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International Trade Administration
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Investigation
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October 6, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination in the Countervailing Duty Investigation of Non-Oriented Electrical Steel from Taiwan

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I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of non-oriented electrical steel (NOES) from Taiwan, as provided in section 705 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Case History

On March 25, 2014, the Department published the *Preliminary Determination* in this investigation.[1] We calculated a *de minimis* rate for China Steel Corporation (CSC) and its cross-owned affiliates Dragon Steel Corporation (DSC), HiMag Magnetic Corporation (HIMAG) and China Steel Global Trading Corporation (CSGT) (collectively, CSC Companies) and an adverse facts available (AFA) rate for Leicong Industrial Company, Ltd. (Leicong). Petitioner in this proceeding is AK Steel Corporation.

[1] *See Non-Oriented Electrical Steel from Taiwan: Preliminary Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 79 FR 16290 (March 25, 2014) *(Preliminary Determination)* and accompanying Issues and Decision Memorandum (Preliminary IDM).

On April 24, 2014, the Taiwanese Authorities (TA) requested a public hearing.[2] On September 4, 2014, the TA withdrew its request for a public hearing, therefore no hearing was held for this investigation.[3]

Between May 5, 2014, and May 16, 2014, we conducted verification of the questionnaire responses submitted by the TA and the CSC Companies. We released the verification reports for both the TA and the CSC Companies on August 6, 2014.[4] On August 21, 2014, the Department issued its Post Preliminary Determination.[5]

On August 29, 2014, we received a case brief from the TA.[6] No other parties commented.

The "Subsidies Valuation Information," "Use of Facts Otherwise Available and Adverse Inferences," and "Analysis of Programs" sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Additionally, we analyzed the comments submitted by the TA in its case brief in the "Analysis of Comments" section below, which contains the Department's positions on the issues raised in the brief. Based on the comments received, and our verification findings, we made certain modifications to the *Preliminary Determination*, which are discussed below under each applicable program and "Use of Facts Otherwise Available and Adverse Inferences." We recommend that you approve the positions described in this memorandum.

B. Period of Investigation

The period of investigation (POI) is January 1, 2012, through December 31, 2012.

III. SCOPE COMMENTS

In the *AD Initiation Notice*,[7] the Department invited interested parties to "to raise issues regarding product coverage." On November 22, and 26, 2013, Petitioner requested that the Department clarify the scope by lowering the minimum silicon content from 1.25 percent to 1.00 percent, removing altogether the maximum silicon content, and including language regarding

[2] *See* Letter to the Department from the TA, "Non-Oriented Electrical Steel from Taiwan: Hearing Request," dated April 24, 2014.
[3] *See* Letter to the Department from the TA, "Non-Oriented Electrical Steel from Taiwan: Withdrawal of Hearing Request Withdrawal," dated September 4, 2014.
[4] *See* Department Memorandum, "Verification of the Questionnaire Responses Submitted by the Taiwanese Authorities (TA)," August 5, 2014 (GOT Verification Report); Department Memorandum, "Verification of the Questionnaire Responses Submitted by China Steel Corporation and its affiliates," August 5, 2014, (CSC Verification Report).
[5] *See* Department Memorandum from Melissa G. Skinner, Director AD/CVD Operations, Office III, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Countervailing Duty (CVD) Investigation of Non-Oriented Electrical Steel (NOES) from Taiwan: Post-Preliminary Determination," dated August 21, 2014.
[6] *See* Letter to the Department from the GOT, " Non-Oriented Electrical Steel from Taiwan: Case Brief of the Government of Taiwan," dated August 29, 2014 (GOT's Case Brief).
[7] *See Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Initiation of Antidumping Duty Investigations*, 78 FR 69041 (November 18, 2013) (*AD Initiation Notice*).

surface oxide coating.[8] On January 28, 2014, POSCO/DWI,[9] a respondent in the companion less than fair value (LTFV) investigation of NOES from the Republic of Korea (Korea), filed scope comments with the Department in which it requested that the Department clarify whether laminations and cores, downstream products fabricated from NOES, and certain NOES specifications with silicon content less than the percentage identified in the scope of NOES investigations contained in the *AD Initiation Notice*, are covered by this and the companion investigations.[10] On February 4, 2014, Petitioner responded to POSCO/DWI's comments, stating (1) that laminations and cores are out of the scope of the investigations to the extent that exclusion only covers products that are suitable for use (without further processing) as a drop-in part of a core; and (2) that the Department should promptly implement the changes to the scope of the investigations relating to silicon content described in Petitioner's Proposed Scope Changes, and clarify for POSCO/DWI the data that it should report to the Department.[11]

After analyzing the scope comments regarding silicon content and surface oxide coatings, the Department has decided to lower the minimum silicon content identified in the scope from 1.25 percent to 1.00 percent and to include language regarding surface oxide coating in the scope. However, the Department has decided not to eliminate the maximum silicon content in the scope. For a complete discussion of these decisions see the memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Robert Bolling, Program Manager for AD/CVD Operations, Office IV, regarding "Scope Modification Requests," dated April 10, 2014, and hereby incorporated by reference into this memorandum. The scope language below reflects these decisions.

With respect to the issue involving laminations and cores, POSCO/DWI described laminations as products that are cut from NOES into their finished shape by a punch and die or, when in smaller quantities, by laser or wire erosion.[12] The laminations are subsequently assembled together to form laminated transformer cores or electric motor stator and rotor parts.[13] POSCO/DWI commented that it understands that laminations and cores manufactured from NOES are products not subject to these investigations because NOES is manufactured in sheet or strip form, either in coils or in straight lengths, and any subsequent processing is not simply an extension of the NOES production process, but, instead, processing performed by the end user or by a fabricator

[8] *See* Letter from Petitioner to the Department, "Petitions for the Imposition of Antidumping and Countervailing Duties against Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, Taiwan/Petition Amendment to Clarify the Proposed Scope Definition," dated November 22, 2013 ("Petitioner's Proposed Scope Changes"); and Letter from Petitioner, "Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, Taiwan: Petitioner's Comments on the Scope of Investigations," dated November 26, 2013.

[9] On January 23, 2014, POSCO and Daewoo International Corporation (DWI) filed a joint response in the concurrent LTFV investigation of NOES from Korea. The Department has preliminarily found these two companies to be a single entity in the companion LTFV investigation of NOES from Korea. *See* the memorandum from Senior Advisor Gary Taverman to Assistant Secretary Paul Piquado entitled "Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Non-Oriented Electrical Steel from the Republic of Korea" dated May 15, 2014.

[10] *See* Letter from POSCO/DWI to the Department, "Scope Clarification Requests," dated January 28, 2014.

[11] *See* Letter from Petitioner to the Department, "Re: Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden and Taiwan/Petitioner's Response to POSCO's Scope Clarification Requests," dated February 4, 2014.

[12] *See* Letter from POSCO/DWI to the Department, "Scope Clarification Requests," dated January 28, 2014, at 3.

[13] *Id.* at 3-4.

that sells to the end user.[14] POSCO/DWI commented that NOES is consumed exclusively in the production of laminated cores for transformers as well as stators and rotors for motors, and generators.[15] Depending on the design requirements of an end user, the standard lamination products are cut "E," "I," or "U," or varying combinations thereof, while highly complex lamination products are customized with numerous sides, curved edges, or numerous punched holes.[16] POSCO/DWI commented that the process of converting NOES coil or strip into laminations or cores constitutes a substantial transformation into products with end uses and customer expectations different from those for NOES.[17]

In its reply to POSCO/DWI's scope clarification request, Petitioner stated that it agrees with POSCO/DWI that laminations and cores are outside the intended scope of the NOES investigations.[18] Petitioner commented that to the extent the term "laminations" is used as a substitute for the term laminated "cores," Petitioner likewise agrees that laminations that are ready for assembly into cores are excluded from the intended scope of the NOES investigations.[19] Petitioner commented that it does not agree with POSCO/DWI that the production process for NOES necessarily ends with slitting; because the scope definition covers NOES "whether or not in coils," simply cutting to length or cutting blanks from a coil (whether slit or not) does not take such products out of the scope.[20] Petitioner commented that it agrees nevertheless with POSCO/DWI that laminations cut from NOES to their finished shape and are otherwise suitable for use, without further processing, as a drop-in part of the core, are outside the intended scope of the NOES investigations.[21]

On the basis of Petitioner's statements that it is not seeking relief from laminations and cores made from NOES, we modified the scope to reflect this exclusion.[22]

IV. SCOPE OF THE INVESTIGATION

The merchandise subject to this investigation consists of NOES, which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term "substantially equal" means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling

[14] POSCO refers to the production process for NOES described in the petitions and in the International Trade Commission's preliminary determination that POSCO understands to mean that the NOES production process ends with slitting. *Id.*, at 4.
[15] *See* Letter from POSCO/DWI to the Department, "Scope Clarification Requests," dated January 28, 2014, at 3-4.
[16] *Id.* at 4-5.
[17] *Id.* at 5.
[18] *See* Letter from Petitioner to the Department, "Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden and Taiwan/Petitioner's Response to POSCO's Scope Clarification Requests," dated February 4, 2014, at 2.
[19] *See id.* Referring to POSCO/DWI's Scope Comments, Petitioner interprets POSCO/DWI's statement, that POSCO/DWI uses the terms laminations and cores interchangeably in the normal course of business, to mean that laminations are a substitute for cores.
[20] *Id.*
[21] *Id.*
[22] *See* Letter from Petitioner to the Department, "Non-Oriented Electrical Steel from The People's Republic of China, Germany, Japan, The Republic of Korea, Sweden, and Taiwan: Scope Clarification Language," dated May 12, 2014.

direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B_{800} value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.

NOES is subject to this investigation whether it is fully processed (*i.e.*, fully annealed to develop final magnetic properties) or semi-processed (*i.e.*, finished to final thickness and physical form but not fully annealed to develop final magnetic properties). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404-8-4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of this investigation is not limited to merchandise meeting the ASTM, JIS and IEC specifications noted immediately above.

NOES is sometimes referred to as cold-rolled non-oriented (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO) electrical steel. These terms are interchangeable.

Excluded from the scope of this investigation are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the Harmonized Tariff Schedule of the United States (HTSUS) as a part *(i.e.*, lamination) for use in a device such as a motor, generator, or transformer.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the HTSUS. Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

V. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[23] The Department notified the respondent of the 15-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

[23] *See* U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

Cross Ownership: In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

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 ownership 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. According to the *Preamble*, relationships captured by the cross-ownership definition include those where:

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[24]

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 U.S. Court of International Trade (CIT) 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.[25]

[24] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).
[25] *See Fabrique de Fer de Carleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

China Steel Corporation

The CSC Companies responded to the Department's questionnaires on behalf of itself and its cross-owned affiliates CSGT, HIMAG, and DSC. CSGT, HIMAG, and DSC are majority-owned by CSC and, hence, are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).[26]

CSC is a producer of steel products, including hot and cold rolled coils, coated coils, plates, rods and bars.[27] CSGT is a trading company, acting mainly as a trading and distribution business unit, trading steel products, aluminum products, and other industrial materials. HIMAG produces and sells iron oxide, ferrite powder and ferrite core. HIMAG also serves various specialty chemicals applied to industry of steel making, metal working and eco-equipment such as rolling, pickling, cutting oil and catalyst.[28] DSC produces and sells H-beams, billets, steel plates and hot-rolled coil.[29]

CSGT is the exporter of subject merchandise.[30] Therefore, we attributed the subsidies received by CSGT according to the guidelines established in 19 CFR 351.525(c). HIMAG provides an input to CSC which is primarily dedicated, in whole or in part, to the production of the downstream product.[31] Consequently, we attributed the subsidies received by HIMAG pursuant to the guidelines established in 19 CFR 351.525(b)(6)(iv).

In its initial and supplemental questionnaire response, CSC Companies indicated that DSC produced the steel billets, H-beams, hot-rolled band, and hot-rolled coil that it sold to CSC.[32] However, the CSC Companies also stated that steel billets and H-beams could not be used to produce subject merchandise. The CSC Companies further stated that the hot-rolled bands and coils CSC purchased from DSC could not be used in the production of subject merchandise because the silicon content is less than 1.25 percent (subject merchandise covers steel containing silicon greater than 1.25 percent).[33]

On April 10, 2014, the Department clarified the scope. Specifically, the Department lowered the minimum silicon content for NOES from at least 1.25 percent to more than 1.00 percent.[34] As a result of this scope clarification, the NOES the CSC Companies produced from inputs supplied by DSC falls within the scope. Thus, the Department examined whether to attribute subsidy benefits received by DSC to the CSC Companies.

