Northeast Revitalization Program: Liaoning, Jilin and Heilongjiang.
[454] Id., at 20.
[455] See TTCA Verification Report, at 9-11; and TQR, at 20.
[456] See Department's Position for Comment 5; and "Analysis of Programs" section above.

With regard to the Export Seller's Credit for High-and New Tech Products program which is an export contingent loan program, we are applying the 1.76 percent calculated rate from CWLP from the PRC where we found a program involving export loans to be separate from policy lending as the benefit TTCA received for this program.

Provision of Plant and Equipment for LTAR

We find that partial AFA is unwarranted for this program because, as explained in the Department's Position for Comment 20, we continue to find that there is insufficient time remaining in this investigation to fully analyze this program.

Provision of Land for LTAR

First, we do not find that TTCA's accounting treatment with regard to certain loans somehow demonstrates that TTCA concealed land parcels from the Department. Second, we do not find that TTCA's inability to identify how certain loan proceeds were used by an unaffiliated input supplier invalidates the verified prices paid for TTCA's land-use rights. Consequently, we find that AFA is unwarranted for this program.

Grants

We do not find that there is any evidence suggesting that TTCA received any direct cash grants. First, we verified that TTCA received the "energy savings award" for its 2007 motor energy savings project outside of the POI. Moreover, our testing at verification yielded no evidence of any unreported grants. Therefore, we find that there is no evidence indicating that TTCA received the grant identified in the loan approval document or any grant for the Rationalization of the Citric Acid Industry. Finally, we disagree with Petitioners' contention that TTCA's failure to provide documentation to substantiate the sources of funding for certain capital improvement projects demonstrates a benefit from cash grants in addition to policy lending. We find that any potential benefit that exists with regard to the unidentified funding is already being captured by the application of AFA to policy lending.

Comment 20 Provision of Plant and Equipment for LTAR – Whether the Department is Required to Issue a Finding

Petitioners' Affirmative Comments:

Petitioners contend that the Department improperly deferred its examination of the alleged provision of TTCA's plant and equipment for LTAR to a future administrative review. Petitioners charge that the statute, the Department's regulations, and judicial and Department precedent all require the Department to complete its examination and render a finding. Petitioners warn that the Department's decision to defer a finding will result in a serious understatement of TTCA's cash deposit rate

First, Petitioners state that the alleged program was timely filed and, thus, the Department had adequate time to investigate whether TTCA received plant and equipment for LTAR.[457] Petitioners contend the court's findings in Bethlehem Steel and Allegheny Ludlum confirm that the Department erred by investigating and reaching findings for some of the allegations included in Petitioners' NSAs but not for this program.[458] Consequently, Petitioners argue that the Department has not met its legal obligation.

Second, Petitioners contend that the Department incorrectly concluded in its Post-Preliminary Analysis that it could not complete its determination because the transaction at issue was complex and discovered late in the investigation. Petitioners charge that at the time of initiation, the Department was fully aware of all the different ownership transfers that took place in TTCA's corporate history. In Petitioners' view, the only complicating factor encountered by the Department during the course of its investigation is that a different SOE actually provided the financial contribution to TTCA.[459] Therefore, Petitioners argue that the Department had adequate time to consider this new fact, which was discovered after initiation and, thus, should have rendered a finding.

Third, Petitioners cite to the Department's findings in OTR Tires from the PRC as evidence, in their view, that the Department's deferral of a finding in this case is contrary to the Department's established practice. In OTR Tires from the PRC, Petitioners note that the Department did not delay issuing a finding for a particular kind of debt forgiveness, which the respondents argued was a novel type of subsidy.[460] Petitioners emphasize that in OTR Tires from the PRC, the Department concluded it was not unprecedented to countervail a provision of particular good or service for LTAR without previously countervailing the provision of the exact same good or service.[461] Therefore, Petitioners argue that the Department should have issued a finding in the instant investigation for this program because the Department is merely investigating another instance of the provision of goods for LTAR and not an entirely new program.

Fourth, Petitioners state that the Department was able to make determinations for a number of other subsidy programs, which Petitioners contend were significantly more complicated than the program at is issue in the instant investigation. Specifically, Petitioners note that the Department issued a finding with regard to the Shandong Province's policy lending program in the instant investigation, which was not separately alleged by Petitioners, and required the examination of secondary source documents.[462] Next, Petitioners identify that in DRAMS from Korea, the Department investigated whether the Government of Korea provided an indirect subsidy to the respondent. In that case, Petitioners charge that the Department was able to issue a finding within the statutorily mandated time limit, which required the analysis of a considerable amount of source documents.[463]

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[457] See Petitioners' CB, at 73.
[458] Id., at 73, citing Bethlehem Steel, 140 F. Supp. 2d at 1361; and Allegheny Ludlum, 112 F. Supp. 2d at 1148.
[459] Id., at 74.
[460] Id., at 75, citing OTR Tires from the PRC IDM, at 144-150.
[461] Id., at 74-75, citing OTR Tires from the PRC IDM, at 148.
[462] Id., at 75-76, citing Preliminary Determination, 73 FR at 54376.
[463] Id., at 76, citing DRAMS from Korea – Preliminary.

The GOC's and TTCA's Rebuttal Comments:

The GOC disagrees with Petitioners' contention that the Department may not defer examination of this program.[464] First, the GOC states that particular transaction under the purview of the investigation is quite complicated because it includes two share purchase agreements, an appraisal, negotiated adjustments to the appraisal's valuation, a government approval, a dispute between the SOE and TTCA's current owner, court litigation, a mediation and a court-mediated settlement. Consequently, the GOC disagrees with Petitioners' charge that the Department somehow committed legal error by failing to issue a finding for this program. Rather, the GOC argues that the Department was justified in determining that the transaction was complex, and completely within its authority, pursuant to 19 CFR 351.311, to defer its evaluation until an administrative review.

Next, as a practical matter, the GOC contends that once the Department decided to defer issuing a finding for this program, the Department is precluded from making its first determination regarding the countervailability of a practice in a final determination, which would necessarily be after briefing and the hearing.[465]

TTCA concurs with the GOC's rebuttal comments.[466]

Department's Position:

We disagree with Petitioners that we improperly deferred our examination of the provision of TTCA's plant and equipment for LTAR. First, we find that Petitioners' reliance on Bethlehem Steel and Allegheny Ludlum as a means to argue that the Department failed to meet its legal obligation is misplaced. In the instant investigation, we initiated on this program based on Petitioners' timely allegations.[467] Therefore, we did not improperly justify why we investigated certain untimely allegations but not others, as the court found the Department did in Allegheny Ludlum. Next, we issued a detailed questionnaire to TTCA and the GOC, and then dedicated a substantial amount of time verifying the GOC's and TTCA's responses for this program.[468] Therefore, we did not fail to investigate the alleged program as the court found the Department did in Bethlehem Steel. Further the court in Allegheny Ludlum recognized the Department's ability to defer examination of a potential subsidy to an administrative review.[469]

Second, we do not agree with Petitioners' arguments that simply because the Department was able to make determinations for certain subsidy programs in other cases, e.g., DRAMS from Korea or OTR Tires from the PRC, we should have issued a finding in the instant investigation for this program. The Department's ability to examine certain subsidy programs in one proceeding within statutory deadlines has no bearing on our ability to do so in this proceeding. As noted by the GOC, the transaction in question requires the examination of two share purchase

[464] See GOC's RB, at 15.
[465] Id., at 17, citing sections 707 and 774 of the Act; and 19 CFR 351.309 and 351.310.
[466] See TTCA's RB, at 26.
[467] See NSA Initiation Memo, at 3.
[468] See TTCA Verification Report, at 33-37; and Shandong Government Verification Report, at 17-24.
[469] See Allegheny Ludlum, 112 F. Supp. 2d at 1150.

agreements, an appraisal, negotiated adjustments to the appraisal's valuation, a government approval, a dispute between the SOE and TTCA's current owner, court litigation, a mediation and a court-mediated settlement. We were unable to complete the examination and analysis within the time remaining in this investigation. Therefore, we continue to find that it is appropriate to defer any possible further examination of the SOE's sale of its ownership shares in TTCA, and whether such a sale could confer a countervailable subsidy, to a future administrative review, pursuant to 19 CFR 351.311(c)(2).

Comment 21 Provision of Plant and Equipment for LTAR – Proposed Methodology for Measuring the Benefit

Petitioners proposed a methodology for measuring the benefit received by TTCA by virtue of the provision of plant and equipment for LTAR.[470] The GOC provided rebuttal comments in response.[471] For the reasons explained in the Department's Position for Comment 20, we are deferring our investigation of this alleged subsidy and, therefore, do not need to address Petitioners' or the GOC's comments.

Comment 22 Provision of Land for LTAR – Whether Land is a Good or a Service

GOC's and TTCA's Affirmative Comments:

The GOC claims that the provision of land-use rights does not confer a financial contribution because land-use rights do not fall within any categories described by section 771(5)(D) of the Act.[472] According to the GOC, the land-use right sold by the Anqiu Land Resources Bureau to TTCA was neither a good nor a service but, instead, realty.[473] Consequently, the GOC argues that since land is neither a good nor service, the provision of land-use rights is not covered under section 771(5)(D) of the Act and, thus, is not a subsidy for the purposes of the countervailing law.[474]

TTCA concurs with the GOC's comments.[475]

[470] See Petitioners' CB, at 77-81.
[471] See GOC's RB, at 17-20.
[472] See GOC's CB, at 68.
[473] Id., at 69, citing the Black's Law Dictionary 8th Ed., at 714-15 and 1399.
[474] Id., at 69-70.
[475] See TTCA's CB, at 15.

Petitioners' Rebuttal Comments:

Petitioners agree with the Department's position in the Post-Preliminary Analysis that land-use rights are properly treated as the provision of a good or service under section 771(5)(D)(iii) of the Act.[476] Petitioners point to the Department's previous finding that the statutory definition of "financial contribution" is written broadly "in recognition that governments have a variety of mechanisms at their disposal to confer a financial advantage on specific domestic enterprises or industries."[477] Petitioners point out that since the Department countervailed land leases prior to the publication of the SAA, it is clear that Congress intended to capture the provision of land-use rights within the definition of "financial contribution."[478] Finally, Petitioners state that since the publication of the SAA, the Department has repeatedly indicated its intention to treat the provision of land or land-use rights as a potentially countervailable financial contribution.[479] Consequently, Petitioners argue the Department has properly determined that land-use rights provide a countervailable financial contribution within the meaning of the Act.

Department's Position:

The Department has previously 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.[480] In those cases, 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.[481] The GOC has provided no new arguments nor has it 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.[482] Consequently, the Department continues to take the position that our practice of treating land and land-use rights as a "good" is fully consistent with section 771(5)(D)(iii) of the Act, for the reasons set forth in the cited determinations.

