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Investigation Remand
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TMK IPSCO et al. v. United States

Consol. Court No. 10-00055, Slip Op. 16-62 (CIT June 24, 2016)

FINAL RESULTS OF REDERTERMINATION
PURSUANT TO COURT REMAND

I. SUMMARY

The Department of Commerce (the Department) prepared these final results of redetermination pursuant to the remand order of the Court of International Trade (CIT or the Court) in *TMK IPSCO et al. v. United States*, Consol. Court No. 10-00055, Slip Op. 16-62 (CIT June 24, 2016) (*Remand Opinion and Order*). These final remand results concern *Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*Final Determination*), and accompanying Issues and Decision Memorandum (*OCTG IDM*), as amended, *Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 3203 (January 20, 2010). The four respondents selected for individual examination in the investigation were Jiangsu Changbao Steel Tube Co., Ltd. (Changbao), Tianjin Pipe (Group) Co. (TPCO), Wuxi Seamless Oil Pipe Co., Ltd. (Wuxi), and Zhejiang Jianli Enterprise Co., Ltd. (Jianli).[1]

[1] *See, e.g.*, *Certain Oil Country Tubular Goods from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210, 47210 (September 15, 2009) (*Preliminary Determination*).

On remand, the Court ordered the Department to clarify or reconsider: (1) its use of the date of the People's Republic of China's (PRC's or China's) accession to the World Trade Organization (WTO) as a uniform cut-off date for identifying and measuring subsidies in the PRC; (2) its attribution methodology for subsidies received by certain of Changbao's and TPCO's subsidiaries; (3) its decision to include Jianli's freight quote in the benchmark price for steel rounds and billets; and (4) its decision not to tie the benefit received by TPCO from the provision of steel rounds and billets at less-than-adequate remuneration (LTAR) to its sales of seamless steel pipe.[2] Finally, the Court granted the Department's request for a voluntary remand to recalculate the benchmark for steel rounds without Steel Business Briefing (SBB) East Asia pricing data.[3]

On December 2, 2016, the Department issued its *Draft Remand Determination* and accompanying documents.[4] We invited interested parties to comment on the *Draft Remand Determination* by December 12, 2016. United States Steel Corporation (U.S. Steel) filed timely comments.[5] Based on our analysis of the comments received, we have made no changes from our *Draft Remand Redetermination.*

As set forth in detail below, pursuant to the Court's *Remand Opinion and Order*, in these final results: (1) under respectful protest, we have evaluated certain subsidies and determined a date prior to the WTO accession date on which they could be identified and measured for purposes of this remand; (2) we have changed the attribution methodology for certain of Changbao's and TPCO's subsidiaries; (3) we continue to find that the freight rates used by the Department to adjust the benchmark for steel rounds are representative of what an importer paid

[2] *See Remand Opinion and Order*, at 57.
[3] *Id.*, at 58.
[4] *See* Memorandum to All Interested Parties regarding, "Draft Determination in the Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the People's Republic of China," (December 2, 2016) (*Draft Remand Determination*).
[5] *See* Letter from U.S. Steel dated December 12, 2016 (Comments on Draft Remand Determination).

or would pay if it imported the product; (4) we have clarified our finding that the provision of steel rounds was not tied to TPCO's seamless steel pipe production; and (5) we have removed SBB East Asia pricing data from the benchmark for steel rounds.

II. BACKGROUND

On December 7, 2009, the Department published the *Final Determination* in the countervailing duty (CVD) investigation of Oil Country Tubular Goods (OCTG) from the PRC. The period of investigation (POI) was January 1, 2008 to December 31, 2008.

Certain domestic interested parties, TMK IPSCO, V&M Star L.P., Evraz Rocky Mountain Steel, Wheatland Tube Corp. and United Steelworkers, challenged the *Final Determination* in the CIT. The domestic interested parties' action was consolidated with actions filed by TPCO and Tianjin Pipe International Economic & Trading Corp (IETC) as well as by additional domestic producers of OCTG, Maverick Tube Corporation and United Steel Corporation.