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[26] *See* CSC Companies' Initial Questionnaire Response (IQR) at "CSC" page 4 and at "CSGT" page 4; *see also* HIMAG's IQR (January 29, 2014) at "HIMAG" page 4, and DSC's IQR (January 29, 2014) at "DSC" page 4.
[27] *See* CSC Companies' IQR at "CSC" page 4.
[28] *See* HIMAG's IQR page 4.
[29] *See* DSC's IQR page 4.
[30] *See* CSC Companies' IQR at "HIMAG" Exhibit 3.
[31] *See* HIMAG's Supplemental Questionnaire Response (SQR) (January 27, 2014).
[32] *See* DSC's IQR at 4. *See also* DSC's SQR at 1 – 3 and Exhibit DSC SE-1-a-1.
[33] *See* DSC's SQR at 2. Moreover, the record indicates that CSC also produces non-subject steel such as hot and cold rolled coils, coated coils, plates, rods and bars. *See* CSC Companies' IQR at "CSC" page 4.
[34] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Antidumping Duty Investigations of Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, Korea, Sweden and Taiwan and Countervailing Duty Investigations of Non-Oriented Electrical Steel from the People's Republic of China, Korea and Taiwan: Scope Modification Requests," dated April 10, 2014.

We determine that the inputs provided by DSC to CSC during the POI are "primarily dedicated" within the meaning of 19 CFR 351.525(b)(6)(iv) of the Department's regulations. The inputs in question can be used, in whole or in part, in the production of subject merchandise or in intermediate goods that are subsequently used to make subject merchandise. These are inputs that are "dedicated almost exclusively to the production of a higher value added product – the type of input product that is merely a link in the overall production chain."[35] Accordingly, we are including subsidies provided to DSC in our analysis.

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. We used the CSC Companies' total consolidated sales, exclusive of inter-company sales, for the denominators to calculate the countervailable subsidy rates for the various subsidy programs described below, as explained in the CSC Companies' Post-Preliminary Calculation Memorandum prepared for this investigation.[36]

VI. Use of Facts Otherwise Available and Adverse Inferences

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.

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

[35] *See Preamble*, 63 FR at 65401.

[36] *See* Department Memorandum, "Countervailing Duty Investigation of Non-Oriented Electrical Steel from Taiwan: CSC Companies' Post-Preliminary Calculations," dated August 21, 2014; *see also* Memorandum from Patricia Tran to the File, "Countervailing Duty Investigation on Non-Oriented Electrical Steel from Taiwan: Final Determination Calculations Memorandum for CSC Companies," October 6, 2014.

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

For the reasons explained below, the Department determines that application of AFA is warranted pursuant to section 776(a) and (b) of the Act because, by not responding to our requests for information, Leicong failed to cooperate by not acting to the best of their ability. Leicong did not provide any of the information requested by the Department that is necessary to determine a CVD rate for this final determination. Specifically, Leicong did not respond to the Department's November 22, and December 16, 2013 countervailing duty questionnaires, even after asking, and receiving an extension for time to respond.[37]

The TA, on behalf of Leicong, submitted Leicong's 2012 tax returns.[38] In past CVD proceedings, the Department stated that it will consider using information supplied by a foreign authority in order to determine whether a non-cooperative mandatory respondent used certain subsidy programs under examination in a CVD proceeding, provided that the information the foreign authority provides is complete and verifiable.[39] As a result, we relied on the information in the tax returns for Leicong to determine that Leicong did not use any of the income tax programs at issue in this investigation.[40] In addition, the TA submitted financial statements and sales data for Leicong. However, we determine that information concerning Leicong's financial statements and sales data constitutes information that could only be verified at the company and, because Leicong did not cooperate in this proceeding, we did not use this information in our analysis when assigning a total AFA net subsidy rate to Leicong pursuant to section 776(a)(2)(A) and (C) of the Act.[41]

[37] *See* Letter from Department to Leicong, "Countervailing Duty Questionnaire," dated November 22, 2013 at page 3; Letter from the Department to Leicong, "Initial Questionnaire Response," dated December 16, 2013; letter from Leicong to the Department, "Non-Oriented Electrical Steel from Taiwan: Submission of E-mail for the Record and Extension Request," dated December 23, 2013; Letter from the Department to Leicong, "Countervailing Duty (CVD) Investigation of Non-Oriented Electrical Steel from Taiwan: Initial Questionnaire Response," dated December 23, 2013 (Leicong Questionnaire Response).

[38] *See* TA's SQR (February 28, 2014)(Leicong Tax Response) at Attachment 1.

[39] *See, e.g., Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Extrusions from the PRC*) and accompanying Issues and Decision Memorandum (Extrusions Decision Memorandum) at 11: "Further, where the GOC can demonstrate through complete, verifiable, positive evidence that Dragonluxe, Miland, and the Zhongwang Group (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department will not include those provincial programs in determining the countervailable subsidy rate for those companies," *see also, Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Facts Available."

[40] *See* Preliminary IDM at 8.

[41] *Id.*

Selection of the Adverse Facts Available Rate

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. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner."[42] 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."[43]

It is the Department's practice in a CVD investigation to select, as AFA, the highest calculated rate for the identical subsidy program, or if no identical subsidy program with a subsidy rate above zero is available, then a similar program.[44] Thus, under this practice, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior Taiwan CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program within the investigation where the rate is above zero, the Department looks for an above *de minimis* rate for the identical program in another proceeding. Absent an above zero rate for the identical program, the Department uses the highest rate calculated for the same or similar program (based on treatment of the benefit) in another Taiwan CVD proceeding. Absent an above zero subsidy rate calculated for the same or similar program, the Department applies the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies.[45]

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[42] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909 (February 23, 1998).

[43] *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Doc. No. 316, 103d Cong., 2d Session (1994) (SAA), at 870.

[44] *See, e.g., 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) (*Laminated Sacks)*, and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available;" *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC*), and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies;" *Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012) (*Steel Wire from the PRC)*, and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences;" and *Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) (*Steel Pipe from India*), and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available Rate."

[45] *See, e.g., Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) and accompanying Decision Memorandum at "Selection of the Adverse Facts Available Rate."

Under the standard AFA methodology that has been applied in past CVD investigations,[46] for the alleged income tax programs pertaining to either the reduction or exemption of the income tax rates or payment of no income tax, we apply an adverse inference that the non-cooperating mandatory respondent paid no income tax during the POI. Thus, under this approach, the highest possible benefit for income tax programs is equal to the standard income tax rate in the country at issue. In the instant case, the standard income tax rate for corporations in Taiwan is 17 percent.[47] However, because the TA placed Leicong's tax returns on the record of this investigation, we are using the returns for purposes of our AFA analysis.[48] Based on our review of the tax returns, we determine that Leicong did not use any tax exemptions or reductions at issue in this CVD investigation, and thus, we did not assign a subsidy rate to Leicong for these tax programs.[49]

As explained below, for all other programs, we are sourcing program rates outside of the investigation, but staying within the country. When selecting rates, we first determine if there is an identical program in this investigation and take the highest calculated rate for the identical program. If there is no identical program where the rate is above zero, the Department looks for a rate above zero for the identical program in another proceeding. Absent such a rate for the identical program, we then determine if there is a similar/comparable program (based on treatment of the benefit) and apply the highest calculated rate for a similar/comparable program. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program, but do not use a rate from a program if the industry in the proceeding cannot use that program.[50]

We determine that there are no identical program matches for any program other than the "Tariff Exemption for Imported Equipment" used in this proceeding. Thus, we will use the highest calculated rate for a similar/comparable program from any proceeding for programs other than the "Tariff Exemption for Imported Equipment." We find that the "Overrebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise," in *Stainless Steel Cooking Ware* is the most similar program match for all other programs in this investigation.[51] We find that the calculated rate of 2.13 percent, for the "Overrebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise" is the highest calculated rate for a same or similar program for Taiwan and therefore is the appropriate rate to apply to Liecong.

For the programs listed under "Programs Determined Not to Confer a Benefit During the POI," we determine that only CSC did not receive a benefit. Therefore, for Leicong, we assigned the appropriate AFA subsidy rate for those programs.

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[46] *Id.*; *see also Steel Pipe from India,* and accompanying Issues and Decision Memorandum at "Selection of Adverse Facts Available Rate."
[47] *See* TA IQR at Exhibit N page 20 (for 17 percent income tax rate).
[48] *See* Leicong Tax Response, at Attachment 1.
[49] *Id.* at Attachment 1, page 1.
[50] *See, e.g., Aluminum Extrusions from the PRC* and *Steel Wire from the PRC.*
[51] *See Preliminary Negative Countervailing Duty Determination; Certain Stainless Steel Cooking Ware from Taiwan*, 51 FR 15523 (April 24, 1986), unchanged in the final results, 51 FR 42893 (November 26, 1986) (*Stainless Steel Cooking Ware from Taiwan).*

On this basis, we determine the AFA subsidy rate for Leicong to be 17.12 percent *ad valorem*. For more information on the AFA rate selected for each program under investigation, *see* AFA Memorandum.[52]

Corroboration of Secondary Information

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 defined as "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."[53] The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[54] The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[55]

With regard to the reliability aspect of corroboration, 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 corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.[56]

In the instant investigation, no evidence has been presented or obtained that contradicts the relevance of the information relied upon in *Stainless Steel Cooking Ware from Taiwan*. Therefore, in the instant case, we determine that the information used in this determination has been corroborated to the extent practicable.

[52] *See* Department Memorandum, "AFA Rate for Leicong –Determination," dated concurrently with this memorandum (AFA Rate Memorandum).
[53] *See* SAA at 870.
[54] *Id.*
[55] *Id.* at 869-870.
[56] *See e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

VII. ANALYSIS OF PROGRAMS

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

A. Program Determined To Be Countervailable

1. Tariff Exemption for Imported Equipment

In its initial January 14, 2014, questionnaire response, the TA reported that the purpose of the program is to revitalize non-technology-related industries in Taiwan by allowing certain manufacturers and technical service providers to receive tariff exemptions on the machinery and equipment that they import.[57] The applicant is required to submit a tariff exemption application to the authority overseeing the industry to which the machinery, equipment or instrument is related (which for the electrical steel industry is the Industrial Development Bureau of the Ministry of Economic Affairs) before the delivery of the goods or within four months after the arrival of the goods.[58] CSC and CSGT reported receiving exemptions under this program during and prior to the POI.[59]

We determine that this tariff exemption program is countervailable. We find that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act and confers a benefit in the amount of exemptions and reimbursements of customs duties on capital equipment in accordance with section 771(5)(E) of the Act and 19 CFR 351.510(a). Regarding specificity, we determine that the legislation indicates that benefits are not expressly limited to any enterprise, industry, geographical location or other criteria, and thus is not *de jure* specific under section 771(5A)(D)(i) of the Act. However, we determine that benefits under this program are *de facto* specific under section 771(5A)(D)(iii)(III) of the Act because the record indicates disproportionate use by the CSC Companies.[60]

Normally, import duty exemptions are considered to be recurring benefits and are expensed in the year of receipt.[61] However, the Department's regulations recognize that, under certain circumstances it may be appropriate to allocate over time, rather than to attribute the benefits to the year of receipt, for benefits of a program normally considered a recurring subsidy.[62] Where the benefit received from the exemption of import duties is granted for the importation of capital

[57] *See* TA IQR at Exhibit J – 1 page 1.
[58] *Id.* at 2.
[59] *See* CSC Companies' IQR at Ex P-G-2-3.D and SQR at Exhibit CSC-SE-1-e.
[60] *See* Memorandum to Melissa G. Skinner from Christopher Hargett, entitled "Non-Oriented Electrical Steel from Taiwan: Final *De Facto* Specificity Analysis," dated concurrently with this final determination (Final *De Facto* Specificity Memo).
[61] *See* 19 CFR 351.524(c)(1).
[62] In the *Preamble* to our regulations, the Department provides an example of when it may be more appropriate to consider the benefits of a tax program to be non-recurring benefits, and, thus, allocate those benefits over time. *See Preamble*, 63 FR at 65393. We stated in the *Preamble* that, if a government provides an import duty exemption tied to major capital equipment purchases, it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring, even though import duty exemptions are on the list of recurring subsidies.

goods by the CSC Companies, we determine that it is appropriate to treat the exemption of duties on capital goods as a non-recurring benefit.[63]

Therefore, to calculate the countervailable subsidy for the CSC Companies, we summed import duty exemptions on capital goods received during the POI. Further, for duty exemptions received on capital goods in the 15 years prior to the POI, we summed the amount of exemptions received in each year. We then conducted the "0.5" percent test, as described in the "Allocation Period" section above, on each of the annual sums. We then allocated those annual sums that passed the "0.5 percent" test to the POI using the subsidy allocation formula described under 19 CFR 351.524(d)(1). To calculate the total benefit received under the program, we summed duty exemptions received during the POI as well as those allocated to the POI.