Comment 23 Provision of Land for LTAR – Whether the Use of an External Benchmark is Appropriate

The GOC's Comments:

First, the GOC contends that the statute requires the Department to consider "adequate remuneration" in relation to prevailing market conditions in the country subject to investigation

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[476] See Petitioners' RB, at 55.
[477] Id., at 55, citing LWS from the PRC IDM, at 51; and SAA, at 927.
[478] Id., at 56, citing Wire Rod from Trinidad and Tobago, 49 FR 480.
[479] Id., at 56, citing CVD Preamble, 63 FR at 65378.
[480] See LWS from the PRC IDM, at 14; OTR Tires from the PRC IDM, at 20; LWTP from the PRC IDM, at 25; CWLP from the PRC IDM, at 14.
[481] 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 72.
[482] See GOC's CB, at 68-70.

or review.[483] The GOC believes that the Department's position that the PRC is an NME does not absolve the Department from the requirement to seek domestic benchmarks, particularly when comparable domestic 50-year land lease benchmarks are available.[484] In fact, according to the GOC, the valuation of land does not require a traditional market because land is not bought and sold as a good but, instead, land only requires a productive and valued use.[485] Consequently, the GOC argues that the external Thai benchmark used in the Post-Preliminary Analysis was inappropriate under the CVD law because the Thai benchmark reflect factors unique to Thailand, and not the prevailing market conditions in the PRC.[486]

Second, the GOC rejects the Department's justification for using an out-of-country benchmark as previously stated in Lumber from Canada Investigation.[487] The GOC points to a NAFTA panel decision rejecting the Department's use of cross-border (i.e., external) benchmarks for lumber and notes that as a result, the Department adopted a benchmark derived from the sale of Canadian logs.[488] The GOC states that the CIT has found that once the Department issues a remand determination approved by the court (or NAFTA panel), that remand determination replaces the Department's original, final determination.[489] Therefore, the GOC contends that the Department's final remand determination approved by the NAFTA panel in Softwood Lumber from Canada replaced and nullified the Department's original determination in that case.[490] Consequently, according to the GOC, the only precedent the Department has offered for using cross-border (i.e., external) benchmarks cannot be characterized as the Department's administrative practice.[491] Finally, the GOC identifies previous instances where the Department rejected the use of cross-border benchmarks because of comparability issues.[492]

Third, the GOC claims that Article 14(d) of the SCM Agreement exhibits a clear preference for in-country benchmarks.[493] In support, the GOC cites to a WTO Appellate Body decision that, in the GOC's view, finds that while the SCM Agreement does not prohibit third-country benchmarks, they can only be used in limited circumstances and there must be a rational basis for the selected surrogate.[494] The GOC also notes that the WTO Appellate Body concluded that adjusting a benchmark composed of prices in one country to reflect conditions prevailing in another country would be difficult and unlikely to succeed, which, according to the GOC, further supports the argument that the use of external benchmarks is inappropriate.[495]

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[483] Id., at 71, citing section 771(5)(E)(iv) of the Act.
[484] Id., at 70-71.
[485] Id., at 71.
[486] Id., at 71.
[487] Id., at 72, citing Softwood Lumber from Canada Investigation.
[488] Id., at 72-74, citing In the Matter of Certain Softwood Lumber Products from Canada, NAFTA USA-CDA-2002-1904-03 (August 13, 2003), at 27-35; and In the Matter of Certain Softwood Lumber Products from Canada, Secretariat File No. USA-CDA-2002-1904-03, First Remand Determination (January 12, 2004)
[489] Id., at 75, citing Decca Hospitality Furnishings, 427 F. Supp. 2d at 1256.
[490] Id., at 75.
[491] Id., at 76.
[492] Id., at 74-75, citing e.g., Certain Softwood Lumber Products from Canada, 48 FR 24159, 24168 (May 31, 1983).
[493] Id., at 76.
[494] Id., citing Appellate Body Report United State – Final Countervailing Duty Determination With Respect To Certain Softwood Lumber From Canada, at paragraph 108 WT/DS257/AB/R (January 19, 2004).
[495] Id., at 76.

Fourth, the GOC states that the Department failed to make any adjustments to account for differences in market conditions affecting land values in Bangkok, Thailand and Anqiu, the PRC. The GOC believes the lack of any adjustment is contrary to the SCM Agreement and U.S. law.[496] The GOC argues that the use of an external land benchmark is also not acceptable under the statute because it does not reflect: (1) the fact that a 50-year land lease is different than an outright sale of land; and (2) differences in the demand for land in Bangkok, Thailand versus Anqiu City, the PRC.[497]

Finally, the GOC states that the Department failed to evaluate comparability factors for Thailand and the PRC in this case.[498] The GOC contends that no such comparison was performed because, in every CVD investigation of imports from the PRC, the Department has used the same Thai land benchmark to determine the adequacy of remuneration. In the GOC's view, this underscores the absurdity of using the Thai land benchmark.[499] The GOC contends that none of the market conditions setting the price of land in Thailand (e.g., price, quality, availability, marketability, transportation, etc.) would or could be the prevailing market conditions in the PRC.[500] In support, the GOC compares the GDPs and population densities in Bangkok, Thailand and Shandong Province, the PRC, which the GOC believes demonstrates differences in market conditions.[501] Based on the totality of the aforementioned arguments, the GOC charges that the Department's use of a Thai benchmark to determine the adequacy of remuneration is irrational as an economic position and contrary to law.

TTCA concurs with the GOC's comments.[502]

Petitioners' Rebuttal Arguments:

Petitioners disagree with the GOC's contentions that the statute requires the Department to value land-use rights in the PRC using an in-country benchmark.[503] Rather, Petitioners contend that section 771(5)(E)(iv) of the Act precludes the Department from relying on in-country benchmarks that are so distorted by government intervention that "prevailing market conditions" for a particular good or service cannot be discerned.[504] In addition, Petitioners note that the Department's regulations establish a hierarchy for choosing an appropriate benchmark, which specifically anticipates the use of external benchmarks.[505] Finally, Petitioners assert that consistent with past investigations, the Department properly concluded that an in-country benchmark to analyze Chinese land subsidies was inappropriate and, thus, the Department was

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496 Id., at 77.
497 Id., at 71 and 78.
498 Id., at 77.
499 Id., at 78.
500 Id., at 71-72.
501 Id., at 72.
502 See TTCA's CB, at 15-16.
503 See Petitioners' RB, at 57.
504 Id., at 57.
505 Id., at 57-58, citing 19 CFR 351.511(a)(2).

compelled to use an external benchmark to measure the countervailable benefit.[506] Petitioners highlight that the Department has also found it necessary to use external benchmarks for investigations involving countries other than the PRC.[507]

Next, Petitioners believe that the GOC's attempts to undermine the Department's use of an external benchmark in this investigation by citing to a decision by a NAFTA panel and text from the SCM Agreement are unfounded.[508] In support, Petitioners assert that neither a NAFTA panel nor the SCM Agreement is binding on the Department's interpretation of the U.S. CVD statute for the purposes of the current investigation.[509] Therefore, according to Petitioners, the GOC has offered no reason for the Department to depart from using an external benchmark to value land-use rights in the PRC.

Finally, Petitioners submit that, contrary to the GOC's arguments, the Department has reasonably established the comparability of Thai land prices with land-use rights in the PRC. Petitioners also believe that the GOC's claim that the Department did not purport to evaluate any comparability factors is baseless. In support, Petitioners note that the Department referenced its earlier factual findings concerning Thai land prices and land-use rights in the PRC by placing significant information gathered in LWS from the PRC on the administrative record of this investigation.[510] According to Petitioners, this information supports the Department's selection of Thai land prices as an appropriate external benchmark. Petitioners assert that the GOC has not demonstrated that anything more is required under U.S. law, including adjustments to reflect specific differences in Chinese market conditions.[511] Accordingly, Petitioners argue that the Department properly used a Thai land price to value Chinese land-use rights in this investigation.

Department's Position:

We disagree with the GOC's arguments that the CVD statute requires the Department to use in-country benchmarks to determine the adequacy of remuneration. We have determined that Chinese land prices are distorted by the significant government role in the market and, hence, cannot be used as a benchmark.[512] Also, because of this significant government involvement and because property rights remain poorly defined and weakly enforced, we continue to determine, consistent with our regulations for government-provided goods, that land prices in the PRC are not in accordance with market principles. See 19 CFR 351.511(a)(2)(iii).[513]

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[506] Id., at 58-59, citing CWLP from the PRC IDM, at 16; LWTP from the PRC IDM at 64; LWS from the PRC IDM, at 14, 15, 58 and Comments 8-10.
[507] Id., at 59, citing CFS from Indonesia IDM, at 69-72.
[508] Id., at 59.
[509] Id., at 59.
[510] Id., at 60, citing Post-Preliminary Analysis, at 7 (which cites to LWS from the PRC IDM); and TTCA Post-Prelim Calc Memo, at 3 (which cites to LWS from the PRC IDM).
[511] Id., at 61.
[512] See Analysis of Programs – "Provision of Land-Use Rights in the AEDZ for LTAR;" and LWS from the PRC IDM, at 15 and Comment 10.
[513] See LWS from the PRC IDM, at 16.

As we stated in LWS from the PRC, the Department has analyzed a number of variables in finding that Thailand is comparable to the PRC in terms of its prevailing market conditions and, thus, an appropriate basis to establish a benchmark for land values.[514] As a general matter, we note that the PRC and Thailand have similar levels of per capita GDP, namely, $2,010 and $2,990, respectively.[515] Further, recognizing that it may be appropriate to focus on the regional characteristics relevant to the land under investigation, we note that TTCA is located in the Shandong Province. The Shandong Province has a higher per-capita GDP of approximately $2,208 (2006), even closer to Thailand's.[516] With respect to other factors that may speak to comparability, population density in the PRC and Thailand are roughly comparable, with 141 persons per square kilometer in the PRC and 127 per square kilometer in Thailand.[517] Population density is higher than national averages in both Shandong and Zone 1 in Thailand, at 562 per square kilometer and 908 per square kilometer, respectively.[518]

Additionally, we note that manufacturers located in Asia consider a number of markets, including Thailand, as an option for diversifying production bases in Asia beyond the PRC.[519] Therefore, the same producers may compare prices, including those for land, across borders when deciding where to locate their manufacturing facilities. For example, the Asian Industrial Property Reports compare real estate prices in the PRC with other prices in Asia, including Thailand.[520] With respect to Thailand, we note that studies by JETRO, which compared Asian alternative investment destinations to the PRX, stated that "Thailand got the highest score as the best location for establishing a production base over the next five to 10 years."[521] Further, JETRO finds that Thailand ranks as the second-best choice after the PRC as a location for expanding both high and mid to low-end production.[522] Finally, a report by a private company notes that, "{m}any foreign companies believe that Thailand is still a strategic choice for a Southeast Asian production base."[523]