On June 16, 2011, subsequent to the filing of responsive briefing, this Court stayed the consolidated action pending a final determination by the United States Court of Appeals for the Federal Circuit in *GPX International Tire Corp. v. United States*. The Federal Circuit issued its final decision in that case on March 13, 2015.[6] On May 7, 2015, the Court lifted the stay.[7]

On June 24, 2016, the Court issued its *Remand Order and Opinion*, in which the Court ordered the Department to reconsider the *Final Determination* with respect to the issues referenced above and granted the Department's request for a voluntary remand to reconsider the inclusion of SBB East Asia pricing data in the benchmark for the provision of steel rounds for LTAR.

[6] *GPX Int'l Tire Corp. v. United States*, 780 F.3d 1136 (Fed. Cir. 2015).
[7] Subsequent to the lifting of the stay, TPCO and IETC requested dismissal of their claims, which the CIT granted on July 2, 2015.

On July 25, 2016, the Department issued supplemental questionnaires to the Government of the PRC (GOC) and the four mandatory respondents regarding potential non-recurring subsidies and lending programs with outstanding loans during the POI that were disbursed prior to the PRC's WTO accession date.[8] The Department received no responses to our request for information.[9] On August 3, 2016, and November 14, 2016, the Department requested extensions of the deadline to file the remand redetermination with the Court. The Court granted an extension until December 21, 2016, to submit the final remand redetermination.

On December 2, 2016, the Department issued its *Draft Remand Determination* and accompanying documents.[10] We invited interested parties to comment on the *Draft Remand Determination* by December 12, 2016. United States Steel Corporation (U.S. Steel) filed timely comments.[11]

III. REMANDED ISSUES

A. Identifying and Measuring Subsidies Prior to the PRC's WTO Accession Date

Background

In soliciting information from the GOC and the mandatory respondents in the original investigation, the Department did not request or evaluate receipt of alleged or other subsidies prior to December 11, 2001.[12] In the *Final Determination*, the Department, consistent with other CVD proceedings, adopted a uniform cut-off date of December 11, 2001, from which the

[8] *See* the Department's letter to the GOC, Changbao, Jianli, Wuxi Seamless Oil Pipe Co. Ltd. (Wuxi) and the GOC dated July 25, 2016 (Questionnaire Pursuant to the June 24, 2016 Remand).
[9] Given the length of time since the investigation (2009), the Department confirmed the legal representation status of Changbao, Jianli, TPCO, and Wuxi. For those companies that no longer had local legal representation, the Department mailed the questionnaire via Federal Express to their Chinese headquarters and confirmed receipt from Federal Express through proof of delivery. *See* Memoranda to File from David Neubacher, Senior International Trade Compliance Analyst, regarding: Status of Respondent Representation (July 26, 2016); E-mail questionnaire to Tianjin Pipe (TPCO) (July 29, 2016); and Receipt of Questionnaires by Certain Respondents (October 28, 2016).
[10] *See Draft Remand Determination*.
[11] *See* Comments on Draft Remand Determination.
[12] *See*, in general, Letter from the Department dated June 4, 2009 (Countervailing Duty Questionnaire) at pages II-1 and III-5.

Department found that it could identify and measure subsidies in the PRC for purposes of CVD law.[13] The Department selected this date because it marked the PRC's accession to the WTO, which in turn reflected the PRC's implementation of various economic reforms.[14]

In the *Remand Opinion and Order*, the Court found that the Department "arbitrarily picked China's accession to the WTO as the date when economic conditions in China made subsidies identifiable and measurable."[15] The Court found that the Department's application of a uniform cut-off date was inconsistent with the Department's own acknowledgment that there "was not a single moment or single reform law that suddenly permitted {it} to find countervailable subsidies" in the Chinese economy, and that reform "may take hold in some sectors of the economy or areas of the country before others."[16] As a result, the Court ordered the Department on remand to "investigate each subsidy program and allocate subsidies beginning on the first date it could identify and measure the subsidy considering the particular program in question and the impact of relevant economic reforms on that program."[17]