Next, we divided CSC Companies' total benefits under the program by the CSC Companies' total consolidated sales during the POI. Our method of calculating the benefit under this program is consistent with the Department's practice involving tariff exemptions on imported equipment.[64] On this basis, we determine a countervailable subsidy rate of 0.04 percent *ad valorem* for CSC Companies. Because a tariff exemption is not noted on a tax return, the Department is finding that Leicong benefited from this program. Consistent with the Department's practice, the Department is applying the 0.04 percent rate as AFA for Leicong.[65]

2. Income Tax Credit for Upgraded Equipment

Pursuant to Paragraph 1 and 2 of Article 6 of the *Statute for Upgrading Industries*, the TA will provide income tax credits for upgrading equipment.[66] The Income Tax Credits for Upgraded Equipment program has two components: (1) tax credits for expenses incurred in connection with investment in upgraded technology/equipment; and (2) tax credits for R&D and personnel training expenses.[67] This program took effect in 1991 and was abolished on December 31, 2009 due to the expiration of the *Statute for Upgrading Industries*.[68] However, companies are allowed to allocate the use of the tax credit within five years of the year in which the equipment was delivered.[69] The purpose of this program was to encourage the use of automation equipment, replacement of old equipment and research and development.[70]

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[63] *See* 19 CFR 351.524(c)(2)(iii).
[64] *See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India*, 69 FR 52866, 52870 (August 30, 2004) (unchanged in the *Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India*, 70 FR 13460 (March 21, 2005).
[65] *See, e.g.*, *Laminated Sacks*, and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available;" *Aluminum Extrusions from the PRC*, and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies;" *Steel Wire from the PRC*, and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences;" *Steel Pipe from India*, and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available Rate;" AFA Rate Memorandum.
[66] *See* TA IQR at Exhibit B-1 page 1 and B-2.
[67] *Id.*, at Exhibit B – 1 page 1.
[68] *Id.*
[69] *Id.* at 3.
[70] *Id.* at 1.

We determine that this program constitutes a financial contribution under section 771(5)(D)(ii) of the Act and confers a benefit equal the amount of tax savings under the program as provided under section 771(5)(E) of the Act and 19 CFR 351.509(a). Regarding specificity, we find that the *Statute for Upgrading Industries* does not expressly limit the program to any enterprise, industry, geographical location or other criteria, and thus, we determine that benefits under this program are not *de jure* specific under section 771(5A)(D)(i) of the Act. In our initial questionnaire, we asked the TA to provide information concerning the manner in which benefits are distributed under this program. In its response, the TA provided the amount received by CSC, the amount received by each industry, the grand total provided to all industries, and the total number of companies that received benefits under the program.[71]

After our second request for information the TA also provided information concerning the specific amounts for each of the companies that received benefits under the program.[72] Based on our analysis of the data, we determine that benefits under this program are not *de facto* specific to CSC nor to the basic metals industry, which is the industry category to which CSC belongs, as described under section 771(5A)(D)(iii)(II) of the Act. However, we determine that the amount that CSC received under the program, when compared to the amount received by other companies (*e.g.*, the amount provided to the CSC Companies under the program during the POI, compared to the amount provided to the all other recipients during the POI), is disproportionately large and, therefore, *de facto* specific as described under section 771(5A)(D)(iii)(III) of the Act.[73] To calculate the benefit from this program, we treated the income tax credit claimed by CSC as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

We divided the CSC Companies' total benefits under the program by the CSC Companies' total consolidated sales during the POI. On this basis, we determine a countervailable subsidy rate of 0.38 percent *ad valorem* for CSC Companies.[74] For Leicong, based on our review of its tax returns, we determine that Leicong did not use any credits under this program.[75]

3. Shareholder's Investment Tax Credit for Participation in Infrastructure Projects

Pursuant to the *Act for Promotion of Private Participation in Infrastructure Projects*, a profit-seeking enterprise which subscribes for registered shares issued by a private institution participating in a major infrastructure project, and held such registered shares for a period of four years or more may, upon its incorporation or expansion, receive credit for up to 20 percent of the subscription price against the business income tax payable for the current year.[76] In case the amount of the business income tax payable is less than the amount creditable, the balance thereof may be credited against the business income tax payable in the four ensuing years. According to

[71] *See* TA IQR at B-1 page 19.
[72] *See* TA SQR at 3, and accompanying data file.
[73] *See* Final *De Facto* Specificity Memo.
[74] *See* Preliminary Calculation Memorandum.
[75] *See* Leicong Tax Response, at Attachment 1.
[76] *See* TA IQR at Exhibit N-1 page 1.

the TA, this program is designed to promote private participation in infrastructure projects.[77] CSC reported receiving a tax credit based on the income tax return it filed during the POI.[78]

We determine that this program confers a countervailable subsidy. The income tax exemption is a financial contribution in the form of revenue foregone by the authority, as described under section 771(5)(D)(ii) of the Act, and it provides a benefit to the recipient in the amount of the tax savings, pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). Regarding specificity, we determine that this legislation indicates that benefits are not expressly limited to any enterprise, industry, geographical location or other criteria, and thus is not *de jure* specific under section 771(5A)(D)(i) of the Act. However, we determine that this program is *de facto* specific under 771(5A)(D)(iii)(I) of the Act because the number of companies receiving benefits under the program is limited in number.[79] To calculate the benefit from this program, we treated the income tax exemption claimed by CSC as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

We divided the CSC Companies' total benefits under the program by the CSC Companies' total consolidated sales during the POI. On this basis, we determine a countervailable subsidy rate of 0.01 percent *ad valorem* for CSC Companies. For Leicong, based on our review of its tax returns, we determine that Leicong did not use any credits under this program.[80]

4. Shareholder's Investment Tax Credit for Investment in Newly Emerging, Important and Strategic Industries

Pursuant to the *Statute for Upgrading Industries*, Article 8, the TA provides investment tax credits for investment in newly emerging, important and strategic industries.[81] The purpose of this program is to encourage the incorporation or expansion of the newly emerging, important and strategic industries that can generate substantial benefits for economic development, are of high risks and are in great need of support. The TA reports that a profit-seeking enterprise investor who subscribes for the registered stock issued by a company within the newly emerging, important and strategic industries, and held such stock for a period of three years or longer, may credit up to 20 percent of the price paid for acquisition of such stock against the profit-seeking enterprise income tax or the consolidated income tax payable in each year within a period of five years from the then current year.[82] The paid-in capital or the increase in the paid-in capital of the company qualifying for the newly emerging, important and strategic industries must exceed NT$200,000,000 (NT$50,000,000 if the company is engaged in green technology industry), and the amount invested by the company in purchasing new machinery and equipment must exceed NT$100,000,000 (NT$15,000,000 if the company invests in certain products in green technology

[77] *Id.*, at Exhibit N – 1.
[78] *See* CSC Companies' IQR at "CSC" page 14, 37-41, and CSC Exhibit-G-A-5-1 and G-A-5-3. CSC Companies reported the program under the title "Income Tax Credit for Holding Shares of Certain Private Institutions."
[79] *Id.*, TA IQR at Exhibit N – 4; Final *De Facto* Specificity Memo.
[80] *See* Leicong Tax Response, at Attachment 1.
[81] *See* TA IQR at Exhibit O-2.
[82] *Id.*

industry).[83] CSC reported receiving a tax credit based on the income tax return it filed during the POI.[84]

We determine that this program confers a countervailable subsidy. The income tax exemption is a financial contribution in the form of revenue foregone by the authority, as described under section 771(5)(D)(ii) of the Act, and provides a provides a benefit to the recipient in the amount of the tax savings, pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). Regarding specificity, we determine that this legislation indicates that benefits are not expressly limited to any enterprise, industry, geographical location or other criteria, and thus is not *de jure* specific under section 771(5A)(D)(i) of the Act. However, we determine that that this program is *de facto* specific under 771(5A)(D)(iii)(I) of the Act because the number of companies receiving exemptions under this program is limited in number.[85] To calculate the benefit from this program, we treated the income tax exemption claimed by CSC as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

We divided the CSC Companies' total benefits under the program by the CSC Companies' total consolidated sales during the POI. On this basis, we determine a countervailable subsidy rate of 0.01 percent *ad valorem* for CSC Companies. For Leicong, based on our review of its tax returns, we determine that Leicong did not use any credits under this program.[86]

5. Conventional Industry Technology Development

On March 11, 2014, the TA responded to the Department's new subsidy questionnaire.[87] In its new subsidy allegation questionnaire response, the TA reported that the Industry Development Bureau (IDB) of the Ministry of Economic Affairs is the entity that administers this program. Under this program, IDB grants funds to companies to facilitate their projects devoted to R&D and improvement of existing skills and products.[88]

The TA reported that this program is implemented under the *Act for Industrial Innovation*, and Article 2 of the Ministry of Economic Affairs (MOEA) *Regulations on the Funding and Assistance for Industry Innovation Activities.*[89] The TA reported that the purpose of this program is to encourage companies to develop and design products and enhance their R&D abilities through providing funds to companies.[90] The TA reported that for 2012, the companies that are eligible to apply for the benefit must: (1) be incorporated in Taiwan; and (2) operate in the non-technology related industries.[91] The applications can be divided into three categories: (1)

[83] *Id.*, at Exhibit O – 1 page 11.
[84] *See* CSC Companies' IQR at "CSC" page 14, 37-41, and CSC Exhibit-G-A-5-1 and G-A-5-3. CSC Companies reported the program under the title "Income Tax Credit for Holding Shares of Certain Private Institutions."
[85] *Id.*, TA IQR at Exhibit O – 8; Final *De Facto* Specificity Memo.
[86] *See* Leicong Tax Response, at Attachment 1.
[87] *See* Letter from the Department to the GOT, entitled "New Subsidy Allegations Questionnaire for the Government of Taiwan (GOT)," dated February 24, 2014; TA's response to the Department's New Subsidy Allegation Questionnaire, dated March 11, 2014 (TA's NSA Response)
[88] *Id.*
[89] *See* TA's NSA Response at 1.
[90] *Id.*
[91] *Id.*

product development; (2) product design, and (3) joint development. Each category has different selection criteria and the maximum amount that may be granted for each application is NT$10,000,000.[92]

We determine that the Conventional Industry Technology Development program is countervailable. The grant is a financial contribution and benefit in the form of a direct transfer of funds by the authority under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, we determine that this legislation indicates that benefits are not expressly limited to any enterprise, industry, geographical location or other criteria, and thus is not *de jure* specific under section 771(5A)(D)(i) of the Act. However, we determine that this program is *de facto* specific under 771(5A)(D)(iii)(I) of the Act because the number of companies receiving grants under this program is limited in number.[93]

The TA reported that Leicong received benefits under this program, but that no other mandatory respondent received benefits under this program, therefore this program is not countervailable as to CSC.[94] Because Leicong is not participating in this proceeding, the Department is using AFA in determining the rate to apply to Leicong under this program, and not using information provided by the TA.[95] Because no identical or similar programs exist, we are applying the highest rate for a non-company specific program, which we find to be 2.13 percent calculated for Overrebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise, calculated in *Stainless Steel Cooking Ware from Taiwan.*[96]

6. Self-Evaluation Service

The TA reported that the "Self-Evaluation Service for Enterprises Seeking Excellent Performance" (the Self-Evaluation Service) is a part of the 2010 "Plan on Promotion of Enterprises' Excellent Performance" and has been in effect since June 8, 2010.[97] The TA stated that there are no specific laws or regulations promulgated regarding the Self-Evaluation Service; rather, it falls under the authority of the IDB to promote industrial development and more efficient ways of production. The TA reported that the actual implementation of this program is by the China Productivity Center (CPC), a not-for-profit foundation.[98]

The TA reported that the purpose of Self-Evaluation Service is to promote among enterprises the practice of self-evaluation, especially the excellence performance measurement system, which is developed on the basis of the standards and criteria adopted in the review process of the National Quality Award.[99] The goal of the program is to provide participating entities with a better understanding of the company's own competitive advantages as well as an understanding of the company's operational weaknesses and to identify areas in which the participating company can

[92] *Id.* at 2.
[93] *Id.* at 11; Final *De Facto* Specificity Memo.
[94] *Id.* at 4.
[95] *See* "Use of Facts Otherwise Available and Adverse Inferences" section of IDM.
[96] *See Stainless Steel Cooking Ware from Taiwan;* AFA Rate Memorandum.
[97] *See* TA NSA Response at 15.
[98] *Id.*
[99] *Id.* at 16.

improve its operations.[100] The TA reported that the CPC assigns consultants and experts in the enterprise's field and will instruct the enterprise to complete the self-evaluation process. The TA stated that for every company for which the CPC performs the evaluation, the TA pays CPC an amount to compensate the CPC for the costs incurred in the provision of the evaluation service, including the fees paid to the consultants and experts and transportation fees.[101] The TA stated that no financial contribution is provided by the TA directly to participating companies under this program.[102]

We determine that the Self-Evaluation Service program is countervailable. The service is a financial contribution and benefit in the form of a provision of a good or service provided for less than adequate remuneration by the authority under sections 771(5)(D)(iii) and 771(5)(E)(iv) of the Act, respectively. Regarding specificity, we determine that there is no information on the record that indicates that benefits are or are not expressly limited to any enterprise, industry, geographical location or other criteria, and thus it is not possible to determine whether this program is *de jure* specific under section 771(5A)(D)(i) of the Act.[103] However, we determine that that this program is *de facto* specific under 771(5A)(D)(iii)(I) of the Act because the number of companies the TA reported receiving evaluation services under this program is limited in number.[104]

The TA reported that no mandatory respondent received benefits under this program during the POI, therefore this program is not countervailable as to CSC.[105] As noted above, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act with regard to Leicong because, by not responding to our questionnaire, it failed to cooperate by not acting to the best of its ability. Because no identical or similar programs exist, we are applying the highest rate for a non-company specific program, which we find to be 2.13 percent calculated for Overrebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise, calculated in *Stainless Steel Cooking Ware from Taiwan.*[106]

7. Building and Land Value Tax Deduction for Supplying to Major Infrastructure Projects

The TA reported that the "Building and Land Value Tax Deduction for Supplying to Major Infrastructure Projects" (Building Tax Deduction) is administered under article 39 of the *Act for Promotion of Private Participating in Infrastructure Projects* (*PIPA*) and has been in effect since October 31, 2001.[107] Under *PIPA*, the TA reported that private institutions participating in the building or operation of a major infrastructure project, *i.e.*, road or harbor construction, are eligible for a reduction or exemption from the land value tax, building tax, or deed tax.[108] The TA published the *Statute for the Exemption of Land Value, Building Tax and Deed Tax for*

[100] *Id.*
[101] *Id.*
[102] *Id.* at 16 – 17.
[103] *Id.* at 15.
[104] *Id.* at 24; Final *De Facto* Specificity Memo.
[105] *Id.* at 19.
[106] *See Stainless Steel Cooking Ware from Taiwan*; AFA Rate Memorandum.
[107] *See* TA IQR at Exhibit K – 1 at page 1 and Exhibit K - 2.
[108] *Id.* at Exhibit K – 1 at 1.