Further, we do not find that an adjustment is necessary to account for the differences between a 50-year land-use term and outright sale of land, primarily because outright land ownership in the

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[514] Id., at Comment 11.
[515] See TTCA Post-Preliminary Calc Memo, at Attachment 8, sub-attachment 6, citing the World Bank World Development Report.
[516] Id., at Attachment 8, sub-attachment 7, citing the Market Profiles on Chinese Cities and Provinces.
[517] Id., at Attachment 8, sub-attachment 6, citing the World Bank World Development Report.
[518] Id., at Attachment 8, sub-attachment 8, citing IIASA Data-Population Growth (2004 Report) (for the Shandong population density figure); and at Attachment 8, sub-attachment 9, citing the List of Provinces of Thailand by Population Density (2006 data) (the Zone 1 population density figure of 908 is an average of the Zone 1, which includes Bankok, Samutprakam, Pathumthani, Nanthaburi, Nakorn Pathom and Samutakron and which is identified at sub-attachment 13, at page 9).
[519] Id., at Attachment 8, sub-attachment 10, citing Japan firms rate Vietnam best alternative to China, Nikkei Weekly (April 10, 2006); and at Attachment 8, sub-attachment 12, citing JETRO Releases its Latest Survey of Japanese Manufacturers in ASEAN and India (2006).
[520] Id., at Attachment 8, sub-attachments 3 and 5, citing the Asian Industrial Property Reports, both at page 3.
[521] Id., at Attachment 8, sub-attachment 10, citing Japan firms rate Vietnam best alternative to China, Nikkei Weekly (April 10, 2006).
[522] Id., at Attachment 8, sub-attachment 11, citing FY 2005 Survey of Japanese Firms' International Operations, Japan External Trade Organization, March 2006 at 13; and at Attachment 8, sub-attachment 12, citing JETRO Releases its Latest Survey of Japanese Manufacturers in ASEAN and India (2006).
[523] Id., at Attachment 8, sub-attachment 13, citing Industrial Property Guide, Thailand.

PRC is prohibited, and the GOC has not specifically identified a meaningful difference, from the buyers' perspective, between a 50-year land-use term and an outright sale. With regard to the GOC's argument that we failed to make necessary adjustments to account for differences in demand, as noted in the preceding paragraph, information on the record indicates that such an adjustment is not warranted because Thailand is comparable to the PRC in terms of its prevailing market conditions. Moreover, the GOC has provided no basis for making adjustments to such prices and given the lack of any market-determined prices for land-use fees in the PRC, deriving such an adjustment would be a highly complex, speculative and impracticable exercise. Therefore, consistent with LWS from the PRC, we determine that land values in Thailand provide an appropriate market-determined benchmark and that no further adjustments to these benchmark land values are necessary.[524]

With respect to the NAFTA Panel decision cited by the GOC, it is important to note that in the remand, the Department continued to find that the out-of-country benchmark was the proper choice. Moreover, NAFTA panel decisions are not precedential.[525] 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).[526]

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 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.[527] Accordingly, we continue find that the use of an external land benchmark to value the adequacy of remuneration is warranted in this investigation.

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[524] See LWS from the PRC IDM, at 17.
[525] See NAFTA Article 1904.9.
[526] See Softwood Lumber from Canada - Remand.
[527] See United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada, Report of the Appellate Body, WT/D5257/AB/R, at paragraph 101 (January 19, 2004).

Comment 24 Provision of Land for LTAR – Whether Benchmark is New Factual Information

GOC's and TTCA's Affirmative Comments:

The GOC contends that the land benchmark data that the Department utilized in its Post-Preliminary Analysis is new factual information, and that the Department did not provide parties notice or an opportunity to rebut the information. Therefore, it should not be used to measure any potential benefit.[528] According to the GOC, due process and the Department's regulations require that parties have an opportunity to comment on new factual information and, also, to rebut factual information.[529] Consequently, the GOC argues that the Department should either remove the land benchmark data from the record, or provide parties with the opportunity to submit factual information of their own to rebut the land benchmark data.[530]

TTCA concurs with the GOC's comments.[531]

Petitioners' Rebuttal Comments:

Petitioners disagree with the GOC's argument that information about Thai land prices was improperly placed on the record and, thus, cannot be used in the instant investigation.[532] Petitioners point out that Attachment 8 to the TTCA Post-Prelim Calc Memo, which contains the Thai land benchmark data, consists entirely of the memorandum and data from the record of the investigation of LWS from the PRC.[533] Moreover, Petitioners contend that the GOC and respondents have been on notice from at least November 26, 2007, which is the date when data concerning Thai land prices was placed on the administrative record in LWS from the PRC, that external land benchmark data would be at issue in subsequent CVD investigations.[534] Petitioners emphasize that November 26, 2007, is well in advance of the initiation of the instant investigation, which occurred on May 12, 2008. Petitioners believe that the GOC and the respondents have been aware of the need to place evidence on the record concerning alternative external benchmarks but simply failed to do so.[535] Consequently, according to Petitioners, the Department cannot now be faulted for using the same information concerning external benchmarks that it has relied on in previous investigations.[536]

[528] See GOC's CB, at 67.
[529] Id., at 67.
[530] Id., at 67.
[531] See TTCA's CB, at 14.
[532] See Petitioners' RB, at 61.
[533] Id., at 61-62, citing TTCA Post-Prelim Calc Memo, at Attachment 8.
[534] Id., at 62.
[535] Id., at 62.
[536] Id., at 62.

Department's Position:

We disagree with the GOC's argument that the land benchmark data utilized in the Post-Preliminary Analysis is new factual information, which parties were not provided the opportunity to rebut. The allegation of the provision of land-use rights for LTAR has been subject to investigation since the initiation of new subsidy allegations on September 12, 2008. The deadline for interested parties to submit factual information occurred on October 27, 2008, in accordance with 19 CFR 351.301(b)(1). Therefore, interested parties were provided ample time to submit factual information on the record concerning preferred benchmarks.

Further, we disagree with the GOC's argument that parties were not provided an opportunity to rebut the external land benchmark used in the Post-Preliminary Analysis. The Department has previously relied on the same external land benchmark in several other recent PRC CVD investigations. That the GOC was fully aware of the Department's past reliance on this benchmark is illustrated by the GOC's argument that external benchmarks are unlawful.[537] Interestingly, the GOC submitted substantial amounts of factual information in the instant investigation with regard to a benchmark for measuring the benefit from the policy lending in its original questionnaire response.[538] This preemptive submission of factual information and argument by the GOC was based entirely on its objection to the Department's previous findings in several PRC CVD investigations, in which the Department decided not to use interest rates from within the PRC as benchmarks.[539] Although no finding had yet been made by the Department in the instant investigation, the GOC submitted information and argument in rebuttal to the Department's prior practice. This same opportunity with regard to the Department's practice of using external land benchmarks, before the Department had made a finding in the instant investigation, was certainly available to the GOC and other interested parties once we initiated on this subsidy program back on September 12, 2008. Therefore, we disagree with the GOC's implication that parties were caught off guard, or not provided an opportunity to rebut the external land benchmark. Moreover, parties had ample opportunity and have fully availed themselves of that opportunity to make arguments about the external land benchmark through the briefing process.

Comment 25 Whether the Appropriate Benchmark Interest Rate for Floating Loan

TTCA's Affirmative Comments:

TTCA contends that the Department incorrectly applied a 2004 interest rate benchmark to determine the benefit received by TTCA for a specific loan countervailed in the Preliminary Determination.[540] TTCA states that the interest rate for the loan in question was floating and

[537] See e.g., LWS from the PRC IDM, at 14; OTR Tires from the PRC IDM, at 20; LWTP from the PRC IDM, at 25; CWLP from the PRC IDM, at 14; see also GOC's CB, at 77-78.
[538] See GQR, at 22-28.
[539] Id., at 22-23.
[540] See TTCA's CB, at 14, citing TTCA Preliminary Calc Memo, at Attachments 6.b and 7.

adjusted in 2007.[541] Consequently, TTCA argues that the Department should use a 2007 interest rate benchmark to calculate the benefit received for this loan.[542]

Petitioners' Rebuttal Comments:

Petitioners disagree with TTCA's contention and urge the Department to follow its long-standing practice of applying variable-rate long-term loan benchmarks based on the year the loan was disbursed.[543]

Department's Position:

As explained in the Department's Position for Comment 19, we are drawing an adverse inference with respect to the benefit TTCA received from policy lending. Since we are no longer basing our computation of the subsidy rate for policy lending on the particular loans received by TTCA, the issue of benchmark interest rates is moot.

Comment 26 Whether To Correct a Clerical Error in TTCA's Subsidy Calculation

TTCA's Affirmative Comments:

TTCA contends that, in the Preliminary Determination, the Department incorrectly double counted the benefit received from the National-Government Policy Lending Program. Specifically, the Department incorrectly included the benefit received from the National-Government Policy Lending Program in the subsidy rate calculation for the Shandong Province Policy Lending Program.[544]

Petitioners' Rebuttal Comments:

Petitioners do not agree with TTCA that the Department made a clerical error in the Preliminary Determination. Petitioners point out the Department has already corrected this error, when it calculated TTCA's subsidy rate in its post-preliminary creditworthiness determination.[545] Consequently, Petitioners argue that the adjustment requested by TTCA has already been made.[546]

Department's Position:

We agree with TTCA that a clerical error was made in the Preliminary Determination that resulted in the derived benefit from the National-Government Policy Lending Program being included in the subsidy rate calculation for the Shandong Province Policy Lending Program. However, as explained in the Department's Position for Comment 19, we are drawing an adverse

[541] Id., at 14, citing TQR, at Exhibit 35.
[542] Id., at 14.
[543] See Petitioners' RB, at 49, citing 19 CFR 351.505(a)(2)(iii); and CVD Preamble, 63 FR at 65368.
[544] See TTCA's CB, at 16, citing TTCA Preliminary Calc Memo, at Attachment 6.a.
[545] See Petitioners' RB, at 73, citing TTCA Preliminary Creditworthiness Memo, at Attachment 3.a-3.b.
[546] Id., at 73.

inference with respect to the benefit TTCA received from policy lending. Since we are no longer basing our computation of the subsidy rate for policy lending on the particular loans received by TTCA, the issue of a clerical error relating to computations is moot.

Comment 27 Attribution of Yixing Union and Cogeneration Based on Cross-Ownership

Yixing Union's Affirmative Comments:

Yixing Union disagrees with the Department's preliminary finding that cross-ownership exists between Yixing Union and Cogeneration. Citing 19 CFR 351.525(b)(6)(vi), Yixing Union argues that for cross-ownership to exist, one corporation must be able to direct the individual assets of the other corporation in essentially the same way it can use its own assets. Yixing Union notes that according to the same regulation the standard is normally met when there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.