Analysis of CVD Cut-Off Dates

In 1986, the Department found that it could not apply the CVD law to exports from the monolithic, Soviet-style economies of the 1980s, because the very concept of the government transferring a benefit to a producer or exporter in one of those state-controlled, centrally planned economies was meaningless. The Federal Circuit deferred to the Department's determination, observing that "{e}ven if one were to label these incentives as a 'subsidy' in the loosest sense of

[13] *See OCTG IDM* at 54.
[14] *Id.*, at 53.
[15] *See Remand Opinion and Order* at 22.
[16] *See Remand Opinion and Order* at 22-23 (quoting *OCTG IDM* at 53-54).
[17] *See Remand Opinion and Order* at 23.

the term, the governments of those nonmarket economies would in effect be subsidizing themselves."[18]

The *2007 Georgetown Memorandum*[19] focused on whether the analytical elements of the opinion in *Georgetown Steel*, which were framed according to the traditional, monolithic, Soviet-style economies of the 1980s, are applicable to China's current non-market economy (NME). The Department noted in the *2007 Georgetown Memorandum* that traditional, Soviet-style economies were characterized by "the deliberate and almost complete severance between market forces and allocation and use of resources," stating further that:

> In 1984, virtually every aspect of these economies was governed by extensive mandatory five-years plans created and administered by central planners. Production quotas were set for all {state-owned enterprises ("SOEs")} with near-complete government ownership and operation of all industries, banking, transportation, and communication systems, trade and public services, and most of the agricultural sector. Leaders and planners directed the flow of all materials, directly setting prices for nearly all factors of production, including labor and capital. The central government exercised complete control over investment and consumption in accordance with party priorities, the details of which extended down to the level of every enterprise.[20]

As the Federal Circuit found in *Georgetown Steel*, subsidies have no meaning in a command-control economy.[21] In such a situation, subsidies could not be separated from the amalgam of government directives and controls. Both the Federal Circuit's and the Department's reasoning focused on the *nature* of the NME in question, and not merely the label of "non-market economy." Subsidies can be meaningful, for example, in an NME that is no longer comprised of a monolithic entity that is ultimately responsible for all economic activity.

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[18] *Georgetown Steel Corp. v. United States*, 801 F.2d 1308, 1316 (Fed. Cir. 1986).
[19] *See* Memorandum from the Department dated October 28, 2016 (Remand) (containing Memorandum from the Department dated March 27, 2007 (Whether the Analytical Elements of the *Georgetown Steel* Opinion are Applicable to China's Present-Day Economy) (*2007 Georgetown Memorandum*)).
[20] *2007 Georgetown Memorandum* at pages 4-5, citing to Library of Congress Country Studies, Czechoslovakia, Economic Structures and Its Control Mechanisms (August 1987) and Library of Congress Country Studies, Soviet Union, Economy (May 1989).
[21] *Georgetown Steel*, 801 F.2d at 1316.

This is reflected in the statute. Section 701(f)(1) of the Tariff Act of 1930, as amended (the Act), provides that NME countries are subject to the CVD law. However, section 701(f)(2) of the Act contains an exception to this general rule, stating that CVDs are not required to be imposed on merchandise from an NME country "if the administering authority is unable to identify and measure subsidies provided by the government of the nonmarket economy country or a public entity within the territory of the nonmarket economy country because the economy of that country is essentially comprised of a single entity."