Participation in Major Infrastructure Projects by Private Institutions providing that participants in major infrastructure projects may be exempt from 50 percent of the building tax for a period of five years upon the approval of the Local Tax Bureau, Taichung City Government (the "Taichung Tax Bureau")."[109] The TA reported that DSC participated in this program in 2012, with a tax exemption of 50 percent of its building tax.[110]

We determine that the Building Tax Deduction program is countervailable. We find that the tax exemption provides a financial contribution in the form of foregone revenue within the meaning of section 771(5)(D)(ii) of the Act, and it provides a benefit to the recipient in the amount of the tax savings, pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1).

Regarding specificity, because this program is only available to companies participating in major infrastructure projects, we determine this program is *de jure* specific under section 771(5A)(D)(i) of the Act.[111] To calculate the benefit from this program, we treated the reduction in taxes as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

To calculate the countervailable subsidy for the CSC Companies, we summed the difference between the building tax invoices DSC reported for 2011 and 2012, we then divided the total by the CSC Companies' total consolidated sales during the POI. On this basis, we determine a countervailable subsidy rate of 0.02 percent *ad valorem* for the CSC Companies. Because this is a land value tax deduction, which is not reflected in Leicong's income tax filings, we are applying the 0.02 percent rate calculated for the CSC Companies as AFA for Leicong with respect to this program.

8. Major Infrastructure Projects — Land Lease Program

The TA reported that the "Major Infrastructure Projects —Land Lease Program" (Land Lease Program) is administered under Article 46 of the *PIPA* and has been in effect since October 31, 2001.[112] The TA stated that companies participating in infrastructure projects are eligible for a 40 percent discount off standard lease rates.[113] The TA reported that the standard lease rates and applicable discounts were established in 1993.[114] The TA reported that DSC rented land from Taiwan International Ports Corporation (TIPC), in Taichung City under this program.[115]

We determine that the Land Lease Program is countervailable. We find that the reduced lease rate is a financial contribution in the form of foregone revenue and confers a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Regarding specificity, because this program is only available to companies participating in major infrastructure projects, we determine this program is *de jure* specific under section 771(5A)(D)(i) of the Act.[116]

[109] *Id.* at pages 1 – 2 and Exhibit K-3.
[110] *Id.* at 3.
[111] *Id.* at 7.
[112] *See* TA IQR at Exhibit Q – 1 at 1 and Ex K - 2.
[113] *See* TA IQR at Exhibit Q – 1 at 1.
[114] *Id.*
[115] *Id.* at 1.
[116] *Id.* at 5.

To calculate the benefit from this program, we calculated the difference between what DSC would have paid at the standard lease rate and what it actually paid. We next divided the sum of the price differentials by the CSC Companies' consolidated sales during the POI. On this basis, we determine a countervailable subsidy rate of 0.02 percent *ad valorem* for CSC Companies. Consistent with the Department's practice, as facts available, we will apply this rate to Leicong for the *Final Determination*.[117]

B. Programs Determined To Be Not Countervailable

1. Income Tax Credit for Research and Development Expenses

Pursuant to the *Act for Industrial Innovation* and *Regulations Governing the Application of Investment Tax Credits for Research and Development Expenditures of Companies*, the TA provides income tax credits to encourage research and development (R&D) activities and innovation.[118] Companies whose R&D activities fall within the scope of "highly innovative" R&D are eligible for the benefit.[119] Companies seeking benefits under this program must first apply for eligibility with the authority that has expertise in the particular field to determine whether an applicant's R&D activities qualify under the program.[120] If the applicant is approved for the tax credit, the amount of the tax credit shall be equivalent to 15 percent of the R&D expenses, provided that the tax credit shall not exceed 30 percent of the income tax payable by the applicant for the year.[121] During the POI, CSC used this program.[122]

We determine that the *Act for Industrial Innovation and Regulations Governing the Application of Investment Tax Credits for Research and Development Expenditures of Companies* indicates that benefits are not expressly limited to any industry, geographical location or other criteria, and thus is not *de jure* specific under section 771(5A)(D)(i) of the Act. Further, we determine that the usage information provided by the TA indicates that this program has been applied broadly across numerous industries, and that the participating company, CSC has not disproportionately benefited from this program.[123] Thus, we determine that that this program is not *de facto* specific under section 771(5A)(D)(iii) of the Act. Therefore, we determine that this program is not countervailable.

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[117] *See* AFA Memorandum; *see, e.g.*, *Laminated Sacks*, and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available;" *Aluminum Extrusions from the PRC*, and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies;" *Steel Wire from the PRC*, and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences;" *Steel Pipe from India*, and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available Rate;" AFA Rate Memorandum.

[118] *See* TA IQR at Exhibit A – 1.

[119] *Id*.

[120] *Id.*

[121] *Id.*

[122] *See* CSC Companies' IQR at "CSC" page 9.

[123] *See* Memorandum to Eric B. Greynolds from the Team, entitled "Non-Oriented Electrical Steel from Taiwan: De Facto Specificity Analysis," dated March 18, 2014.

2. Partial Payment for Electricity Bill of Strong-Motion Observation Station

The Central Weather Bureau, Ministry of Transportation and Communications (CWB) places earthquake motion observation equipment at locations throughout Taiwan in order to detect earthquake activities.[124] In instances where the equipment is placed on private property, the CWB may reimburse companies or individuals up to a certain amount to compensate for the use of electricity for running the equipment.[125]

We found no evidence that the CWB overcompensates private property owners for its placement of the country's earthquake motion observation equipment. Therefore, we determine that no benefit is provided under this program; thus, we determine that this program is not countervailable.

C. **Programs Determined Not To Confer a Benefit During the POI**

We determine that the programs listed below did not confer a benefit during the POI to the CSC Companies or that the benefit to the CSC Companies resulted in a net subsidy rate that is less than 0.005 percent *ad valorem*. Consistent with our past practice, we have not included programs with net subsidy rates of less than 0.005 percent in our net countervailing duty rate calculations in the CSC Companies' calculations.[126] As noted above, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act with regard to Leicong because, by not responding to our questionnaire, it failed to cooperate by not acting to the best of its ability. Because no identical or similar programs exist, we are applying the highest rate for non-company specific program, which we find to be 2.13 percent calculated for Overrebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise, calculated in *Stainless Steel Cooking Ware from Taiwan.*[127]

1. Industrial Technology Development Program

The TA enacted the Industrial Technology Development Program (ITDP) pursuant to the *Regulations Governing the Assistance on Enterprises' R&D by Ministry of Economic Affairs,* which was promulgated under the authorization of Paragraph 2 of Article 22-1 of the *Statute for Upgrading Industries*.[128] The program is administered by the Department of Industrial Technology (DOIT), Ministry of Economic Affairs (MOEA) and the purpose of the program is to encourage industrial innovation, providing grants to support a company's R&D activities.[129] The CSC Companies reported that it received subsidies under this program.[130]

[124] *See* TA IQR at Exhibit M-1.
[125] *Id.*
[126] *See, e.g., Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 77 FR 17017 (March 23, 2012), and accompanying Issues and Decision at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District."
[127] *See Stainless Steel Cooking Ware from Taiwan*; AFA Rate Memorandum.
[128] See TA IQR at Exhibit H-1 page 1.
[129] *See* TA IQR at Exhibit H – 1 page 1.
[130] *See* CSC Companies' IQR at CSC Exhibit P-G-1.

We determine that the grant received by CSC constitutes a financial contribution as a direct transfer of funds and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, we determine that the legislation indicates that benefits are not expressly limited to any enterprise industry, geographical location or other criteria, and thus the program is not *de jure* specific under section 771(5A)(D)(i) of the Act. However, because a limited number of enterprises received grants under this program,[131] we determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

The total grants the CSC Companies received during the POI were less than 0.005 percent of the total consolidated sales of CSC Companies for the POI. Therefore, consistent with the Department's practice, we determine that this program did not confer a benefit to the CSC Companies during the POI.[132] As noted above, as AFA we are applying a rate of 2.13 percent to Leicong.

2. Strengthen the Ability of Emerging Development Program

The Strengthen the Ability of Emerging Development Program (SAEDP) was established under the *Regulations Governing the Assistance on Enterprises' R&D by Ministry of Economic Affairs*, promulgated under the authorization of Paragraph 2 of Article 22-1 of the *Statute for Upgrading Industries.* The purpose of the program is to encourage corporations to undertake R&D activities and create technology or products that meet future market needs.[133] The CSC Companies reported that it received a subsidy under this program.[134]

We determine that the grant received by CSC constitutes a financial contribution as a direct transfer of funds and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, we determine that this legislation indicates that benefits are not expressly limited to any enterprise, industry, geographical location or other criteria, and thus the program is not *de jure* specific under section 771(5A)(D)(i) of the Act. However, we determine that this program is *de facto* specific under 771(5A)(D)(iii)(I) of the Act because only a limited number of enterprises received grants under this program.[135]

The total grants the CSC Companies received during the POI were less than 0.005 percent of the total consolidated sales of CSC Companies for the POI. Therefore, consistent with the Department's practice, we determine that this program did not confer a benefit to CSC Companies during the POI.[136] As noted above, as AFA we are applying a rate of 2.13 percent to Leicong.

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[131] *Id.*, at Exhibit H – 2 and H – 3; *see* Final *De Facto* Specificity Memo.
[132] *See, e.g.*, *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 72 FR 38565 (July 13, 2007) (*CTL Plate 2005 Final Results*) and accompanying Issues and Decision Memorandum at "Asset Revaluation under Tax Programs under the Tax Reduction and Exemption Control Act (TERCL) Article 56(2)."
[133] *See* TA IQR at Exhibit H-1 page 1.
[134] *See* CSC Companies IQR at CSC Exhibit P-G-1 and SQR at page SE-5 through SE-30.
[135] *See* Final *De Facto* Specificity Memo.
[136] *See CTL Plate 2005 Final Results* and accompanying Issues and Decision Memorandum at "Asset Revaluation under Tax Programs under the Tax Reduction and Exemption Control Act (TERCL) Article 56(2).".

3. Subsidy for Certain Photovoltaic Power Stations

Under the *Renewable Energy Development Act (REDA*), promulgated on July 8, 2009, the TA seeks to encourage investment in renewable energy.[137] The Bureau of Energy, Ministry of Economic Affairs (BOE) provides a grant of NT$50,000 per KW of electricity generating capacity as financing for equipment that can generate 1 KW to 10 KW of renewable energy before it is installed.[138] The CSC Companies reported that it received a grant under this program.[139]

We determine that the grant received by the CSC Companies constitutes a financial contribution as a direct transfer of funds and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, we determine that this legislation indicates that benefits are not expressly limited to any enterprise, industry, geographical location or other criteria, and thus is not *de jure* specific under section 771(5A)(D)(i) of the Act. However, we determine that this program is specific under 771(5A)(D)(iii)(I) of the Act because only a limited number of enterprises received grants under this program.[140]

The total grant the CSC Companies received during the POI was less than 0.005 percent of the total consolidated sales of the CSC Companies for the POI. Therefore, consistent with the Department's practice, we determine that this program did not confer a benefit to the CSC Companies during the POI.[141] As noted above, as AFA we are applying a rate of 2.13 percent to Leicong.