In this case, Cogeneration, Yixing Union's self-proclaimed parent company owns 50 percent of Yixing Union, which Yixing Union argues is not a majority interest.[547] In support, Yixing Union points to Softwood Lumber from Canada, where the respondent Shawood purchased logs from an affiliated logging company of which it owned 50 percent and the Department preliminarily found that the two companies were not cross-owned within the meaning of 19 CFR 351.525(b)(6)(iv).

Moreover, Yixing Union contends that Cogeneration does not control the assets of Yixing Union. According to Yixing Union there is no evidence on the record that Cogeneration dominated any decisions regarding the purchase, sale, or marketing of subject merchandise or the operational or long-term decisions of Yixing Union.[548] In support, Yixing Union points out that Yixing Union and Cogeneration: (1) have different accounting systems and separate employees;[549] (2) record intercompany transactions of steam, heat and electricity as intercompany sales, and then record the transactions as sales;[550] (3) file separate tax returns;[551] (3) have different available tax benefits;[552] (4) were treated independently by the management of the YEDZ; and (5) board members appointed by Cogeneration did not vote differently than the appointees of the other shareholders on Yixing Union's Board of Directors.

[547] Previously, the percentage of ownership Cogeneration owned in Yixing Union was designated as business proprietary information. However, Yixing Union has deemed this information as public in Yixing Union's CB, at 20.
[548] See Yixing Union's CB, at 21.
[549] See Yixing Union Verification Report, at 6.
[550] Id., at 12.
[551] Id., at 12 (Cogeneration Tax Programs).
[552] Id., passim.

Finally, Yixing Union argues that it is inequitable to increase the subsidy rate applied to Yixing Union by a factor of almost four to one through the attribution of subsidies from Cogeneration, when Cogeneration does not produce or export subject merchandise or supply a major input to Yixing Union.

Petitioners' Rebuttal Comments:

Petitioners assert that the Department should reject Yixing Union's arguments and continue to find that Cogeneration is Yixing Union's parent and that cross-ownerhip exists.[553] The CIT confirmed 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.[554] Although this standard is "normally" met when there is a majority ownership interest between the two entities, Petitioners contend it is not a requirement.[555] Petitioners cite to the CVD Preamble, 63 FR at 65401, to demonstrate that the Department can find cross-ownership without majority ownership.

Because the Department's analysis is fact intensive and varies from case-to-case, Petitioners argue that there is little insight to be gained from Yixing Union's citation to Softwood Lumber from Canada - 1st AR.[556] As contrary evidence, Petitioners cite to Wire Rod from Canada and CHRCSF Products from South Africa where the Department found cross-ownership when there was 50 percent ownership. In CHRCSF Products from South Africa, the Department stated:

> Because {one company} owns half of {a second company}, nearly a majority, the remaining facts only need demonstrate that the balance is tilted in {the first company's} favor, when determining whether {the first company} is in a position to use or direct {the second company's} assets. It is not necessary to demonstrate that {the first company's} use or direction of {the second company's} assets is so strong as to relegate {another shareholder of the second company} to an insignificantly influential position.[557]

Petitioners argue that the standard articulated in CHRCSF Products from South Africa should be applied in the current investigation and that record evidence indicates that Cogeneration's 50 percent ownership interest in Yixing Union, along with additional factors, is sufficient to conclude that Cogeneration can exercise ultimate control over Yixing Union and its assets. The additional factors are: (1) in its financial statements, Yixing Union describes Cogeneration as an affiliated company with "control relations;"[558] (2) in its QR, Yixing Union stated Cogeneration

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[553] See Preliminary Determination, 73 FR at 54372.
[554] See Fabrique, 166 F. Supp. 2d. at 603.
[555] Id.
[556] See Yixing Union's CB, at 21, citing Softwood Lumber from Canada.
[557] See CHRCSF Products from South Africa and IDM at Comment 1.F.
[558] See YQR, at Exhibit 4 at note 6.1. We note that Petitioners improperly designated affiliated company with "control relations" as business proprietary information in its RB at 72. However, we note according the Yixing Union's QR, the information was deemed as public.

was its parent company;[559] (3) six of the ten Board of Directors for Yixing Union are nominated by Cogeneration;[560] (4) the chairman of Yixing Union's Board of Directors is appointed by Cogeneration and the chairman makes the final decision when the board is deadlocked;[561] and (5) the same individual is the chairman of both Boards of Directors.[562]

Despite Yixing Union's claim, Petitioners argue that record evidence also indicates that Cogeneration and Yixing Union can use or direct the individual assets (subsidy benefits) of the other corporation. Petitioners note that Yixing Union leases a substantial portion of its land from Cogeneration, and of all of Cogeneration's affiliates, Cogeneration only sells its products to Yixing Union.[563] Moreover, citing proprietary evidence, Petitioners allege that the two companies are financially intertwined, which is summarized in the Final BPI Memo, at Comment C.

Department's Position:

We continue to find that Yixing Union and Cogeneration are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). We acknowledge that Yixing Union is only 50 percent owned by Cogeneration and, as such, it is necessary to look at additional indicators of whether one company can use or direct the individual assets of the other company in essentially the same ways it can use its own assets. Among the indicators we considered at the time of the Preliminary Determination were the rights accorded to Cogeneration under Yixing Union's articles of incorporation. Specifically, Cogeneration appoints the majority of Yixing Union's board members. Moreover, Cogeneration appoints the chairman of Yixing Union's board and this chairman casts the tie-breaking vote in the event the board is deadlocked. According to the Article 20 of the articles of association for Yixing Union, Cogeneration can appoint six of the ten boards of directors to Yixing Union.[564] Additionally, Cogeneration appoints the chair of the boards of directors. Furthermore, according to Article 26 of the articles of association, the chair of the boards of directors casts the tie-breaking vote in the event of a deadlock.[565] Although Yixing Union claims that Cogeneration's board appointees have not voted differently than the appointees of other shareholders, this does not detract from the fact that if disagreements were to arise, Cogeneration has the power to direct Yixing Union through Cogeneration's predominant position on Yixing Union's Board of Directors.

The other indicators described by Yixing Union (different accounting systems and employees; recording intercompany transactions as sales; filing separate tax returns, etc.) do not address the issue of control. Filing separate tax returns and receiving different tax benefits likely occur because the two companies are separately incorporated (which is precisely what requires us to make a finding with regard to cross-ownership.[566]

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[559] Id., at 4.
[560] See Y2SR, at Exhibit 1, at Chapter 4, Article 20.
[561] Id., at Exhibit 1, at Chapter 4, Article 20.
[562] Id., at Exhibit 1, at Chapter 4, Article 20.
[563] See Yixing Union Verification Report, at 20-21; see also Y3SR, at question 4.
[564] See Y2SR, at Exhibit 1.
[565] Id.
[566] See 19 CFR 351.525(b)(6)(i).

Regarding the Softwood Lumber from Canada - 1st AR precedent cited by Yixing Union, we acknowledge that the Department took the position described by Yixing Union with respect to Shawood and its affiliate. However, the language in the CVD Preamble and the precedents cited by Petitioners indicate that the Department's inquiry should not normally end with a finding that one party only owns 50 percent of another, because other factors may well support a finding of control with less than majority ownership. Consequently, we have analyzed the record with respect to control available in this case and have determined that the specific facts of this case warrant finding cross-ownership.

Therefore, based on the high level of ownership and Cogeneration's ability to direct Yixing Union through Cogeneration's predominant position on Yixing Union's Board of Directors, we determine that the two companies are cross-owned under 19 CFR 351.525(b)(6)(vi). Having determined that cross-ownership exists, we further determine that it is appropriate to attribute the subsidies received by Cogeneration in accordance with 19 CFR 351.525(b)(6)(iii). Although Yixing Union finds it inequitable that the bulk of the CVD rate for Yixing Union is based on subsidies to Cogeneration, the extent to which the finances of the two companies are intertwined strongly supports attributing subsidies received by Cogeneration to its sales and those of Yixing Union.

Comment 28 Whether to Apply AFA for Land in the YEDZ for LTAR Program

Petitioners' Affirmative Comments:

Petitioners argue the Department incorrectly found in its Post-Preliminary Analysis that the YEDZ was established after Yixing Union and Cogeneration acquired their land-use rights.

Petitioners note that the Yixing Union claimed in its responses to the Department's questions that the YEDZ was established in 2006 and, based on this claim, the GOC declined to provide certain information requested in the questionnaire regarding this program.[567] Moreover, the GOC and Yixing Union both confirmed the 2006 start-up date at verification.[568] However, citing to an exhibit included in the Jiangsu Verification report,[569] Petitioners assert that the YEDZ was already in existence when both companies obtained their land-use rights. Petitioners assert that given the conflicting information on the record and parties' refusal to answer the Department's questions regarding this program, the Department should apply AFA to conclude land-use rights were provided at LTAR.

[567] See GNSAR at 9-10; see also YNSAR1, at 5, 9-12.
[568] See Yixing Union Verification Report, at 20 and Jiangsu Government Verification Report, at 5.
[569] The specific information in the document is business proprietary and therefore is summarized in the Final BPI Memo at Comment D.

The GOC's Rebuttal Comments:

The GOC agrees with the Department's finding in its Post-Preliminary Analysis that Yixing Union and Cogeneration did not receive a countervailable provision of land by virtue of their location in the YEDZ because (1) the respondents received all of their land prior to the creation of the YEDZ, and (2) the minimum floor price for land in Jiangsu Province did not make any distinction for land inside or outside of the YEDZ, or any distinction based on type of entity.[570]

The GOC disagrees with Petitioners' assertion that a sub-provincial zone existed prior to the establishment of the YEDZ in 2006. The GOC also disagrees with Petitioners' interpretation of the propriety verification exhibit,[571] a 2006 Circular. The GOC argues that the 2006 Circular does not support Petitioners' conclusions as it is unclear whether a zone actually preceded the YEDZ, what its status was, or where it was located. The GOC acknowledges that the Circular identifies a Zhuqiao Key Open Park. However, the name of the park does not indicate that it was ever any type of economic zone, or was previously the YEDZ, the development zone that allegedly gave rise to the subsidy. Moreover, it is unclear whether a government entity decides which enterprises may locate in the park which, according to the GOC, is a requirement for the Department to find the location of the park specific, within the meaning of the Act.[572]

Finally, the GOC argues that the record clearly demonstrates that Yixing Union and Cogeneration did not receive any preferential land rates due to their location and both companies followed the appropriate provincial procedures to obtain their land-use rights.[573] Therefore, the GOC asserts that there is no basis to find the program Provision of Land in the YEDZ for LTAR de jure specific.