In the *2007 Georgetown Memorandum*, the Department found that the PRC's economy, "though riddled with the distortions attendant to the extensive intervention of the PRC government, is more flexible than these Soviet-style economies."[22] This "flexibility," in which "constrained market forces operate alongside of (and sometimes in spite of) government plans," includes both the existence of economic actors capable of undertaking commercial activity outside of the state-run monopoly over all production as well as a certain degree of "freedom of movement," *i.e.*, the ability of commercial actors to respond to changes in their economic environment, even if that environment is otherwise distorted. For example, the Department found in the *2007 Georgetown Memorandum* that "many business entities in present-day China are generally free to direct most aspects of their operations, and to respond to (albeit limited) market forces."[23] It is this fundamental change from China's command-control past – that is, from an economy that is "essentially comprised of a single entity" within the meaning of section 701(f)(2) of the Act – to a more flexible, although highly distorted economy, with sufficient freedom of movement that rendered subsidies meaningful and made it possible to determine whether the GOC has made a financial contribution and bestowed a benefit upon a Chinese

[22] *2007 Georgetown Memorandum* at page 5.
[23] *Id.*, at page 10.

producer (*i.e.*, the subsidy can be identified and measured) and whether any such subsidy is specific.

"Flexibility" and "freedom of movement" result from a variety of factors in the economy that *collectively* determine the freedoms or restrictions on the activities of commercial actors. This is at the heart of the *2007 Georgetown Memorandum*, which addressed a number of economic factors that, in concert, define the economic operating environment for all enterprises in China, finding that there was sufficient flexibility in China's economy to render subsidies meaningful and to allow the Department to identify and measure subsidies.

In the 2008 final affirmative determination of CVDs in circular welded carbon quality steel pipe from the PRC, the Department found that it was "appropriate and administratively desirable to establish a uniform date from which the Department will identify and measure subsidies in China for purposes of the CVD law."[24] Accordingly, the Department adopted December 11, 2001, the date on which China became a member of the WTO. This date was closely linked to the analysis that the Department undertook in the *2007 Georgetown Memorandum*, namely:

> {W}e have selected this date because of the reforms in the PRC's economy in the years leading up to its WTO accession and the linkage between those reforms and the PRC's WTO membership. The changes in the PRC's economy that were brought about by those reforms permit the Department to determine whether countervailable subsidies were being bestowed on Chinese producers. For example, the GOC eliminated price controls on most products; since the 1990s, the GOC has allowed the development of a private industrial sector; and, in 1997, the GOC abolished the mandatory credit plan.[25]

Commentators have noted the substantial reform efforts that preceded China's accession to the WTO. For example, the OECD noted that "the momentum towards a freer economy has

[24] *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.
[25] *Id.* (internal citations omitted).

continued this decade with membership of the World Trade Organization, resulting in the standardization of a large number of laws and regulations."[26] Further, regarding China's WTO accession commitments, a paper from the International Monetary Fund noted that:

> Apart from market access, China has major commitments on trade-related activities, such as national treatment and non-discrimination principles, and with respect to Trade-Related Investment Measures (TRIMs) and Trade-Related Aspects of Intellectual Property (TRIPs). Compliance with such commitments is likely to have far-reaching implications domestically, including by encouraging greater internal integration of domestic markets (through the removal of inter-provincial barriers). Moreover, the commitment to comply with the principles and rules of the international trading system will improve the transparency of the domestic policy environment.[27]

Other reforms that preceded China's accession to the WTO include a 1999 amendment to the PRC's Constitution that placed a greater emphasis on the role of the private sector;[28] 2000 amendments to the *1986 Law on Wholly Foreign-Owned Enterprises* (*WFOE Law*), which granted greater flexibility to foreign investors in establishing wholly-foreign owned enterprises;[29] and, the promulgation of the *Contract Law*, effective October 1, 1999, which made a substantial movement towards creating a universal framework for contractual obligations in China.[30] These reforms represent a significant movement towards a more flexible economic environment that enabled a greater degree of entrepreneurial discretion and protection. The increasing degree of openness, foreign investment and world integration, culminating in China's accession to the WTO, are indicators that the legal reforms promulgated over the 20 years preceding accession had begun to take root in the economy. This assessment was based on years of experience,