4. Payment for Trade Remedy Proceedings

The TA explained the grant program was administered pursuant to *Regulations on Assistance for Trade Promotion* to provide assistance to Taiwanese enterprises on costs incurred from services rendered with regards to trade investigations (antidumping, countervailing duty, or safeguard measures) in other countries.[142] The record indicates that grants provided under this program are tied to an actual trade proceeding in which the company incurred its legal expenses.[143] Specifically, in order to receive reimbursements under this program, the TA requires the recipient to submit supporting documentation, *i.e.*, engagement letter with legal counsel, accountant, and or consultant, and invoices for services rendered. CSC received grants under this program and, as indicated by the TA, CSC's reimbursements are tied to trade proceedings in Indonesia, Australia, and Thailand, and thus did not confer a benefit to exports to the United States.[144] Because at the time of bestowal the benefits under this program are tied to non-subject merchandise in markets other than the United States and because there are no standing antidumping or CVD orders on NOES from Taiwan in the United States, we determine that

[137] *See* TA IQR at Exhibit I – 1 page 1.
[138] *Id.*
[139] *See* CSC Companies' IQR at CSC Exhibit P-G-1 and SQR at page SE-9.
[140] *Id.* at pages 10 and 11; s*ee* Final *De Facto* Specificity Memo .
[141] *See, e.g., CTL Plate 2005 Final Results,* and accompanying Issues and Decision Memorandum at "Asset Revaluation under Tax Programs under the Tax Reduction and Exemption Control Act (TERCL) Article 56(2)."
[142] *See* TA IQR at Exhibit L-1.
[143] *Id.*, at Exhibit L- 4 through Exhibit L-7.
[144] *Id.*, at page 5, 11, and 14.

neither the CSC Companies nor Leicong received any benefits from this program during the POI within the meaning of section 771(5)(E) of the Act.

5. Five-Year Income Tax Exemption Incentive for New Investments

The TA reported that the "Five-Year Income Tax Exemption Incentive for New Investments" (Five Year Tax Exemption) is administered under the *Statute for Upgrading Industries*, and has been in effect since 2003.[145] The TA stated that the purpose of the program is to encourage investment by allowing revenue produced by brand-new machinery, equipment, or technology purchased during the designated period to be eligible for tax exemptions.[146] The TA reported that the credit is applied to a company's taxable income based on calculations by the tax bureau. The amount of the credit, or the tax-free income, is re-calculated for the next four consecutive years.[147] The TA reported that DSC claimed the tax exemption under the program in its tax returns filed during the POI.[148]

We determine that the Five Year Tax Exemption program is countervailable. We find that the tax exemption provides a financial contribution in the form of revenue foregone within the meaning of section 771(5)(D)(ii) of the Act and confers a benefit equal the amount of tax savings under the program as provided by section 771(5)(E) of the Act and 19 CFR 351.509(a). Regarding specificity, we determine that the legislation indicates that benefits are expressly limited to companies which are qualified as newly emerging, important and strategic industries, and, therefore, the program is *de jure* specific under section 771(5A)(D)(i) of the Act.[149] To calculate the benefit from this program, we treated the income tax exemption claimed by DSC as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

The total benefit DSC received during the POI was less than 0.005 percent of the total consolidated sales of the CSC Companies for the POI. Therefore, consistent with the Department's practice, we determine that this program did not confer a benefit to the CSC Companies during the POI.[150] As noted above, as AFA we are applying a rate of 2.13 percent to Leicong.

6. Verification of Greenhouse Gas Emission Inventory

The TA reported that the Verification of Greenhouse Gas Emission Inventory program is designed to encourage companies in the energy sector to verify and understand their Greenhouse Gas (GHG) emissions.[151] The TA stated that this program has been in effect since March 26, 2010.[152] The TA explained that the purpose of this program is to promote work on the inventory and reduction of GHG emissions by the energy industry as well as encourage enterprises to

[145] *See* TA IQR at Exhibit P – 1 at 1, Exhibit P – 2, and Exhibit P – 3.
[146] *See* TA IQR at Exhibit P -1 at 1.
[147] *Id.* at 3.
[148] *See* TA IQR at Exhibit P – 1 at 2.
[149] *Id.* at Exhibit P – 3 at 7.
[150] *See, e.g., CTL Plate 2005 Final Results* and accompanying Issues and Decision Memorandum at "Asset Revaluation under Tax Programs under the Tax Reduction and Exemption Control Act (TERCL) Article 56(2)."
[151] *See* TA 3rd SQR at 18.
[152] *Id.*

obtain GHG validation or verification statements. Companies in the energy industries, which include the (1) petroleum refining industry, (2) natural gas industry, (3) power generation industry, and (4) cogeneration power plants are eligible to apply for the GHG Validation and Verification Subsidy.[153] The funds under this program are provided to offset the costs associated with a company's verification of its GHG emissions. In addition, companies can receive additional funds for taking corrective actions to reduce their GHG emissions.[154]

We determine the Verification of GHG Emissions Inventory program is countervailable. The Verification of GHG Emissions Inventory program is a grant and constitutes a financial contribution in the form of a direct transfer of funds by the authority and confers a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because this program is only available to companies in the energy industries, we determine this program is *de jure* specific under section 771(5A)(D)(i) of the Act.

The total grant DSC received during the POI was less than 0.005 percent of the total consolidated sales of the CSC Companies for the POI. Therefore, consistent with the Department's practice, we determine that this program did not confer a benefit to CSC Companies during the POI.[155] As noted above, as AFA we are applying a rate of 2.13 percent to Leicong.

D. Programs Determined To Be Not Used[156, 157]

1. Income Tax Credits for Investment in Designated Regions
2. Income Tax Credits for Participating in Infrastructure Projects
3. Grants for Developing an International Image and Brand
4. Subsidies for Companies that Invest in Industrial Parks

E. Program for Which the Department is Deferring Investigation to Any Future Administrative Reviews

1. Sustainable Employment Program

The TA reported that the Sustainable Employment Program was established on January 5, 2010, for the purpose of providing currently unemployed minority workers with opportunities to join the workforce.[158] The TA stated that the program is administered under Article 3 of the

[153] *Id.*
[154] *Id.*
[155] *See CTL Plate 2005 Final Results* and accompanying Issues and Decision Memorandum at "Asset Revaluation under Tax Programs under the Tax Reduction and Exemption Control Act (TERCL) Article 56(2)."
[156] The Department determines that CSC did not use these programs, For Leicong, the Department finds that Leicong did not use the income tax programs, but as AFA, will apply a rate of 2.13 percent to the "Grant for Developing an International Image and Brand," and the "Subsidies for Companies that Invest in Industrial Parks."
[157] We find the grants provide a financial contribution and are *de jure* specific because they are available to either companies that have exports or are limited to companies that invest in specific areas.
[158] *See* TA 3rd SQR at 7.

Administrative Order, and has been in effect since January 5, 2010.[159] The TA reported that DSC received assistance under this program.[160]

Due to time and resource constraints, the Department did not have the opportunity to issue a supplemental questionnaire to the TA requesting complete usage information required to conduct a complete specificity analysis. Therefore, if this investigation results in a CVD order, we will examine this program in a subsequent administration review.

VIII. CALCULATION OF THE ALL OTHERS RATE

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States. The all-others rate may not include zero and *de minimis* rates or any rates based solely on the facts available. However, where the countervailable subsidy rates for all of the individually investigated respondents are zero or *de minimis* or are based on AFA, the Department's practice, pursuant to 705(c)(5)(A)(ii), is to calculate the all others rate based on a simple average of the zero or *de minimis* margins and the margins based on AFA (*e.g.* ((0.48 percent + 17.12 percent) / 2)).[161]

This practice is based on the SAA, which states:

> Where the countervailable subsidy rates for all exporters and producers examined are zero or *de minimis*, or are determined entirely on the basis of the facts available, section 705(c)(5)(A)(iii) authorizes Commerce to use any reasonable method to establish an all-others rate.[162]

IX. ANALYSIS OF COMMENTS

Comment 1: Whether the CSC Companies Were Disproportionate Users of Certain Programs

TA's Case Brief

- The Department found the Tariff Exemption for Imported Equipment Program and the Income Tax Credit for Upgraded Equipment Program, specific because CSC's benefit constituted "predominant use."
- The benefit CSC received under the program represented a relatively small amount of benefit when compared to the total provided under the program.
- The Department previously declined to find predominant use for usage ratios that are higher than the usage ratios calculated for CSC in this investigation.
- CSC, as a large enterprise, qualifies for a greater absolute benefit than smaller enterprises.

[159] *Id.*
[160] *Id.*
[161] *See Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013).
[162] *See* SAA at 942.

- The courts have found the average comparison methodology insufficient to support a *de facto* specificity finding where a benefit conferred on a large company might be disproportionate merely because of the size of the company.[163]
- The courts have found the Department's finding that a subsidy was not specific where the fact that an industry received a greater monetary benefit from a program than did other participants is not determinative of whether that industry was 'dominant' or receiving 'disproportionate' benefits.[164]

Department's Position: The Department disagrees with the TA and finds that certain programs were disproportionately used by CSC and are therefore specific. The TA argues that the Department previously found that usage rates ranging from 4.9 percent to 15.6 percent are disproportionate.[165] First, we note that the Department conducts its *de facto* specificity analysis under section 771(5A)(D)(iii)(III) of the Act on a case-by-case basis. As the Court of Appeals for the Federal Circuit (CAFC) stated: "{d}eterminations of disproportionality and dominant use are not subject to rigid rules, but rather must be determined on a case-by-case basis taking into account all facts and circumstances of a particular case."[166] Thus, the Department's analysis of usage ratios in one proceeding does not necessarily inform its analysis in subsequent proceedings. Second, in the proceedings referenced by the TA, the Department was referring to usage ratios of particular industries or industry sectors.[167]

In contrast, for the Imported Equipment Program, the Department compared CSC's receipt of benefits against the amount all companies in Taiwan received, and as indicated in the usage data, CSC received benefits under the program that greatly exceeded the average exemption amount.[168] For the Upgraded Equipment Program, as mentioned above, the Department used the information provided by the TA and determined that the benefit received by CSC is among the highest received when compared to the benefit received by other companies.[169] Accordingly, we continue to find that this program is *de facto* specific to CSC under section 771(5A)(D)(iii)(III) of the Act.

According to the TA, the CAFC holding in *AK Steel* demonstrates that the comparison methodology utilized by the Department in the *Preliminary Determination* is insufficient to support a *de facto* specificity finding. However, we do not construe *AK Steel* as mandating or

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[163] *See* TA Brief at 7, citing *AK Steel Corp v. United States*, 192 F3d 1376, 1385 (Fed. Cir. 1999) (*AK Steel).*
[164] See TA Brief at 8, citing *Bethlehem Steel Corp. v. United States*, 140 F.Supp.2d 1354 (CIT 2001) (*Bethlehem Steel*); *Samsung Electronics co. Ltd. v. United States*, 973 F. Supp.2d 1321 (CIT 2014) (*Samsung Electronics*).
[165] *See* TA Brief at 5, citing *Final Negative Countervailing Duty Determination; Live Cattle From Canada*, 64 FR 57040, 57054 (October 22, 1999) (*Live Cattle from Canada)*; *Final Negative Countervailing Duty Determination: Live Swine from Canada*, 70 FR 12186 (March 11, 2005) (*Live Swine from Canada*) and accompanying Issues and Decisions Memorandum at comment 1; *Certain Steel Products from Belgium*, 58 FR 37273, 37280 (July 9, 1993) (*Steel from Belgium); Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") From Italy*, 61 FR 30288 (June 14, 1996) (*Pasta from Italy)* at 30296.
[166] *AK Steel Corp. v. United States*, 192 F.3d 1367, 1384 (Fed.Cir. 1999).
[167] *See Live Cattle from Canada* at 57054*; Live Swine from Canada* IDM at Comment 1*; Steel from Belgium* at 37280; *Pasta from Italy* at 30296.
[168] *See* Final *De Facto* Specificity Memo for details; *see* Memorandum to Eric Greynolds from Christopher Hargett and Patricia M. Tran, "Countervailing Duty Investigation: Non-Oriented Electrical Steel from Taiwan: De Facto Specificity Analysis," dated March 18, 2014.
[169] *See* Final *De Facto* Specificity Memo for details.

prohibiting any particular methodology. In *AK Steel*, the CAFC affirmed the Department's specificity analysis in light of the facts and circumstances of that particular case and explained that "{d}eterminations of disproportionality and dominant use are not subject to rigid rules, but rather must be determined on a case-by-case basis taking into account all the facts and circumstances of a particular case."[170]

We similarly find the TA's reliance on *Bethlehem Steel* and *Samsung Electronics* to challenge the specificity finding for the Upgraded Equipment Program to be misplaced. Our finding in *Bethlehem Steel* that electricity rates "will not be countervailed solely because the rates are provided to large consumers" if "the rate charged is consistent with the standard pricing mechanism and the company under investigation is, in all other respects, essentially treated no differently than similarly situated consumers" was based on our examination of the Korean steel industry, which we determined was characterized by the large consumption of electricity.[171] More importantly, *Bethlehem Steel* concerned the standard related to determining whether there is a benefit conferred under 771(5)(E)(iv) of the Act for the authority provision of a good or service, not whether a program is specific under 771(5A)(D) of the Act. Thus, the program and facts of *Bethlehem Steel* are not applicable to our analysis of these programs and the facts in this investigation. Finally, the court in *Samsung Electronics* recognized that "{n}either the Federal Circuit in *AK Steel* nor this Court in *Bethlehem Steel* required Commerce to consider whether the benefit awarded was proportionate relative to a beneficiary's use of the program."[172]

We find that the facts of the Upgraded Equipment Program are different than those in *Samsung Electronics*, in that in the instant case, there is information on the record with respect to individual company benefit amounts and proportion of the amounts given to each company, of which CSC received among the highest benefit.[173]

The TA argues that CSC is a large company and qualifies for a greater amount of benefits than smaller companies.[174] First, we note that this statement is not necessarily correct. A large company that purchased only domestically-manufactured equipment would receive no benefits under this program as opposed to a smaller company that imported equipment. Similarly, a large software company would receive less benefits under this program than a small but capital-intensive company.