Yixing Union's Rebuttal Comments:

Yixing Union argues that Petitioners present few specific facts to support their assertion that the YEDZ was in existence before 2006. Yixing Union asserts there is no information on the record to support Petitioners' claim that Yixing Union or Cogeneration received its land-use rights by virtue of being in any "park" or "zone." Moreover, Yixing Union argues the Department verified that both companies obtained their land through the land resources bureau, followed the appropriate process, and paid prices as provided for in provincial law. Yixing Union also notes the Department verified other programs alleged by Petitioners in regards to the YEDZ and saw that the company did not receive any benefits by virtue of its location in the zone. Thus, it is clear from the totality of the evidence that neither Yixing Union nor Cogeneration benefitted from programs by virtue of their location in the zone and there is no reason to believe any benefits were provided prior to 2006.

[570] See GOC's RB at 20.
[571] The GOC's proprietary rebuttal of Petitioners' discussion is summarized in the Final BPI Memo at Comment D.
[572] See GOC's RB, at fn 12.
[573] See GOC's RB at 21.

Department's Position:

We received timely responses from both the GOC and Yixing Union with regard to this alleged subsidy.[574] Although Petitioners cite to an instance where the GOC did not provide the information requested, we note that a response was provided and a reason was given as to why the GOC believed the information was not pertinent to this investigation. As such, the Department, at its discretion, still had the opportunity to request further information from the GOC, if it felt it was warranted. Finally, the Department was able to verify the information submitted regarding this alleged program.[575] Thus, the remaining issue is whether the GOC and Yixing Union significantly impeded this investigation.

The only information presented by Petitioners to support their claim that the GOC and Yixing Union somehow impeded this investigation is an exhibit collected at verification used to demonstrate when the YEDZ was established.[576] Because this information was obtained from a proprietary verification exhibit, it is discussed in the Final BPI Memo at Comment D. However, based on our analysis of this document, we do not find a clear indication that the YEDZ was in existence prior to 2006. Moreover, in addition to statements by the GOC and Yixing Union that the YEDZ was established in 2006, Yixing Union officials also stated at verification that the company and Cogeneration were not part of the YEDZ and provided evidentiary support to this claim.[577] Consequently, it is also possible Yixing Union and Cogeneration were never part of any zone that might have existed prior to 2006.

Although we had insufficient time to fully evaluate whether the YEDZ existed prior to 2006 and the extent to which any benefits were provided as a result to Yixing Union and Cogeneration, we do not agree that the GOC or Yixing Union impeded the investigation in terms of the program alleged. Accordingly, we will not apply facts available to this program.

Comment 29 How to Treat the Transfer of Allocated to Granted Land-use Rights from HPP to Cogeneration

Petitioners' Affirmative Comments:

If the Department does not countervail Cogeneration's land-use rights based on the "Provision of Land in the YEDZ for LTAR" program, Petitioners submit that the Department should countervail certain portions of Cogeneration's land that were converted from allocated to granted rights in 2003. Petitioners argue that in examining this transaction in its Post-Preliminary Analysis, the Department did not capture the full amount of the subsidy to Cogeneration. For the final determination, Petitioners contend that the Department should fully countervail Cogeneration's receipt of land-use rights for less than adequate remuneration in 2003, the date when its allocated land-use rights were converted to granted status.

[574] See GNSAR at NA-9 – NA-10, see also YNSAR1 at 3.
[575] See Yixing Union Verification Report at 20-23.
[576] See Jiangsu Verification Report, at Exhibit 4.
[577] See Yixing Union Verification Report at 27.

According to Petitioners, converting allocated land to granted land normally requires a large up-front fee.[578] Once the land is converted, it can be transferred, leased, or mortgaged at will.[579] Thus, granted land-use rights are key to private ownership of the land.

Petitioners state that in 2003, HPP, a wholly owned government entity, owned a sufficiently large portion of Cogeneration's shares that Cogeneration was an SOE.[580] Through a nominal privatization of HPP in the same year, Petitioners further note that the GOC reduced its ownership in Cogeneration and transferred its shares from HPP to other GOC entities. Around the same time, the GOC converted Cogeneration's allocated land-use rights to granted land-use rights free of charge.[581] Thus, Petitioners assert that HPP's land was given over to Cogeneration free of charge for Cogeneration's exclusive use as part of the privatization. Although the Department asked about this land transaction at verification, according to Petitioners, Yixing Union officials did not provide substantive information, instead requesting that the Department ask the GOC.[582] The GOC also provided no details besides the fact the land was converted from allocated to granted land in 2003.[583] Petitioners contend that the facts, as described above, indicate that Cogeneration simply received converted land in 2003 free of charge.

Accordingly, Petitioners contend that the transaction has all the elements of a countervailable subsidy. Cogeneration received a financial contribution within the meaning of section 771(5)(D)(iii) of the Act and a benefit in the form of a good for LTAR, within the meaning of section 771(5)(E)(iv) of the Act. The provision of land was specific to Cogeneration within the meaning of section 771(5A)(D)(i) of the Act because the subsidy was only made available to it as part of the privatization of a specific enterprise, HPP.

Citing LWRP Post-Preliminary Analysis, Petitioners note the Department referenced 19 CFR 351.511(b) and outlined the process by which the Department would determine the date on which a land-use rights contract would give rise to a countervailable benefit.[584] Petitioners contend that we should apply this same ruling and find Cogeneration received a subsidy in 2003.

The GOC's Rebuttal Comments:

The GOC contends that the facts of the case and Petitioners' own line of argument establish that Cogeneration received no subsidy from this transaction. The GOC points out that Petitioners first note that HPP and Cogeneration were both SOEs in 2003. The GOC contends this fact, in itself, eliminates Petitioners' entire argument as the Department has already determined in this case for another alleged program that "mere rearrangement of assets between SOE's . . . does not by itself confer a potential countervailable subsidy, as the assets remain under state-control."[585]

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[578] See Petitioners' CB, at 89.
[579] See Petitioners' CB, at 89.
[580] See Y5SQR, at 2.
[581] See Y2SQR, at 2 and Yixing Union Verification Report, at 2-4.
[582] See Yixing Union Verification Report, at 22.
[583] See Jiangsu Government Verification Report, at 7.
[584] See LWRP Post-Preliminary Analysis, at 2.
[585] See Post-Preliminary Analysis, at 3.

Notwithstanding the above argument, the GOC points out that HPP provided land to Cogeneration in 1996, before the cut-off date, in exchange for shares, which continued to be held by HPP and its successors. As such, no new financial contribution occurred in 2003 because the GOC had already provided the land in 1996 and, moreover, the GOC's actions diminished Cogeneration's land-use rights from an indefinite term to a 50-year term.

Yixing Union's Rebuttal Comments:

Yixing Union disputes Petitioners' claim that Cogeneration received land-use rights free of charge. Citing the Yixing Union Verification Report, the company argues land was not received for free as the land was contributed by HPP in exchange for partial ownership of Cogeneration at an agreed-upon value.[586] Moreover, Yixing Union asserts that nothing changed in 2003 when Cogeneration was issued granted land-use rights because HPP, and its successors, continued to hold the equity interest in Cogeneration. As such, no new financial contribution occurred in 2003 and, in fact, Cogeneration's land-use rights were diminished from an indefinite term to a 50-year term.

The GOC's and Yixing Union's Affirmative Comments:

The GOC contends that the record of this investigation does not support the Department's finding of a countervailable subsidy in its Post-Prelim Analysis. Furthermore, the GOC argues that the Department must clearly address two threshold questions for the final determination: (1) what is the government action that the Department believes created the subsidy; and (2) when did it occur.

The GOC states that the facts surrounding the 2003 transfer of land-use rights are not in dispute. HPP received allocated land-use rights in 1989. In 1996, HPP contributed this land as its equity contribution when Cogeneration was created and HPP received shares in Cogeneration. HPP continued to hold rights, as the GOC points out that only the Land Resources bureau can transfer land use rights. In 2003, Cogeneration applied to the Land Resources Bureau to have the land-use rights transferred and received a granted land-use certificate.

Based on the above facts, the GOC argues no subsidy exists as HPP held the allocated land-use rights from 1996-2003 and Cogeneration applied for the transferred rights in 2003 and was properly issued granted land-use rights for 50 years. Thus, there is no reason why 1996 should be considered the starting date. The GOC concludes by stating that the fact Cogeneration did not apply for land-use rights in 1996 cannot create a subsidy because a private company cannot create a financial contribution and, moreover, whatever land-rights Cogeneration acquired in 1996, occurred before the cut-off date.

Yixing Union's Affirmative Comments:

[586] See Yixing Union Verification Report, at 21-22.

Yixing Union argues the Department's finding that Cogeneration somehow holds land-use rights of 57 years is misplaced. The fact, as noted by Yixing Union, is that Cogeneration was issued granted land-use rights in 2003. Moreover, from 1996-2003, Cogeneration never had the protection of granted land-use rights. Thus, the absence of a right should not be viewed as a benefit.

Petitioners' Rebuttal Comments:

Petitioners agree with the GOC and Yixing Union that Cogeneration did not receive granted land-use rights for the transferred land until 2003. However, they do not agree that Cogeneration did not receive a countervailable benefit at that time. At the time of the transfer, Petitioners contend that Cogeneration did not pay the appropriate fee for the conversion of allocated to granted land-use rights.[587] Petitioners cite to OTR Tires from the PRC, where Hebei Tire, like HPP, went through a privatization, and the final step of the privatization was to convert and sell its allocated land-use rights. In OTR Tires from the PRC, the Department found that the respondent paid a reduced fee for the conversion of the land, and in the current investigation, Petitioners allege that Cogeneration received the conversion free of charge. Accordingly, Petitioners argue that the GOC's and Yixing Union's arguments should be dismissed and the transaction should be countervailed according to the Department's standard LTAR methodology.[588]

Department's Position:

We continue to find that Cogeneration received a countervailable subsidy by virtue of the additional seven years of land-use rights it received when the allocated land-use rights were changed to granted land-use rights.

Based on our review of the record evidence, we have concluded that Cogeneration received its land-use rights in 1996 when HPP contributed land in exchange for an ownership position in the company. The company's capital verification report states that the land transfer occurred on September 26, 1996,[589] and a confirmation letter signed on May 8, 1996, by the Yixing Planning Economic Committee states that "{d}uring the operating of {Cogeneration}, the land-use right belongs to the {company}" and "the amortization of the contribution by using land-use right should comply . . . relevant accounting standards."[590] On this last point, we note that Cogeneration officials stated at verification that the company amortizes the land from the purchase date of 1996.[591] It is unclear why the land-use rights that had been allocated to HPP and then contributed to the joint venture were not converted to granted land-use rights at that time, especially in light of the language in the Planning Committee's letter. Nevertheless, it appears that Cogeneration treated the land-use rights as belonging to it from 1996 onward.

[587] See Petitioners' RB, at 68.
[588] See Petitioners' RB, at 69 and Exhibit U.
[589] See Y6SR, at Exhibit 1, at 4.
[590] See Y6SR, at Exhibit 1, at 11.
[591] See Yixing Union Verification Report, at 22.