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[26] *Economic Survey of China* (Paris: Organization for Economic Cooperation and Development, 2005) at page 16.
[27] *China's Growth and Integration into the World Economy, Prospects and Challenges* (Washington, DC: International Monetary Fund, 2004), page 10.
[28] *See* Article 16 of the 1999 Constitution Amendments, amending Article 11 of the Constitution of the People's Republic of China ("The non-public sector of the economy such as individual and private sectors of the economy, operating within the limits proscribed by law, constitute an important component of the socialist market economy.").
[29] *See* Zimmerman, James, *China Law Deskbook, A Legal Guide for Foreign-Invested Enterprises*, 2nd edition (Chicago: American Bar Association, 2005) at pages 78-79, citing to *Wholly Foreign-Owned Enterprise Law of the People's Republic of China* (April 12, 1986, as amended on October 31, 2000).
[30] *Id.*, at pages 249-250, citing to the *Contract Law of the People's Republic of China*, (March 15, 1999) (the *Contract Law*).

research and analysis of a vast pool of third-party, expert sources that continually assess and update the ongoing reforms of China's economy. This is especially true of the time period covering the reforms necessary for China's accession to the WTO, which was closely analyzed world-wide by private researchers and WTO-member governments alike. In other words, the Department is confident that, as of 2001, China's reforms had progressed to the point that there was sufficient flexibility in the economy as a whole to warrant the application of the CVD law. As one commentator stated, "{a}lthough some analysts have viewed WTO accession as the start of a new stage in China's economic reform process, it is better seen less as a driver of further reform than as a manifestation of the stage reached by China's ongoing reform process."[31]

That said, the Department is also aware that China's reforms have been incremental in nature and that China's accession to the WTO may not have been the precise moment that sufficient flexibility was achieved. However, it is very difficult to look backwards in time and pinpoint the precise moment that the tides turned and sufficient flexibility was achieved. Given the broad nature of the analysis, identifying a date different from December 11, 2001, may also be feasible.

The Department stresses, however, that regardless of the ultimate date, the analysis of the economic factors that provide the basis for sufficient flexibility to determine that subsidies are meaningful and to identify and measure subsidies will *always result in a uniform cut-off date* that cuts across all subsidies because it focuses on the business environment and institutional factors that act in concert. In other words, it is the shift from an economy "essentially comprised of a single entity" to one that is not so comprised that allows for the identification and measurement of subsidies. Therefore, the Department maintains that a single, uniform cut-off date, regardless

[31] *See* Clarke, Donald, *et al.*, "The Role of Law in China's Economic Development," in *China's Great Economic Transformation*, Loren Brandt & Thomas G. Rawski, eds. (New York: Cambridge Univ. Press, 2008), page 392.

of subsidy type, is the proper approach. The extent of flexibility and freedom of movement are characteristics of the operating environment of all of the commercial actors in an economy and are not dependent upon the type of incentive being offered. This is supported by the statute, which only speaks of the shift of an entire economy from one that is "essentially comprised of a single entity" to one that is not.[32]

The Court, however, has ordered the Department to "investigate each subsidy program and allocate subsidies beginning on the first date it could identify and measure the subsidy considering the particular program in question and the impact of relevant economic reforms on that program."[33] Therefore, for the purposes of this remand, the Department must adopt a different approach. In order to comply with the Court's order, under respectful protest, we have analyzed each subsidy type with respect to the context of the government bestowal, rather than the nature of the recipients' economic environment. Given the Court's order, for the purposes of this final remand redetermination, we have assessed relevant laws or regulations underlying each non-recurring, allocable subsidy type at issue in the investigation. For the purposes of this analysis, the Department assessed when a sufficiently developed legal framework relevant to that particular type of subsidy existed that would enable the Department to identify the sphere of commercial activity involved, the economic actors involved and the government action required to bestow that type of subsidy.