Moreover, under the explicit language of the statute and the SAA, if the Department finds that a program has a limited number of actual recipients, an enterprise is a predominant user of a subsidy, or an enterprise receives a disproportionately large amount of the subsidy, that is sufficient for finding *de facto* specificity under section 771(5A)(D)(iii) of the Act. For example, if there were only 20 actual subsidy recipients, neither the statute nor the SAA requires the

[170] *See AK Steel* at 1385 citing *Proposed Regulations*, 54 Fed. Reg. at 23368 ("The specificity test cannot be reduced to a precise mathematical formula. Instead, the Department must exercise judgment and balance various factors in analyzing the facts of a particular case.").
[171] *See Bethlehem Steel*, 140 F. Supp. 2d at 1369.
[172] *See Samsung Electronics*, 973 F. Supp. 2d at 1327.
[173] *See* Letter from the TA to the Department, "Non-Oriented Electrical Steel from Taiwan: Third Supplemental Questionnaire Response of the Government of Taiwan," dated April 16, 2014, at 3, and accompanying Excel data file.
[174] The TA has not cited to any evidence on the record to support its statement.

Department to explain why there are only 20 subsidy recipients. Similarly, if one recipient received a disproportionate share of the subsidies under a program, neither the statute nor the SAA requires the Department to explain why that recipient received a disproportionate amount of subsidies provided under the program. The analysis of *de facto* specificity, as noted by the term "*de facto*," is based solely on the facts with respect to the distribution of subsidies to recipients under the investigated subsidy program.

Therefore, when the Department found that CSC received a disproportionately large share of the subsidy, there was no reason to examine why CSC received a disproportionate share because it does not matter whether CSC received a disproportionate share of the benefits because it is a large company or is a capital-intensive company or that it chose to import expensive equipment rather than to purchase domestically-manufactured equipment. Because this is a *de facto* specificity finding, the statute and SAA require only an examination of the facts regarding the distribution of benefits under the program, which, as we explained, indicate that CSC received a disproportionate share.

Comment 2: Whether the Industrial Technology Development Program and the Ability of Emerging Development Program are Separate Programs

TA's Case Brief

- Grants awarded pursuant to the Industrial Technology Development Program (ITDP) and Strengthen the Ability of Emerging Development Program (SAEDP) are administered by the same authorities pursuant to the same laws and should be considered a single program by the Department.
- The record established that these grants essentially operate as a single program, are designed to serve the same purpose, and are governed by the same laws and regulations.
- The Department should only include this program once if it continues to include it in the total AFA rate calculation for Leicong.

Department's Position: The Department disagrees with the TA and finds that the ITDP and SAEDP are separate programs. In order to consider these programs as one program, the TA must provide evidence that the two programs meet all of the criteria to be considered integrally linked as set forth under 19 CFR 351.502(c). The TA did not cite to any record evidence that the programs are integrally linked under the Department's regulations. Based on the information that is on the record, these programs do not meet all of the criteria for integral linkage under 19 CFR 351.502(c). For example, 19 CFR 351.502(c) requires that the subsidy programs have the same purpose and bestow a similar level of benefits on similarly situated firms. The TA reported that "{t}he purpose of ITDP, which was established in 1999, is to encourage industrial innovation.[175] The purpose of SAEDP is to encourage corporations to undertake R&D activities and create technology or products that meet future market needs."[176] Further, the TA stated that "The ITDP is a long-term program, while SAEDP only accepted applications during two short periods: March 1, 2009 to April 30, 2009; and October 15, 2009 to December 31, 2009."[177]

[175] *See* TA IQR at Exhibit H – 1 page 1.
[176] *See* TA IQR at Ex H-1 page 1.
[177] *Id.*

Thus, although the ITDP and SAEDP are governed by the same laws and regulations, the two programs are not intended to serve the same purpose. According to the TA, the ITDP is intended to provide long term support for general innovation activities while the SAEDP is intended to provide support to bring discrete technologies or products to the market.[178] Further, information from the TA indicates that the have separate application processes.[179]

We therefore determine that it is appropriate to treat the ITDP and SAEDP as separate programs. Accordingly, when applying total AFA to Leicong, we assigned separate AFA rates to the ITDP and SAEDP programs.

Comment 3: Whether Certain Programs Are *De Facto* Specific by Virtue of Limited Use

TA's Case Brief

- The Department found the Shareholder's Investment Tax Credit for Investment in Newly Emerging, Important and Strategic Industries Program, ITDP, SAEDP, and Self Evaluation Service *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the number of companies participating in this program during the POI was limited in number.
- The Department did not provide a basis or analytical framework to explain how it determined what qualifies as "limited in number."
- There is no benchmark to determine what comprises a limited number of users.
- The SAEDP was terminated in 2010 and no companies have been approved since 2011.
- The Self Evaluation Service program was subject to budget cuts in 2012 that limited the number of companies to which the TA was able to provide this service.
- Leicong only participated in the Self Evaluation Service in 2010, and the Department should use participation numbers from 2010 to make its determination.

Department's Position: The Department disagrees with the TA and finds that Shareholder's Investment Tax Credit for Investment in Newly Emerging, Important and Strategic Industries Program, ITDP, SAEDP, and Self Evaluation Service were used by a limited number of companies and thus, are *de facto* specific under section 775(5A)(D)(iii)(I) of the Act. The SAA states with respect to the analysis of specificity: "{t}he Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy."[180] Therefore, in light of the SAA, the specificity provision in section 771(5A)(D)(iii)(I) of the Act is intended to capture those subsidies that are not broadly available and widely used throughout an economy.

Section 775(5A)(D)(iii) and sub-section (I) of the Act explicitly state that "{w}here there are reasons to believe that a subsidy may be specific as a matter of fact, the subsidy is specific if one or more of the following factors exist: The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number." The Department looks at whether a

[178] *Id.*
[179] *Id.*
[180] *See* SAA at 929. The SAA "shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act…." 19 USC 3512(d).

program is provided to a limited number of companies on a case by case basis.[181] As indicated in *Preliminary Determination*, we find that the Shareholder's Investment Tax Credit for Investment in Newly Emerging, Important and Strategic Industries Program, ITDP, SAEDP, and Self Evaluation Service provide benefits to a limited number of companies and, therefore, are *de facto* specific.[182]

There is no information on the record that would indicate that the SAEDP program has been terminated. Rather, the TA reported that "on and after May 12, 2010, Subparagraph 2, Article 9 of the *Act for Industrial Innovation* has applied to both programs," and "after November 15, 2010, the *Regulations Governing the Assistance on Innovation Activities by Ministry of Economic Affairs* has applied to both the ITDP and SAEDP programs."[183] Thus it appears that the SAEDP program was not terminated in 2010.

The TA asserts that the Self Evaluation Service was "reduced by a substantial amount"[184] that limited the number of companies to which the TA was able to provide the service. Regardless of the funding available for the Self Evaluation Service, we find that the program was extended to a limited number of companies, and thus, is *de facto* specific.

As noted, as a result of Leicong's decision to not participate, the record of this investigation does not contain usage figures from Leicong that would allow the Department to determine whether a program is specific to Leicong or whether Leicong used a certain program. Absent such data on the record, the Department applied AFA pursuant to 776(a) and 776(b) of the Act.

Thus, as AFA, the Department will continue to include the programs identified by the TA in the calculation of Leicong's countervailing duty rate.[185]

Comment 4: Whether Benefits Under the Grants for Photovoltaic Power Stations (SCPPS) Program Are Tied to Non-Subject Subject Merchandise

TA's Case Brief

- The SCPPS bears no relationship to NOES production or to the steel industry because the program was available to a wide number of participants.
- The SCPPS was terminated in 2010, and only residual funding was provided in 2012.
- The TA urges the Department to examine usage statistics from a broader time period, which shows broader usage of this program.
- The Department should exclude this program from any calculation of a rate for Leicong, as Leicong could not have possibly benefited from this program.

Department's Position: Under this program, the TA provides a payment of NT$50,000 per KW electricity generating capacity for eligible equipment upon its installment.[186] There is nothing on

[181] *See AK Steel Corp. v. United States*, 192 F.3d 1367, 1384 (Fed.Cir. 1999).
[182] *See Preliminary Determination;* GOT IQR at Ex O – 1 page 11; GOT IQR at Ex H – 2 and H – 3; Final *De Facto* Specificity Memo.
[183] *See* TA IQR at Ex H-1 page 4.
[184] *See* TA NSA Response at 24.
[185] *See* AFA Rate Memorandum.

the record indicating that, at the time of the bestowal, the receipt of the grants under the program is tied to a particular product under 19 CFR 351.525(b)(5). Thus, in accordance with 19 CFR 351.525(b)(3), we find benefits under this program are attributable to total sales because this is an untied domestic subsidy. Because this is an untied domestic subsidy under 19 CFR 351.525 we find that the subsidy is not tied to a particular product, or that there is any evidence on the record to support the assertion that Leicong did not use this subsidy program. As such, we assigned an AFA rate to Leicong under this program and included this rate in Leicong's overall net subsidy rate.

Regarding the TA's claims that it terminated the program, the legislation the TA provided on the record did not include a date or other indication that the program has, in fact, been terminated.[187] Therefore, we find the TA's claims concerning the program's termination to be unsubstantiated.

Comment 5: Whether the Department Should Apply Total AFA to Leicong

TA's Case Brief

- Leicong was not unwilling, but rather, unable to respond to the Department's CVD questionnaire.
- The TA provided information with respect to Leicong for the programs discussed in the questionnaire.
- The Department will rely on facts otherwise available when information is not on the record or an interested party withholds requested information, fails to provide requested in the form and manner requested within the established deadlines, significantly impedes the proceeding, or provides information that cannot be verified.[188]
- The Department will not decline to consider information if certain conditions are met.[189] Those conditions are: (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and (5) the information can be used without undue difficulties.
- The TA demonstrated that Leicong did not receive benefits pursuant to the vast majority of the programs at issue in this investigation.
- The TA's response contains all the information that the Department requested of Leicong.
- The Department has previously used information submitted by a government to render determinations on respondent companies, including geographically-limited subsidies and tax returns.
- The information provided by the TA on behalf of Leicong was certified by the TA and no record evidence calls into question its reliability and accuracy.

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[186] *See* TA IQR at Ex I pg. 9.
[187] *Id.* at Ex I – 2; Ex I – 6; Ex I – 7.
[188] *See* Section 776 of the Act.
[189] *See* Section 782(e) of the Act.

- The TA obtained consent from Leicong for the Department to verify the company. Further, the TA requested that the Department set aside time at verification to examine the data pertaining to Leicong.
- The fact that the Department chose not to verify information with regard to Leicong does not render it unreliable.
- The information on the record is complete and can serve as a reliable basis for reaching a determination.

Department's Position: Section 776(a) of the Act provides that, if an interested party or any other person withholds information that has been requested, fails to provide such information by the deadlines, significantly impedes a proceeding, or provides information that cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination. Further, section 776(b) of the Act provides that, if the Department finds that "an interested party has failed to cooperate by not acting to the best of its ability" the Department "may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." As discussed above in the "Use of Facts Otherwise Available and Adverse Inferences" section, Leicong, a mandatory respondent, withheld requested information and significantly impeded a proceeding, and failed to cooperate in this investigation by not acting to the best of its ability to comply with the Department's requests for information contained in the initial questionnaire.[190] Leicong maintained that due to its size, the financial burden to the company, and the volume of its exports of subject merchandise to the United States, it should be exempt from responding to the Department's questionnaire.[191] At the same time Leicong requested an extension of time to respond to the Department's questionnaire.[192] The Department granted the extension.[193] Leicong did not provide the Department with any information regarding its sales, exports to the United States, or use of any programs. As such, the application of facts available to Leicong is warranted. Further, the use of an inference that is adverse to the company's interests in selecting from the facts otherwise available is appropriate, pursuant to section 776(b) of the Act.