Turning to the transfer of land-use rights from HPP to Cogeneration, neither the GOC nor Yixing Union could explain why the land-use rights certificates issued in 2003 showed a 50-year term beginning in 2003.[592]

Thus, quite simply, the record shows that the rights for the land used by Cogeneration were given for 57 years. As we explained in the Post-Preliminary Analysis, industrial land-use rights are typically given for 50 years. The difference, seven years, results in the GOC forgoing revenue that it would have received beginning in 2046, but will not receive until 2053. The GOC provided a financial contribution in 2003, when it gave Cogeneration an extra 7 years of land-use rights, and this financial contribution conferred a benefit at this time.

Regarding Petitioners' argument, we do not agree that the land in question was provided to Cogeneration in 2003. As explained above, the evidence supports a finding that Cogeneration received its land-use rights in 1996 at the formation of the joint venture. This fact distinguishes the situation here from that in OTR Tires from the PRC, where the conversion from allocated to granted land-use rights occurred as part of the reform of the SOE, Hebei Tire. If a conversion fee was warranted in this investigation, it appears that it should have been paid when the land was contributed to the joint venture by HPP, i.e., prior to the 2001 cut-off date for finding subsidies in the PRC.

Comment 30 Whether the Department's Finding Regarding Land-use Rights in Yixing City Violates Due Process

GOC's and Yixing Union's Affirmative Comments:

The GOC contends that the Department never provided notice that the land-use rights acquired by Cogeneration in 2003 were under investigation as a possible subsidy. According to the GOC, the alleged subsidy under investigation was the provision of land-use rights to SOEs for LTAR. Once the Department found no such subsidy, as it did in its Post-Preliminary Analysis, the GOC argues that the Department should have ended its inquiry. Instead, the GOC contends, the Department found a different subsidy relating to a land parcel. Because the GOC had no notice of the possible subsidy, it claims that the Department violated 19 CFR 351.311(d) and denied the respondents due process by failing to afford them full opportunity to address the issues. Therefore, according to the GOC, consideration of the possible subsidy should be deferred to an administrative review.

Yixing Union makes similar arguments, citing to U.S. v. James Daniel Good Property, to support its position that due process has been denied.[593] Specifically, Yixing Union claims that because the Department's interest in this purported subsidy only became known at the time of the Post-Preliminary Analysis, Yixing Union could not consult with the GOC about how such issues had been addressed in the past. Finally, Yixing Union asserts that it is a precedent and general rule that "individuals must receive notice and an opportunity to be heard."

[592] See Post-Preliminary Analysis, at 15-16.
[593] See U.S. v. James Daniel Good Property, 510 U.S. 43, 48-49 (1993).

Petitioners' Rebuttal Comments:

Petitioners argue that the Department should reject the GOC's and Yixing Union's claim that they were not given adequate notice that Cogeneration's 2003 land transactions were under investigation and that they were not notified until the publication of the Post-Preliminary Analysis that the land transactions were under review.[594] Contrary to their assertions, Petitioners believe that the GOC and Yixing Union received ample notice and note that as early as the filing of the Petition, the respondents should have been aware that land was going to be under investigation because Petitioners alleged that the GOC provided citric acid producers with grants of land or land-use rights at reduced preferential rates.[595] Second, in the Petitioners' NSAs, three separate land allegations were made. These allegations were broad in scope, called into question all land transactions pertaining to each respondent, and were submitted three months prior to verification. Third, Petitioners contend that the GOC and Yixing Union had adequate time to prepare their responses to the Department concerning Yixing Union's and Cogeneration's land transactions. Fourth, the Department's verification outline advised the GOC and Yixing Union to "be prepared to discuss and provide evidentiary support to substantiate how Yixing Union and Cogeneration applied for and obtained land-use rights for all parcels of land obtained after the December 11, 2001, cut-off date."[596] And more specifically, the verification outline asked,

> "for land-use rights provided to Cogeneration from Yixing Heat and Power Plant in 1998, please be prepared to discuss and provide documentation concerning Cogeneration's application for obtaining land-use certificates in its own name for the following parcels of land in 2003…"[597]

Petitioners also oppose the GOC's and Yixing Union's argument that consideration of this subsidy should be deferred until the first administrative review. Petitioners argue that the Department has the ability to investigate subsidies found during the course of the investigation pursuant to section 775 of the Act. Moreover, according to 19 CFR 351.311(c), the Department should only defer if there is insufficient time before the final determination to examine the program. Petitioners state that an examination of the transaction was completed pursuant to the verification outline issued by the Department and both the GOC and Yixing Union were given an opportunity to comment and discuss the transactions at verification. Moreover, neither the GOC nor Yixing Union disputes the facts of the land transactions. Therefore, Petitioners assert that there is no need to further investigate the facts of the transactions which would delay the results until the first administrative review. Accordingly, the Department should continue to countervail Cogeneration's 2003 land transactions in its final determination.

Department's Position:

We disagree with the GOC and Yixing Union that we denied due process to the respondents regarding Cogeneration's 2003 land transactions. On March 4, 2009, we issued our Post-

[594] See GOC's CB, at 64-65; Yixing Union's CB, at 30-31.
[595] See Petition, Vol. IV, at 48.
[596] See Petitioners' RB, at Exhibit M.
[597] Id., at Exhibit M.

Preliminary Analysis, which listed our findings for the new subsidy allegations which we decided to investigate.[598] Also included in the Post-Preliminary Analysis were any programs found to be countervailable during the course of the investigation. As stated in both our Post-Preliminary Analysis and Preliminary Determination, parties were allowed to comment on our findings prior to the final determination.[599] To this end, all parties submitted case and rebuttal briefs and participated in a hearing. Consequently, we disagree with the GOC and Yixing Union that the Department never provided notice that the potential subsidy was being investigated.[600] We also disagree that the Department failed to provide an opportunity to be heard.

Moreover, on September 12, 2008, we decided to investigate two alleged land subsidy programs pertaining to Yixing Union, the Provision of Land in the YEDZ for LTAR, and the Provision of Land to SOEs for LTAR.[601] Since that time, the Department has been seeking information pertaining to land-use rights for each respondent. Specifically, in Yixing Union's Supplemental New Subsidy Allegations Questionnaire, issued October 23, 2008, we asked Cogeneration to explain why there were four land-use rights contracts and only one land-use certificate. Cogeneration responded that it did not purchase the parcels of land, and explained they were given by HPP as registered capital in 1998 and Cogeneration did not apply for land certificates until 2003.[602] Based on this new information, we put as notice in our verification outlines that we intended to discuss these transactions at verification.[603] We believe that both Yixing Union and the GOC had ample notice of our interest in Cogeneration's 2003 land transactions and time to prepare for and discuss them and, therefore, we disagree with the GOC's statement that the GOC did not have an opportunity to provide factual information or respond to the allegation.

We agree with the GOC that the original program under investigation was land to SOEs for LTAR. Upon examination of the program and after reviewing the facts on the record, we have determined that a countervailable subsidy does exist with regard to land. Pursuant to section 775 of the Act, if the Department finds a practice which appears to be a countervailable subsidy during the course of the investigation, the Department should include the subsidy program in the proceeding. Moreover, according to 19 CFR 351.311(c), the Department will only defer if there is insufficient time before the final determination to examine the program. Since we have had sufficient time to investigate the facts concerning the transactions in question, albeit under a different program name, we determine that 19 CFR 351.311(c) is not applicable in the current situation.

Comment 31 Whether the Department's Finding Regarding the Torch Program Violates Due Process

Yixing Union's Affirmative Comments:

[598] See NSA Initiation Memo.
[599] See Preliminary Determination, 73 FR at 54382.
[600] See 19 CFR 351.311(d).
[601] See NSA Initiation Memo, at 6-8.
[602] See YNSAR2, at 1.
[603] The verification outlines were sent to Yixing Union on October 27, 2008, and to the GOC on October 30, 2008.

Yixing Union contends that the Torch program was not alleged in either the Petition, or Petitioners' NSAs and was found during the course of verification.[604] Yixing Union believes that like the land subsidy discussed at Comment 29, this program was discovered late in the investigation and interested parties have not had an opportunity to discuss the program. Therefore, pursuant to 19 CFR 351.311(c) the program should be deferred until the first administrative review as a matter of procedural fairness.

Department's Position:

At verification, we discovered benefits pursuant to the Torch program.[605] As stated in our Post-Preliminary Analysis, any benefit resulting pursuant to the program would be expensed in 2003.[606] Because this program expensed in the year of receipt, there is no need to further discuss the issue.

[604] See Yixing Union's CB, at 32.
[605] See Yixing Union Verification Report, at 27.
[606] See Post-Preliminary Analysis, at 17-18.

Recommendation

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

AGREE ____ DISAGREE ____

_____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

_____

(Date)

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Full Name or Term
The Act	Tariff Act of 1930, as amended
AD	Antidumping Duty
AEDZ	Anqiu Economic Development Zone
AFA	Adverse Facts Available
Anhui BBCA	Anhui BBCA Biochemical Co., Ltd.
AUL	Average useful life
BPI	Business proprietary information
CAFC	Court of Appeals for the Federal Circuit
CFR	Code of Federal Regulations
CIO	Change in ownership
CIT	Court of International Trade
citric acid	citric acid and certain citrate salts
Cogeneration	Yixing Union Cogeneration Co., Ltd.
CPI	Consumer Price Index
CRU	The Department's Central Records Unit (Room 1117 in the HCHB Building)
CVD	Countervailing Duty
Department	Department of Commerce
DRC	Development and Reform Commission
FIE	Foreign-Invested Enterprise
FMV	Fair market value
GI	Governance Indicator
GNI	Gross national income
GOC	Government of the People's Republic of China
GT	Guolian Trust
HPP	Yixing Heat and Power Plant
IDM	Issues and Decision Memorandum
IFS	International Financial Statistics
JETRO	Japan External Trade Organization
LMI	Lower-middle income
LTAR	Less than adequate remuneration
NDRC	National Development and Reform Commission
NME	Non-market economy

Petitioners	Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle America, Inc.
PNTR	Permanent Normal Trade Relations
POI	Period of Investigation
PRC	People's Republic of China
RMB	Renminbi
SAA	Statement of Administrative Action
SAIC	State Administration of Industry and Commerce
SEPA	State Environmental Protection Administration
SETC	State Economic and Trade Commission
SHIBOR	Shanghai Inter-bank Offered Rate
SOCB	State-Owned Commercial Bank
SOE	State-Owned Enterprise
TTCA	TTCA Biochemical Co., Ltd. (formerly known as Shandong TTCA Biochemistry Co., Ltd.)
VAT	Value Added Tax
WTO	World Trade Organization
YEDZ	Yixing Economic Development Zone
Yixing Union	Yixing Union Biochemical Co., Ltd.