As in any CVD investigation, the Department will not countervail any subsidies provided prior to the average useful life (AUL) of the assets.[34] Therefore, any non-recurring countervailable subsidies provided prior to the AUL would not provide a benefit during the POI.

[32] *See* section 701(f)(2) of the Act.
[33] *See Remand Opinion and Order* at 23.
[34] *See* 19 C.F.R. 351.524(a) and (b) (stating that recurring benefits are expensed in the year in which the benefit is received, and non-recurring benefits are allocated over the AUL).

In the present case, the POI was 2008 and the Department found that the AUL of the assets used in the production of OCTG was 15 years.[35] Thus, the earliest year to which the Department would reach back to examine the countervailability of subsidies would be 1994. Furthermore, the application of the AUL is only relevant with respect to non-recurring subsidies.[36] Moreover, in the *Final Determination*, the Department did not examine any credit or lending mechanisms (*e.g.*, loans) that were provided prior to December 11, 2001, and remained outstanding during the POI. Accordingly, only non-recurring subsidies that are normally allocated over a period of years or outstanding lending mechanisms provided prior to December 11, 2001, are at issue in this remand because only those subsidies were affected by the Department's application of a uniform cut-off date. As such, the only investigated programs potentially impacted by the Court's remand are:

- *Grants:* The State Key Technology Project Fund, Subsidies Provided in the Tianjin Binhai New Area (TBNA) and the Tianjin Economic and Technological Development Area (Science and Technology Fund); Sub-central Government Programs to Promote Famous Export Brands and China World Top Brands, Jiangsu Province Famous Brands; Stamp Exemption on Share Transfers Under Non-Tradable Share Reform;[37] Foreign Trade Development Fund (Northeast Revitalization Program); Export Assistance Grants; Program to Rebate Antidumping Fees; Subsidies for Development of Famous Export Brands and China World Top Brands; Grants to Loss-Making SOEs; Five Points, One Line Program; Forgiveness of Tax Arrears For Enterprises in the Old Industrial Bases of Northeast China; Debt-to-Equity Swap for Pangang Group Chengdu Iron & Steel (PGG CSST) (Pangang); Equity Infusions; and Exemptions for SOEs from Distributing Dividends to the State;[38]

- *Credit Oriented Subsidies:* Policy Loans; Export Loans from the Export-Import Bank of China; Loan and Interest Forgiveness for SOEs, Export Loans to Jianli; Export Interest Subsidies; Export Loans; Treasury Bond Loans to Northeast; Preferential Loans for Key Projects and Technologies; Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program; Preferential Loans for SOEs;

[35] *See Preliminary Determination*, 74 FR at 47214 (unchanged in the *Final Determination*).
[36] *See* 19 CFR 351.524(a) (stating that recurring benefits are expensed in the year in which the benefit is received).
[37] As described below, we are finding this program to be recurring for purposes of this draft remand.
[38] As described below, we are finding this program to be recurring for purposes of this draft remand.

- *Tax-related Subsidies:* Value Added Tax (VAT) and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund; High-Tech Industrial Development Zones; and,

- *Land Oriented Subsidies*: Subsidies Provided in the Tianjin Binhai New Area (TBNA) and the Tianjin Economic and Technological Development Area (Land); Provision of Land Use Rights for Less Than Adequate Remuneration to Huludao City Steel Pipe Industrial Co. (Huludao); Provision of Land and/or Land Use Rights to SOEs for LTAR.

Consistent with the Court's remand order, the Department has analyzed each of the four subsidy categories above to determine when the Department considers that it may have been able to evaluate the countervailability of that particular category of assistance.