Under section 782(e), the Department relies upon a government's response where a respondent company failed to cooperate, provided certain conditions are satisfied. For example, in *Lined Paper from India*, the Department utilized information in the Government of India's response in making its findings because AR Printing & Packaging India Pvt. Ltd., a mandatory respondent, did not respond to the Department's questionnaire.[194] Specifically, we relied on information in the government's response to find that certain programs were terminated. In *CTL Plate from Indonesia*, the Department also relied on certain information submitted in the Government of

[190] *See* Letter to Leicong Industrial Company., Ltd., from the Department, entitled "Countervailing Duty Investigation of Non-Oriented Electrical Steel from Taiwan**:** Countervailing Duty Questionnaire," dated November 22, 2013 (Leicong IQR).
[191] *See* Letter from Leicong to the Department, "Non-Oriented Electrical Steel from Taiwan: Submission of E-mail for the Record and Extension Request," dated December 23, 2013
[192] *Id.*
[193] *See* Letter from the Department to Leicong, "Countervailing Duty (CVD) Investigation of Non-Oriented Electrical Steel from Taiwan: Initial Questionnaire Response," dated December 23, 2013.
[194] *See Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; Calendar Year 2010*, 78 FR 22845 (April 17, 2013) (*Lined Paper from India*), and accompanying Issues and Decision Memorandum at "Summary."

Indonesia's questionnaire response because Krakatau Steel, a mandatory respondent, failed to respond to the Department's questionnaires.[195] In both of those cases, the respective government provided a response that included useable information about, and specific to, the non-cooperating company.

Similarly, the Department has determined to rely on a government's response in lieu of company's response with regard to provincial or regional programs when applying AFA in certain instances. Specifically, with respect to such programs, when the government "can demonstrate through complete, verifiable, positive evidence that non-cooperating companies (including all their facilities and cross-owned affiliates) are not located in the provinces whose subsidies are being investigated,"[196] the Department will not apply an AFA rate for such programs.

The TA submitted information on the record for Leicong, specifically Leicong's tax return for 2011, filed in 2012.[197] The TA also submitted statements on the record with regard to Leicong's use or non-use of programs, and caps on benefits available under certain programs.[198] The Department used the submitted tax returns to find that Leicong did not use any of the income tax programs at issue in this investigation.[199]

The TA urges the Department to also utilize information contained in Leicong's financial statement (*e.g.*, sales data). By not participating, Leicong did not provide any information regarding its sales, corporate affiliations, subsidiaries, or other financial holdings, nor did it provide an answer, affirmative or negative, as to the receipt of grants or tax exemptions from the TA in the initial questionnaire sent by the Department. As a result Leicong did not participate in this proceeding. The Department, therefore, did not have the opportunity to fully analyze and issue supplemental questions regarding the company's sales data, or to determine whether Leicong has affiliates, subsidiaries or other financial interests in Taiwan. Further, we find that the information concerning Leicong's financial statements and sales data could not be verified because the Department was unable to supplement Leicong and fully analyze the information;

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[195] *See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia*, 64 FR 73155, 73156 (December 29, 1999) (*CTL Plate from Indonesia*), where the Department stated that "… Krakatau failed to respond to any of the Department's questionnaires. The GOI provided some, although not all, of the information requested about Krakatau. In the Preliminary Determination, relying upon section 782(e) of the Act, the Department determined that based on the GOI's submission of some data, the administrative record was not so incomplete that it could not serve as a reliable basis for reaching a preliminary determination. Therefore, the Department used the GOI's data where possible, *i.e.*, the Department relied on information provided by the GOI to reach a preliminary determination that Krakatau had not used the Rediscount Loan Program and Tax Holiday Program. The Department only resorted to the facts otherwise available in those instances where data necessary for the calculation of Krakatau's subsidy rate was missing.… In addition, … the Department determined that in those instances when resort to facts available was necessary, the use of an adverse inference was warranted under section 776(b) of the Act because the Department determined that Krakatau failed to cooperate by not acting to the best of its ability in complying with requests for information in this investigation."

[196] *See, e.g., Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum at Application of Facts Available, Including the Application of Adverse Inferences.

[197] *See* Leicong Tax Response.

[198] *See, e.g.* TA IQR Ex. D, Ex. E, Ex. F; TA's NSA Response at 4 and 19.

[199] *See* "Use of Facts Otherwise Available and Adverse Inferences," section above.

therefore the record did not contain a complete information to verify.[200] Because Leicong's information does not satisfy the requirement in section 782(e)(2) of the Act, we did not considered this information in our analysis when assigning a total AFA net subsidy rate to Leicong pursuant to section 776(a)(2)(A) and (C) of the Act. Finally, the TA's request for the Department to verify Leicong misunderstands the function of the Department's verification process. The aim of verification is to verify the reliability and accuracy of information submitted by a respondent. Such information has been subject to the Department's analysis and further supplemental questionnaires, where warranted, prior to verification. Accordingly, the verification process is not intended to be an exercise in obtaining or collecting new information. As noted above, Leicong did not submit necessary information for the Department to reach a determination in this investigation that is based upon Leicong's actual information. Without verified or verifiable sales data, the Department does not have a dependable denominator with which to calculate Leicong's rate.

Thus, the Department resorted to the use of AFA and, therefore, applied our CVD AFA hierarchy to assign net subsidy rates to Leicong for the programs listed in the calculation of the AFA rate.[201]

We also disagree with the TA's claim that the application of AFA is not warranted because Leicong, though willing, was not able to respond to the Department's questionnaire, and, thus, should not be held accountable for its failure to submit a response to the Department's questionnaire. In the initial questionnaire, the Department provided clear instructions to Leicong on how to file its response with the Department, and explained the serious consequences of failing to submit a questionnaire response.[202]

We find Leicong failed to cooperate by not acting to the best of its ability to comply with a request for information, regardless of the TA's claim that Leicong was unable to respond to the Department's CVD questionnaire. Leicong could have provided the information requested but did not. In *Nippon Steel*, the CAFC recognized that "{t}he statutory trigger for Commerce's consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent."[203] The CAFC in *Nippon Steel* further held that "{s}imply put, there is no *mens rea* component to the section 1677e(b) inquiry. Rather, the statute requires a factual assessment of the extent to which a respondent keeps and maintains reasonable records and the degree to which the respondent cooperates in investigating those records and in providing Commerce with the requested information."[204]

Thus, consistent with the CAFC's holding and the Department's practice, we disagree with the TA that Leicong and the TA's offer to allow the Department to verify information placed on the record for Leicong by the TA would mean that AFA is not warranted where necessary

[200] *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum at Application of Facts Available, Including the Application of Adverse Inferences (requiring complete information that can be verified).
[201] *See* AFA Memorandum.
[202] *See* Leicong Questionnaire Response at 3.
[203] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon Steel*).
[204] *Id*.

information for the Department's determination is not on the record specifically because Leicong did not provide the information requested. It was incumbent upon Leicong to participate in the investigation and to provide necessary information to the Department, as requested. Accordingly, we find that Leicong failed to act to the best of its ability. As a result, the application of AFA under section 776(b) of the Act is warranted in this case.

Comment 6: Whether the Department Should Not Include Certain Programs in Leicong's Total AFA Rate

TA's Case Brief

- The TA reported that Leicong did not receive benefits during the POI for the following programs:
    - Building and Land Value Tax Deduction for Supplying Major Infrastructure Projects
    - Subsidies for Companies that Invest in Industrial Parks
    - ITDP
    - SAEDP
    - Subsidy for Photovoltaic Power Stations
    - Tariff Exemption for Imported Equipment
    - Major Infrastructure Projects – Land Lease Program
- As such, the Department has no basis to assume, as AFA, that Leicong received subsides under these programs that benefited the company during the POI.
- Several programs are included in this investigation only by virtue of CSC disclosing its receipt of benefits pursuant to the Department's catch-all "other subsidy" question. The Department did not request any information of Leicong regarding its participation in these programs and, thus, no requested Leicong information is absent from the record.
- The Department found that certain programs were specific by virtue of CSC's predominant use or receipt of disproportionate benefits. These programs, therefore, are specific only with respect to CSC, and the Department should not include these programs with respect to Leicong.
- The Department should not apply adverse inferences to Leicong with respect to the programs included in the Department's new subsidy questionnaire. The Department issued a questionnaire to the TA for these programs, but did not issue a questionnaire to Leicong.
- The Department included programs in its AFA calculation for Leicong that the Department found were not used during the POI. The Department should not include those programs in calculating Leicong's rate.
- To the extent necessary, the Department must calculate Leicong's program-specific subsidy rates using record information.

Department's Position: As discussed in Comment 5, *supra*, because Leicong did not participate in this proceeding, the Department could not fully analyze or verify the information placed on the record. Leicong did not provide any information regarding its sales, corporate affiliations, subsidiaries, or other financial holdings, nor did it provide an answer, affirmative or negative, as to the receipt of grants or tax exemptions from the TA in the initial questionnaire sent by the Department. As a result, Leicong did not participate in this proceeding, and the

Department and interested parties did not have the opportunity to fully analyze and issue supplemental questions regarding the company's sales data, or to determine whether Leicong has affiliates, subsidiaries or other financial interests in Taiwan. Without verifiable information regarding Leicong's corporate affiliations, the Department cannot determine whether or not Leicong participated in any programs based upon Leicong's actual information, nor can the Department analyze whether Leicong participated disproportionally to other participants.

The TA asserts that the Department has no basis to assume that Leicong received benefits because the TA reported that Leicong did not receive benefits for certain programs. However, it is the Department's practice to verify the non-use of programs.[205] Therefore, without Leicong's participation and verification, the Department cannot use the information placed on the record by the TA.

The Department finds the TA's argument that because Leicong was not individually issued a new subsidy questionnaire, it should be exempt from replying, is unpersuasive. The new subsidy questionnaire is a public document, and all parties have access to it.[206] Had Leicong been participating, it would have the same opportunity to submit responses for each of the new subsidy programs identified in the questionnaire.

The TA also argues that the Department should not include programs found to be specific with respect to CSC, or those that were found to be not used, for Leicong's rate. However, as noted, as a result of Leicong's decision to not participate, the record of this investigation does not contain usage figures from Leicong that would allow the Department to determine whether a program is specific to Leicong or whether Leicong used a certain program. Absent such data on the record, the Department applied the available facts pursuant to 776(a) and 776(b) of the Act.

Thus, the Department will continue to include the programs identified by the TA in the calculation of Leicong's countervailing duty rate.[207]

Comment 7: Whether Subsidies Under the Companies that Invest in Industrial Parks and Major Infrastructure Projects – Land Lease Programs Are Separate Programs

TA's Case Brief

- The Department treated the Subsidies for Companies that Invest in Industrial Parks and the Major Infrastructure Projects – Land Lease Programs as a single program in the *Preliminary Determination*.
- By separating these two programs in the calculation for Leicong's rate, the Department has double counted with respect to Leicong.

[205] *See* Verification Report at 16 listing several programs found to be not used by CSC based on an examination of documents and accounting records.
[206] *See* Letter from the Department to the GOT, "Countervailing Duty Investigation of Non-Oriented Electrical Steel from Taiwan**:** New Subsidy Allegations Questionnaire for the Government of Taiwan (GOT)," dated February 24, 2014.
[207] *See* AFA Rate Memorandum.

Department's Position: In the *Preliminary Determination* the Department stated that the Subsidies for Companies that Invest in Industrial Parks program is also known as Major Infrastructure Projects – Land Lease program.[208] In the *Preliminary Determination*, we collapsed Subsidies for Companies that Invest in Industrial Parks with Major Infrastructure Projects – Land Lease Program.[209] Under further investigation, in the Post-Preliminary Determination, we found Major Infrastructure Projects – Land Lease Program Under PIPA countervailable but inadvertently did not clarify whether these were one or two separate programs.

Subsidies for Companies that Invest in Industrial Parks, and Major Infrastructure – Lease Program Under PIPA are two separate programs provided by the TA: enacted under different legislation; with different eligibility criteria; different benefit schemes; and administered by different agencies. Subsidies for Companies that Invest in Industrial Parks, as the TA reported in its January 14, 2014 IQR at Exhibit F, is a "lease incentive program that aims to promote the leasing of less favored land in certain industrial parks," under the "006688 Special Plan under Article 46 of the *Act for Industrial Innovation* (006688 program)." In the TA IQR, the TA stated the 006688 program "provides lease incentives to encourage tenants to establish their factories or facilities on less favored land in industrial parks designated by the TA during the period which the program is in effect."[210] The TA indicated in its IQR that CSC and its affiliates did not apply for, accrue or receive benefits under the 006688 program because CSC did not have facilities in the specific areas within the Linhai Industrial Park covered by the 006688 program.[211] The benefits under the 006688 program provide "graduated discounted lease rates over a period of six years. Specifically, the program exempts rent for the first two years of the lease, offers a 40 percent discount of the rent for the third and fourth years of the lease, and offers a 20 percent discount of the rent for the fifth and sixth years of the lease."[212] The TA indicated that the Industrial Development Bureau of the Ministry of Economic Affairs is the only agency that administers the 006688 program, administers all phases of the 006688 program, and no other regional or local authorities are involved in administering the program.[213] The TA and CSC and its cross-owned affiliates reported that it did not participate in this program; therefore the program is not used by CSC and its cross-owned affiliates.