II. RESPONSES AND DEPARTMENT MEMORANDA

Short Cite	Full Name
	GOC
GQR	GOC's Original Questionnaire Response (July 23, 2008)
G1SR (8/27)	GOC's First Supplemental Response (August 27, 2007)
G1SR (9/2)	GOC's First Supplemental Response (September 2, 2008)
G2SR (9/2)	GOC's Second Supplemental Response (September 2, 2008)
GOC Pre-Preliminary Comments	GOC's Pre-Preliminary Comments (September 3, 2008)
G2SR (9/5)	GOC's Second Supplemental Response (September 5, 2008)
G3SR	GOC's Third Supplemental Response (September 9, 2008)
G4SR	GOC's Fourth Supplemental Response (October 17, 2008)
G5SR	GOC's Fifth Supplemental Response (October 23, 2008)
GNSAR	GOC's Response to New Subsidy Allegations (October 23, 2008)
GOC's CB	GOC's Case Brief (March 12, 2009) (re-filed on March 24, 2009)
GOC's RB	GOC's Rebuttal Brief (March 28, 2009) (re-filed on March 23, 2009)
	Petitioners
Petition	Petition of Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China (April 14, 2008)
Petitioners' NSAs	Petitioners' submission entitled "Countervailing Duty Investigation of Citric Acid and Certain Citrate Salts from China: Additional Subsidy Allegations" (August 8, 2008)
Petitioners' CB	Petitioners' Case Brief (March 12, 2009) (re-filed on March 24, 2009)

Petitioners' RB	Petitioners' Rebuttal Brief (March 18, 2009) (re-filed on March 25, 2009)
	TTCA
TQR	TTCA's Original Questionnaire Response (July 23, 2008)
T1SR	TTCA's First Supplemental Response (August 6, 2008)
T2SR (8/27)	TTCA's Second Supplemental Response (August 27, 2008)
T2SR (8/28)	TTCA's Second Supplemental Response (August 28, 2008)
T2SR Additional Translations (9/10)	TTCA's Additional Translations of T2SR (8/27) (September 10, 2008)
T3SR	TTCA's Third Supplemental Response (October 16, 2008)
T4SR (11/3)	TTCA's Fourth Supplemental Response (November 3, 2008)
T4SR (11/6)	TTCA's Fourth Supplemental Response (November 6, 2008)
TNSAR	TTCA's Response to New Subsidy Allegations (October 23, 2008)
TTCA's CB	TTCA's Case Brief (March 12, 2009) (re-filed on March 19, 2009)
TTCA's RB	TTCA's Rebuttal Brief (March 18, 2009)
	Yixing Union
YQR	Yixing Union's Original Questionnaire Response (July 23, 2008)
Y1SR	Yixing Union's First Supplemental Response (August 7, 2008)
Y2SR	Yixing Union's Second Supplemental Response (September 2, 2008)
Y3SR	Yixing Union's Third Supplemental Response (October 16, 2008)
Y4SR	Yixing Union's Fourth Supplemental Response (October 27, 2008)
Y6SR	Yixing Union's Sixth Supplemental Response (October 28, 2008)
YNSAR1	Yixing Union's Response to New Subsidy Allegations (October 22, 2008)

YNSAR2	Yixing Union's Second Response to New Subsidy Allegations (October 29, 2008)
Yixing Union's CB	Yixing Union's Case Brief (March 12, 2009)
Yixing Union's RB	Yixing Union's Rebuttal Brief (March 18, 2009)
Department	
NSA Initiation Memo	Memorandum to Susan Kuhbach, Senior Director, Office 1, entitled "Analysis of Petitioners' New Subsidy Allegations" (September 12, 2008)
TTCA Uncreditworthy Initiation	Memorandum to Susan H. Kuhbach, Senior Director, Office 1, entitled "Uncreditworthy Allegation for TTCA" (October 20, 2008)
TTCA Preliminary Creditworthiness Memo	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, entitled "Preliminary Creditworthiness Determination for TTCA Co., Ltd.," (February 25, 2009).
TTCA Verification Report	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, entitled "TTCA Co., Ltd. Verification Report" (December 19, 2008)
TTCA Preliminary Calc Memo	Memorandum to The File, entitled "Preliminary Determination Calculation Memorandum for TTCA Co., Ltd." (September 12, 2008)
TTCA Post-Preliminary Calc Memo	Memorandum to The File, entitled "Post-Preliminary Analysis Calculation Memorandum for TTCA Co., Ltd." (March 4, 2008)
TTCA Final Calc Memo	Memorandum to The File, entitled "Final Determination Calculation Memorandum for TTCA Co., Ltd." (April 6, 2009)
Shandong Government Verification Report	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, entitled "Government of the People's Republic of China, Anqiu City and Shandong Province Verification Report" (January 16, 2009)
National Government Verification Report	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, entitled "The People's Republic of China National Government Verification Report" (January 22, 2009)

Jiangsu Government Verification Report	Memorandum to Susan Kuhbach, Senior Director, AD/CVD Operations, Office 1, entitled "Government of the People's Republic of China, Yixing City and Jiangsu Province Verification Report" (February 9, 2009)
Yixing Union Verification Report	Memorandum to Susan Kuhbach, Director, AD/CVD Operations, Office 1, entitled "Yixing Union Biochemical Co., Ltd. and Yixing Union Cogeneration Co., Ltd. Verification Report" (February 9, 2009)
Post-Preliminary Analysis	Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, entitled "Post-Preliminary Findings for the New Subsidy Allegations" (March 4, 2009)
Yixing Union Post-Prelim Calc Memo	Memorandum to the File entitled, "Countervailing Duty Investigation: Citric Acid and Certain Citrate Salts from the People's Republic of China; Yixing Union Post-Preliminary Calculations" (March 4, 2009)
Preliminary BPI Memo	Memorandum to The File entitled "BPI Memo for Government Policy Lending" (September 12, 2008)
Final BPI Memo	Memorandum to Susan H. Kuhbach, Senior Office Director, AD/CVD Operations, Office 1, entitled "Business Proprietary Information Memorandum for the Final Determination" (April 6, 2009)
LWRP Post-Preliminary Analysis	Memorandum to David M. Spooner, Assistant Secretary for Import Administration, entitled "Post-Preliminary Analysis for the Provision of Land For Less Than Adequate Remuneration" (April 21, 2008)*
OTR Tires CIO Analysis Memorandum	Memorandum to David M. Spooner, Assistant Secretary for Import Administration, entitled "Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires (OTR Tires) for the People's Republic of China; Analysis of Change in Ownership" (May 27, 2008)*

Tissue Paper from China AFA Memo	Memorandum Concerning Application of Total Adverse Facts Available to China National Aero-Technology Import and Export Xiamen Corporation ("China National") in the Final Determination of Sales at Less than Fair Value: Certain Tissue Paper Products from the People's Republic of China ("PRC") (February 3, 2005)*
ITA Policy Bulletin No. 05.1	ITA Policy Bulletin No. 05.1 (April 5, 2005) (bulletin stating NME presumption of state control and specifying requirements to rebut presumption.)
Georgetown Steel Memorandum	Memorandum from Shana Lee-Alaia and Lawrence Norton to David M. Spooner, Assistant Secretary of Commerce, Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China – Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy (March 29, 2007)*
Lined Paper Memorandum	Memorandum to David M. Spooner, Assistant Secretary for Import Administration, Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China"s Status as a Non-Market Economy (August 30, 2006)*

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

III. LITIGATION TABLE

Short Cite	Cases
Allegheny Ludlum	Allegheny Ludlum Corp. v. United States, 112 F. Supp.2d 1141 (CIT 2000)
Asahi Chemical	Asahi Chemical Industry Co. Ltd. v. United States, 548 F.Supp. 1261 (CIT 1982)
Bethlehem Steel	Bethlehem Steel Corp. v. Unites States, 140 F. Supp.2d 1354 (CIT 2001)
British Steel	British Steel plc v. United States, 879 F. Supp. 1254 (CIT 1995) (affirmed in part sub nom LTV Steel Co. Inc. v. United States, 174 F.3d 1359 (Fed. Cir. 1999))
British Steel CIT 1996	British Steel plc v. United States, 929 F. Supp. 426 (CIT 1996)
Budd Co.	Budd Co., Wheel & Brake Div. v. United States, 746 F. Supp. 1093 (CIT 1990)
Butterbaugh v. DOJ	Butterbaugh v. Department of Justice, 336 F.3d 1332 (Fed. Cir. 2003)
Chevron	Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)
Decca Hospitality Furnishings	Decca Hospitality Furnishings, LLC vs. Unites States, 427 F. Supp. 2d 1249 N.11 (CIT 2006).
Dorbest	Dorbest v. United States, 462 F. Supp. 2d 1262 (CIT 2006)
Fabrique	Fabrique de Fer de Charleroi, S.A. v. United States, 166 F. Supp. 2d. 593 (CIT 2001)
Freeport	Freeport Minerals Co. v. United States, 776 F.2d 1029 (Fed. Cir. 1995)
Georgetown Steel	Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986)
Georgetown Steel U.S. Reply Brief	Georgetown Steel U.S. Reply Brief for the United States of America (The Commerce Department), dated February 11, 1986, submitted to the CAFC, Case No. 85-2805 at 11.
Gerber	Gerber Food (Yunnan) Co. v. United States, 491 F. Supp. 2d. 1326 (CIT 2007)
GOC v. United States	Gov't of the People's Republic of China v. United States, 483 F. Supp. 2d 1274 (CIT 2007)
Goldlink	Goldlink Indust. Co. v. United States, 431 F. Supp. 2d 1323, 1329-30 (CIT 2006)