Grants

A grant is a very straightforward incentive that does not require a specific legal framework guiding government action. However, the Department does need to be able to identify distinct economic actors, in contrast to the monolithic Soviet-style economy described in the 1986 *Georgetown Steel* opinion.[39] The legal basis for entrepreneurship, the basis upon which the Department can identify discrete economic actors, is perhaps one of the most important reform areas in China's post-Soviet-style economy. As one commentator states:

> The great expansion in the number and importance of economic actors that are not core parts of the traditional state system reinforced the process of growing out of the system of administrative directives. Privately owned enterprises have had to rely on the legal system for organizational vehicles and remedies for wrongs suffered. Early on, the legal system did not provide much, but over time it became more responsive.[40]

[39] *See* section 701(f)(2) of the Act.
[40] *See* Clarke, Donald, *et al.*, "The Role of Law in China's Economic Development," in *China's Great Economic Transformation*, Loren Brandt & Thomas G. Rawski, eds. (New York: Cambridge Univ. Press, 2008), at page 379.

As of 1993, different types of enterprises were operating in China, including wholly foreign-owned enterprises,[41] SOEs, joint ventures,[42] and domestic enterprises, including township and village enterprises.[43]

In 1993, the GOC moved away incrementally from central planning and recognized the role of other economic actors. First, China amended its Constitution to reflect changes in its economy. Article 15 was changed from "{t}he State practices planned economy" to "{t}he State practices socialist market economy."[44]

The GOC also promulgated the first *Company Law* in December 1993, which covered limited liability companies and joint stock companies. The law recognized the legal standing of privatized firms and further specified the legal status of SOEs, setting forth the principles of business autonomy, responsibility for profits and losses, and right to own assets.[45] The year in which the *Company Law* came into effect, 1994, marks a legal transition away from the classic Soviet-style economy and the beginning of a new phase of economic development where distinct economic actors were legally extended the flexibility to engage in commercial activity. The Department considers that it may have been able to identify and measure grants in China as early as 1994.

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[41] *See* Zimmerman, James, *China Law Deskbook, A Legal Guide for Foreign-Invested Enterprises*, 2nd edition (Chicago: American Bar Association, 2005) at pages 78-79, citing to the "*WFOE Law*."
[42] *Id*. at page 90, citing to *The Chinese-Foreign Contractual Joint Ventures Law of the People's Republic of China* (April 16, 1988, revised October 31, 2000).
[43] When some government authority was decentralized, local authorities saw an opportunity to open businesses; this led to the development of rural enterprises known as township and village enterprises. These reforms began the process of providing the legal basis for a variety of economic actors, as opposed to a single state-run monopoly over production. *See* Memorandum from the Department dated October 28, 2016 (Remand) (containing Memorandum from the Department dated March 30, 2006 (Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China") – China's Status as a non-market economy ("NME")) (August 30, 2006, Memorandum), at page 66.
[44] *See* Article 7 of the Amendment to the Constitution of the People's Republic of China, March 29, 1993.
[45] *See* Articles 5-7 of the *Company Law*.

Credit-Oriented Subsidies

When analyzing whether credit-oriented subsidies can be considered countervailable in the context of an NME, the Department needs to be able to identify the loan as a legal, binding contract between distinct parties.

As discussed in the August 30, 2006, Memorandum, a series of reforms in the banking sector leading up to 1993 established a two-tier banking system with the People's Bank of China acting in a supervisory role. The second tier of the banking sector consisted of the "Big Four" state-owned commercial banks, three state-owned policy banks, and a host of other, smaller, officially designated commercial banks and non-bank financial institutions, *e.g.*, rural and urban credit cooperatives, local government-owned joint stock commercial banks and trust and investment companies. The Department was, therefore, able, as of 1993, to identify the specific economic actors involved in providing credit in China. As discussed above, parallel legal reforms leading up to 1993 regarding entrepreneurship supported the creation of distinct enterprise types, and hence, distinct borrowers.