In contrast to Subsidies for Companies that Invest in Industrial Parks, Major Infrastructure Land Lease Program under PIPA was enacted pursuant to article 46 of the *Act for Promotion of Private Participation in Infrastructure Projects* (*PIPA*) and the Executive Yuan Letter No. 11153.[214] In its IQR, the TA indicated that the Major Infrastructure Land Lease Program Under PIPA encouraged private investment in major infrastructure projects by providing use of land within the project zone at reduced lease rates.[215] Private enterprises participating in infrastructure projects enter into agreements with the relevant authority overseeing the

[208] *See Preliminary Determination* at footnote 92.
[209] *Id.*
[210] *See* TA IQR at Exhibit F-1 page 1.
[211] *Id*. at page 3.
[212] *Id*. at page 1.
[213] *Id*. at page 2.
[214] *See* TA IQR at Ex Q-1
[215] *Id*. at Ex Q-1 page 1

infrastructure project.[216] The TA and CSC's cross-owned affiliate, Dragon Steel Corporation (DSC), reported that DSC participated in a major infrastructure project administered under the Taiwan International Ports Corporation (TIPC), Port of Taichung Branch. The TIPC is a 100-percent TA owned company, which was reorganized from the Maritime and Port Bureau (MPB) under the Ministry of Transportation and Communication (MOTC). DSC received a benefit under *PIPA* of a 40 percent discount off of its standard lease rate.

As described above, the two programs should not be treated as a single program because the Subsidies for Companies that Invest in Industrial Parks and Major Infrastructure Land Lease Program Under PIPA were enacted under different legislation, have different eligibility criteria, provided different benefits, and were administered by different TA entities. Because the Department determines that these are two separate programs, we continue to calculate Leicong's net subsidy rate by including both programs.

Comment 8: Whether the Department Should Use Benefit and Sales Data from the TA to Calculate a Rate for Leicong with Regard to the Conventional Industry Technology Development Program and the Self Evaluation Service Program

TA's Case Brief

- The TA supplied the free on board (F.O.B.) sales value for Leicong for 2012.
- The TA reported the benefit amounts Leicong received in 2012 under the Conventional Industry Technology Development Program and the Self Evaluation Service Program.
- Thus, the Department should not apply an AFA rate to Leicong under these programs, , but should instead calculate net subsidy rates using data provided by the TA.

Department's Position: The Department disagrees with the TA. As discussed in Comment 5, *supra*, Leicong did not provide any information regarding its sales, corporate affiliations, subsidiaries, or other financial holdings, nor did it provide an answer, affirmative or negative, as to the receipt of grants or tax exemptions from the TA. Because Leicong did not participate in this proceeding, the Department did not have the opportunity to analyze and issue supplemental questions regarding the company's sales data, or determine whether Leicong has affiliates, subsidiaries or other financial interests in Taiwan. Further, we find that the information concerning Leicong's financial statements and sales data could not be verified because the Department was unable to supplement Leicong and fully analyze the information. Therefore, the record did not contain a complete record to verify, which can only be built when a party cooperates. Because Leicong has not cooperated in this proceeding, we have disregarded this information. Thus, the Department does not have verified sales data from Leicong with which to calculate program rates for Leicong in the instant investigation.

[216] *Id.*

Comment 9: Whether the Verification of Greenhouse Gas Emission Inventory Program is Countervailable with Regard Leicong

TA's Case Brief

- The TA reported that Leicong did not received benefits under this program.
- This program is specific to the energy industry, and because Leicong does not operate in the energy industry, or have intensive manufacturing operations that could qualify it for this program, the Department should conclude that Leicong could not benefit from this program during the POI.
- If the Department includes this program in Leicong's total net subsidy rate, it should calculate a rate by applying the maximum benefit a company can receive under this program, and sales information on the record provided by the TA.

Department's Position: The Department disagrees with the TA. As discussed in Comment 5 and 6, *supra*, Leicong did not provide any information regarding their sales, corporate affiliations, subsidiaries, or other financial holdings, nor did they provide an answer, affirmative or negative, as to the receipt of grants or tax exemptions from the TA. Because Leicong did not participate in this proceeding, the Department and interested parties did not have the opportunity to fully analyze and issue supplemental questions regarding the company's sales data, or determine whether Leicong has affiliates, subsidiaries or other financial interests in Taiwan. Further, we find information concerning non-use could not be verified because the Department was unable to supplement Leicong and fully analyze the information. Therefore, the record did not contain a complete record to verify, which can only be built when a party cooperates. Because Leicong did not cooperate in this proceeding, we do not have full and complete information that would allow us to make the conclusion about usage, as the TA suggests. We, therefore, did not include this information submitted by TA in our analysis. Pursuant to section 776(b) of the Act, the Department has continued to include the Verification of Greenhouse Gas Emission Inventory Program in the total net subsidy calculation for Leicong.

Comment 10: Corroboration of the AFA Rate Applied to Leicong

TA's Case Brief

- The Department does not need to calculate an AFA rate for Leicong. There is information on the record indicating that Leicong did not use various subsidy programs at issue. Further, for the remaining programs at issue, it is not necessary for the Department to resort to the use of AFA because there are facts available on the record from the TA that will permit the Department to calculate a net subsidy rate for Leicong.
- In the *Preliminary Determination*, the Department, per its CVD AFA hierarchy, set Leicong's net subsidy rate for various programs equal to the net subsidy rate calculated for the Overrebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise (ODDIM) Program.[217]
- The Department has not evaluated the ODDIM Program since 1986, and there is no evidence on the record indicating that this program still exists, was used by a respondent

[217] *See* Preliminary IDM at 10.

in this investigation, or bears any relationship to the subsidies received by the respondents in this investigation.

- The adverse inferences provision under section 776(b) of the Act is designed to "provide respondents with an incentive to cooperate, not to impose punitive, aberrational, or uncorroborated margins."[218]
- The Department may not select unreasonably high rates having no relationship to the respondent's actual dumping margin.[219]
- Information is on the record demonstrating that the 2.13 percent rate individually assigned and the overall 17.12 percent rate is not probative of Leicong's actual subsidy benefits.
- For several programs, the TA provided the actual subsidy amounts received by Leicong. In other instances, the TA provided information indicating that benefit caps exist with regard to several programs. The Department should use this benefit information to calculate the net subsidy rates for Leicong.
- Using this information demonstrates that the AFA rates applied to Leicong are not probative and cannot be corroborated.
- As an alternative to the CVD AFA methodology employed in the *Preliminary Determination*, the Department could use the highest program subsidy rate calculated for the CSC Companies for each program that the Department determines benefited Leicong during the POI.
- Alternatively, the Department could assign the highest total net subsidy rate calculated for any Taiwanese respondent as the total AFA net subsidy applicable to Leicong.

Department's Position: Section 776(c) of the Act provides that when the Department relies upon such 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. "The statute does not prescribe any methodology for corroborating secondary information . . . ."[220] The SAA accompanying the Uruguay Round Agreements Act defines secondary information as "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."[221] The Department considers information to be corroborated if it has probative value.[222] "Commerce assesses the probative value of secondary information by examining the reliability and relevance of the information to be used."[223]

When the Department must resort to facts available because a respondent refused or failed to cooperate in providing necessary information, as requested, the Department makes the reasonable inference that the respondent used the program at issue and that a benefit was

[218] *See F.LLI de Cecco de Filippo Fara S. Martino S.p.A., v United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000)(*De Cecco)*.
[219] See *Gallant Ocean (Thailand) Co. v. United States*, 602 F3d 1319, 1323 (Fed. Cir. 2000). (*Gallant Ocean*).
[220] See *Mittal Steel Galati S.A. v. United States*, 491 F. Supp. 2d 1273, 1278 (Ct. Int'l Trade 2007)(*Mittal Steel Galati*).
[221] *See* H.R. Doc. 103-316, vol. 1 at 870 (1994).
[222] *Id.*
[223] *See Mittal Steel Galati*, 491 F. Supp. 2d at 1278.

provided that resulted in a countervailable subsidy. To conclude otherwise would allow parties to benefit from their own lack of cooperation. The statute allows the Department to draw an adverse inference where a party has failed to cooperate to the best of its ability. In addition, non-use in a prior period does not mean non-use in a later period. Each segment covers a different period of time and the Department conducts a full examination in each segment to determine the proper amount of the benefit for that time period. Contrary to the TA's argument that the Department failed to corroborate the facts available rate used, as explained above, the Department ensures that the AFA rate assigned is corroborated because it uses the actual subsidy rates of cooperating companies calculated for the same or similar type of program in prior segments of the proceeding or country of provision, as applicable. The calculated rates reflect the actual subsidy practices of the TA in Taiwan as reflected in the actual experience of companies in Taiwan.

The TA, however, fails to acknowledge the corroborative element inherent in the Department's AFA methodology. As explained above, in applying the AFA hierarchy, the Department seeks to identify identical program rates calculated for a cooperative respondent in the investigation or, if there are no such rates, from another investigation or administrative review. Alternatively, the Department seeks to identify similar program rates calculated in any proceeding covering imports from Taiwan. Actual rates calculated based on actual usage by Taiwanese companies are reliable where they have been calculated in the context of an administrative proceeding. Moreover, under our CVD AFA methodology, we strive to assign AFA rates that are the same in terms of the type of benefit, (*e.g.*, grant to grant, loan to loan, indirect tax to indirect tax) because these rates are relevant to the respondent. Additionally, by selecting the highest rate calculated for a cooperative respondent we arrive at a reasonably accurate estimate of the respondent's actual rate, and a rate that also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[224]

In instances where an above-zero rate was calculated for CSC for a specific program, the Department applied that rate to Leicong as AFA.[225] Finally, because Leicong did not provide the data needed to calculate a rate in this investigation, *i.e.* program usage data and sales figures, the Department had to resort to calculating an AFA rate. In this case, we find that the "Overrebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise" in *Stainless Steel Cooking Ware* is the most similar program to match for all programs and therefore is appropriate AFA rate to apply to Leicong.

Comment 11: Calculation of the All-Others Rate

TA's Case Brief

- The Department calculated the all-others rate as the simple average of the AFA rate assigned to Leicong and the *de minimis* rate calculated for CSC.
- The Department has adequate record information to calculate a weighted average all-others rate, and must do so in the final determination.
- Specifically, the TA provided export data for the POI for Leicong and CSC.

[224] *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act,* H.R. Doc. No. 316, 103d Cong., 2d Session (1994) (SAA), at 870.
[225] *See* AFA Memorandum.

- By calculating a simple average all-others rate, the Department's ignored the standard practice of calculating a weighted-average all-others rate in calculating all-other rates unless doing so could potentially disclose proprietary information.[226]
- The Department must assign a reasonable rate that is supported by substantial record evidence.[227]
- The all others rate from the *Preliminary Determination* does not reflect economic reality and does not result in a subsidy rate that is as accurate as possible.

Department's Position: As stated in "Section VIII. Calculation of the All Others Rate," *supra*, sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States. The statute further explains that the all-others rate may not include zero and *de minimis* rates or any rates based solely on the facts available.[228] However, where the weighted-average countervailable subsidy rates for all of the individually investigated respondents are zero or *de minimis* or are based on AFA, the Department's practice, pursuant to 705(c)(5)(A)(ii), is to calculate the all others rate based on a simple average of the zero or *de minimis* margins and the margins based on AFA.[229]

The TA argues that the Department should use export data, supplied by the TA, for purposes of calculating a weighted-average all others rate. In the instant case, because Leicong did not participate in this proceeding the Department could not fully analyze or verify the information placed on the record. Thus, the export data provided by the TA may contain non-subject merchandise or other factors the Department may exclude from our calculations. As a result the Department does not have the data to calculate a weight-average subsidy rate for the final determination.

[226] *See Certain Oil Country Tubular Goods from the Republic of Turkey*, 79 FR 41964, 41965 (July 18, 2014).
[227] *See Navneet Publications (India) Ltd. v. United States*, 2014 Ct. Intl. Trade LEXIS 91, slip op 14-87 (CIT 2014).
[228] *See* Section 705(c)(5)(A)(i) of the Act.
[229] *See Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Indonesia*, 70 FR 13456 (March 21, 2005); *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from Malaysia*, 69 FR 34128 (June 18, 2004); *see also Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013).

X. CONCLUSION

We recommend approving all the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

6 OCTOBER 2014
(Date)