GPX v. United States	GPX International Tire Corporation v. United States, F.Supp.2d, 2008 WL 4899523 (CIT 2008).
GSA	GSA, S.r.l. v. United States, 77 F. Supp.2d 1349 (CIT 1999)
Hynix	Hynix Semiconductor Inc. v. United States, 391 F. Supp. 2d 1337 (CIT 2005)
Inland	Inland Steel Industries, Inc. v United States, 967 F. Supp. 1338 (CIT 1997)
Ithaca College	Ithaca College v. NLRB, 623 F.2d 224 (2d Cir.), cert. denied, 449 U.S. 975 (1980).
Mannesmannrohren-Werke	Mannesmannrohren-Werke AF v. United States, 77 F. Supp. 2d 1302 (CIT 1999)
Medellin v. Texas	Medellin v. Texas, 552 U.S., 128 S. Ct. 1346 (2008)
Nippon Steel	Nippon Steel Corp. v. United States, 337 F.3d 1373 (Fed. Cir. 2003)
NLRB	NLRB v. Baptist Hosp. Inc., 442 U.S. 773 (1979)
NSK	NSK, Ltd. v. United States, 481 F.3d 1355 (Fed. Cir. 2007)
Pac. Giant	Pac. Giant Inc. v. United States, 223 F. Supp. 2d 1336, 1342 (CIT 2002)
PPG Industries	PPG Industries v. United States, 978 F.2d 1232 (Fed. Cir. 1972)
Rhone Poulenc	Rhone Poulenc, Inc. v. United States, 899 F.2d 1185 (Fed. Cir. 1990)
Rhone Poulenc CIT 1996	Rhone-Poulenc, Inc. v. United States, 927 F. Supp. 451 (CIT 1996)
Roses	Roses, Inc. v. United States, 743 F.Supp. 870 (CIT 1992)
Rust v. Sullivan	Rust v. Sullivan, 500 U.S. 173 (1991)
Sec of Labor	Sec'y of Labor v. Keystone Coal Mining Co., 151 F.3d 1096 (D.C. Cir. 1998) (quoting Chemical Mfrs. Ass'n v. Dep't of Transp., 105 F.3d 702 (D.C. Cir. 1997) (quoting NLRB v. Curtin Matheson Scientific, Inc. 494 U.S. 775 (1990); and National Mining Ass'n v. Babbitt, 172 F.3d 906 (D.C. Cir. 1999).
Timken v. U.S.	Timken Co. v. United States, 166 F. Supp. 2d 608 (CIT 2001)
Transcom	Transcom, Inc. v. United States, 294 F. 3d 1371 (Fed. Cir. 2002)
U.S. Steel	U.S. Steel Group v. United States, 15 F.Supp. 2d 900 (CIT 1998)
U.S. v. James Daniel Good Property	U.S. v. James Daniel Good Property, et al, 510 U.S. 43, 89-49 (1993)
United Scenic Artists	United Scenic Artists, Local 829 v. NLRB, 762 F.2d 1034 (D.C. Cir. 1985)

Wheatland Tube	Wheatland Tube Co. v. United States, 495 F.3d 1355 (Fed. Cir. 2007)
Wieland-Werke AG	Wieland-Werke AG v. United States, 4 F. Supp. 2d 1207 (CIT 1998)
Yantai Timken	Yantai Timken Co. v. Unietd States, 521 F. Supp. 2d 1356 (CIT 2007)

IV. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

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

Short Cite	Administrative Case Determinations
	CVD Preamble
CVD Preamble	Countervailing Duties; Final Rule, 63 FR 65348, 65357 (November 25, 1998)
	Carbon Steel Plate - Sweden
Steel Plate from Sweden - AD	Certain Cut-to-Length Carbon Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review, 62 FR 18396 (April 15, 1997)
	Certain Hot-Rolled Carbon Steel Flat Product - South Africa
CHRCSF Products from South Africa	Certain Hot-Rolled Carbon Steel Flat Products from South Africa: Final Affirmative Countervailing Duty Determination, (September 21, 2001)
	Certain Softwood Lumber - Canada
Softwood Lumber from Canada	Certain Softwood Lumber Products from Canada: Preliminary Results and Partial Rescission of Countervailing Duty Expedited Reviews, 68 FR 65879 (November 24, 2003)
Softwood Lumber from Canada Investigation	Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002)
Softwood Lumber from Canada - 1st AR	Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products From Canada, 69 FR 75917 (December 20, 2004)
	Carbon Steel Wire Rod – Brazil
Wire Rod from Brazil	Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792 (August 30, 2002)
	Carbon Steel Wire Rod – Canada
Wire Rod from Canada	Carbon and Certain Alloy Steel Wire Rod from Canada: Preliminary Affirmative Countervailing Duty Determination, 67 Fed. Reg. 5984 (February 8, 2002)
	Carbon Steel Wire Rod – Czechoslovakia
Wire Rod from Czechoslovakia	Carbon Steel Wire Rod from Czechoslovakia: Final Negative Countervailing Duty Determination, 49 FR 19370 (May 7, 1984)
	Carbon Steel Wire Rod – Poland

Wire Rod from Poland	Carbon Steel Wire Rod from Poland: Final Negative Countervailing Duty Determination, 49 FR 19374 (May 7, 1984)
	Circular Welded 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)
	Circular Welded Austenitic Stainless Pressure Pipe -PRC
CWASPP from the PRC Preliminary Determination	Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 73 FR 39657, 39661 (July 10, 2008)
CWASPP from the PRC	Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, (74 FR 4936, January 28, 2009)
	Citric Acid and Certain Citrate Salts - PRC
Initiation	Notice of Initiation of Countervailing Duty Investigation: Citric Acid and Certain Citrate Salts from the People's Republic of China, 73 FR 26960 (May 12, 2008)
Preliminary Determination	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 54367 (September 19, 2008)
	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 Amended Preliminary	Coated Free Sheet Paper from the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination, 72 FR 17484 (April 9, 2007) (unchanged in CFS from the PRC final determination)
CFS from the PRC	Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007)
CFS from the PRC AD Final	Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007)
	Dynamic Random Access Memory Semiconductors – Korea
DRAMS from Korea - Preliminary	Preliminary Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Simiconductors From the Republic of Korea, 68 FR 16766 (April 7, 2003)
DRAMS from Korea	Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003)
	Fish Fillets from - Vietnam
Fish Fillets from Vietnam	Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review, 71 FR 14170 (March 21, 2006)
	Flexible Magnets - PRC
Magnets from the PRC	Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 39667 (July 10, 2008)
	Flowers - Columbia
Flowers from Columbia	Roses and Other Cut Flowers From Colombia; Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations, 60 FR 42539 (August 16, 1995)
	Fresh Cut Flowers - Mexico
Flowers from Mexico	Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996)
	Fresh Cut Flowers - Ecuador
Flowers from Ecuador	Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Frest Cut Flowers From Ecuador, 52 FR 1361 (January 13, 1987)

	Hot-Rolled Carbon Steel Flat Products – Thailand
Hot-Rolled Steel from Thailand	Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (October 3, 2001)
	Laminated Woven Sacks – PRC
LWS from the PRC	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)
LWS from the PRC - AD	Laminated Woven Sacks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances, and Postponement of Final Determination, 73 FR 5801 (January 31, 2008)
	Light-walled Rectangular Pipe and Tube – PRC
LWRP from the PRC -	Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008)
	Lightweight Thermal Paper – PRC
LWTP from the PRC	Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008)
LWTP from the PRC - Amended Final	Lightweight Thermal Paper from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 73 FR 70959 (November 24, 2008).
	Lined Paper – PRC
Lined Paper from the PRC – AD	Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006)
	Off-Road Tires - PRC
OTR Tires from the PRC	Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 13850 (March 14, 2008)
Tires from the PRC AD Preliminary Determination	Certain New Pneumatic Off-The-Road Tires From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 9278 (February 20, 2008)

	Oscillating Fans - PRC
Oscillating Fans from China	Oscillating and Ceiling Fans from the People's Republic of China: Final Negative Countervailing Duty Determinations, 57 FR 24,018 (June 5, 1992)
	Potassium Chloride - GDR
Potassium Chloride from GDR	Potassium Chloride From the German Democratic Republic: Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition, 49 FR 23,428 (June 6, 1984)
	In-shell Roasted Pistachios - Iran
Pistachios from the Islamic Republic of Iran	Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review, 71 FR 66165 (November 13, 2006)
	Phosphoric Acid - Israel
Phosphoric Acid from Israel	Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid From Israel, 52 FR 25447 (July 7, 1987)
	Polyethylene Terephthalate Film, Sheet, and Strip - India
PTF from India	Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review, 72 FR 43607 (August 6, 2007)
	Pure Magnesium and Alloy Magnesium - Canada
Magnesium from Canada	Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada, 57 FR 30946 (July 13, 1992)
	Softwood Lumber Products – Canada
Softwood Lumber from Canada	Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002)
Softwood Lumber from Canada – Amended	Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada, 67 FR 36070 (May 22, 2002)
Softwood Lumber from Canada - Remand	Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination, USA-CDA-2002-1904-03 (January 12, 2003)
Softwood Lumber from Canada - 1st AR	Certain Softwood Lumber from Canada: Preliminary Determination, 73 FR 54367 (September 19, 2008)

	Static Random Access Memory Semiconductors - Taiwan
Semiconductors From Taiwan - AD	Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909 (February 23, 1998)
	Stainless Steel Wire Rod – Korea
SSWR from Korea	Stainless Steel Wire Rod from the Republic of Korea: Final Results of Administrative Antidumping Review, 69 FR 19153 (April 12, 2004)
	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)
	Steel Wire Rod – Germany
Steel Wire Rod from Germany	Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany, 62 FR 54990 (October 22, 1997)
	Steel Wire Rod – Italy
Steel Wire Rod From Italy	Final Affirmative Countervailing Duty Determination: Certain Steel Wire Rod From Italy, 63 FR 40474 (July 29, 1998)
	Steel Wire Rod – Trinidad and Tobago
Steel Wire Rod from Trinidad and Tobago	Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago, 62 FR 55003 (October 22, 1997)
	Sulfanilic Acid – Hungary
Sulfanilic Acid from Hungary	Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary, 67 FR 60223 (September 25, 2002)
	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)
	Welded Pipe from Thailand
Welded Pipe from Thailand	Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 69 FR 61649 (October 20, 2004)

	Wooden Bedroom Furniture - PRC
Bedroom Furniture from the PRC - AD	Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People's Republic of China, 72 FR 46957 (August 22, 2007)

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

Short Cite	**Full Name**
Accession Protocol	Protocol on the Accession of the People's Republic of China to the World Trade Organization, WT/L/432, art. 15(b) (November 23, 2001) (found at www.wto.org)
APA	Administrative Procedures Act, 5 USC section 500 et seq.
B. Kelly article	Brian D. Kelly, The Law and Economics of Simultaneous Countervailing Duty and Anti-dumping Proceedings, 3 Global Trade and Customs Journal, Issue 1 at 41 (2008)
GAO Report	GAO, US-CHINA TRADE: Commerce Faces Practical and Legal Challenges in Applying Countervailing Duties, GAO-05-474 (June 2005)
Modification Notice	Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreement Act, 68 FR 37125 (June 23, 2003)
Omnibus Trade and Competitiveness Act of 1988	Pub.L.No. 100-418, 102 Stat. 1007
OTCA	Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988)
OTCA – House Report	Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 100-40, part 1 (1987)
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)
Trade Act 1974	Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (1975)
Trade Act 1979	Trade Agreements Act of 1979, Pub. L. No. 96-39, 93 Stat. 182
TRE Act	United States Trade Rights Enforcement Act, H.R. 3823, 109th Cong. (2005).

URAA	Uruguay Round Agreements Act, Pub L. No. 103-465, 108 Stat. 4809 (1994)
URAA – Senate Report	Uruguay Round Agreements Act, S. Rep. No. 103-412, at 90 (1994)
WTO China Trade Policy Review – Revision	Trade Policy Review: Report by the Secretariat on the People's Republic of China (Revision), WT/TPR/S/161/Rev. 1 (June 26, 2006)
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