The 1995 *Commercial Bank Law* introduced prudential regulation standards.[46] The 1995 law defined a commercial bank as a legal entity that is sufficiently capitalized to engage in banking services. Under this law, commercial banks became legally responsible for their own profits and losses and were afforded legal autonomy from the state in several matters. The *General Rules on Loans* were enacted in 1996 to control and regulate activities related to loans and to protect the lawful rights and interests of all parties.[47] Taken together, these reforms allow the Department to identify distinct legal economic actors in the credit market as well as to examine specific loans and potential forgiveness of such loans. The 1996 *General Rules on*

[46] *See The Commercial Banking Law of the People's Republic of China* (May 10, 1995) (*Commercial Bank Law*).
[47] *See The General Rules on Loans* (August 1, 1996).

Loans, in particular, set out the legal rights and obligations for both lenders and borrowers, providing the legal basis for defining the four corners of any given loan. Given these reforms, the Department considers that it may have been able to evaluate the countervailability of credit-related subsidies for the purposes of this remand starting from 1996.

Tax- related Subsidies

For the purposes of this remand, the Department considered the point in time in which a comprehensive legal framework existed in China for identifying tax payers, as well as for assessing and collecting taxes, especially with respect to border measures. The Department also considered the point in time when economic actors generally had the right to engage in international trade, in contrast to a system of state trading enterprises which characterized Soviet-style economies.

Prior to the era of economic reform, taxes in China served as an accounting device to transfer funds from one arm of the government to another. The importance of a functioning tax regime for state revenue increased as the GOC implemented policies aimed at attracting foreign investment and transitioning towards a more flexible economy.[48] The foundations of the present tax system were established in 1994 with the implementation of China's first comprehensive tax legislation. On January 1, 1994, a series of tax laws came into effect, including regulations regarding VAT, consumption taxes, business taxes, enterprise income taxes, individual income taxes, and resource taxes.[49]

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[48] *See Trade Policy Review, The People's Republic of China* (Geneva: World Trade Organization, February 28, 2006), para. 27 at page 16.

[49] The objectives of these reforms were "to collect necessary tax revenues in an equitable manner, enhance the role of taxation as a tool of macroeconomic policy, encourage foreign investment, and make taxation more compatible with reforms of SOEs and enhance their self-management. The reforms were thus to create a tax system more conducive to China's economic development." *See Trade Policy Review, The People's Republic of China* (Geneva: World Trade Organization, February 28, 2006), para. 27, p. 16. (1) *Provisional Regulations of the People's Republic of China on Value Added Tax*, adopted November 26, 1993, by the 12th session of the Standing Committee of the State Council, became effective on January 1, 1994. (2) *Provisional Regulations of the People's Republic of*

Reforms were also undertaken to improve coordination between the central government and provinces. For example, the State Administration of Taxation was established after 1994 as the supervisor of national tax services, which has the primary responsibility for collecting central and shared taxes.[50] These reforms reflected the GOC's efforts to simplify the implementation of its tax laws, standardize tax collection and limit tax evasion to bring China's tax system into conformity with international practices.[51]

With respect to the right to engage in international trade, all foreign trade and importation of goods in Soviet-style economies was conducted through a state monopoly with central planners mandating the type and volume of goods to be exported and imported.[52] Similarly, in China prior to the late 1970s, all foreign trade was conducted through twelve state-trading enterprises (STEs) managed by the Ministry of Foreign Trade. Each of these STEs had a monopoly over a well-defined range of commodities and was responsible for arranging contracts, securing financing, and negotiating prices.[53] Due to reforms leading up to the mid-1990s, this STE monopoly began to give way to an increasing number of enterprises that were allowed to engage in foreign trade.[54] With the adoption of the Foreign Trade Law on May 12, 1994, all individuals, as well as legal persons and other organizations, were permitted to engage in foreign

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China on Consumption Tax, adopted November 26, 1993, by the 12th session of the Standing Committee of the State Council, became effective on January 1, 1994. (3) *Provisional Regulations of the People's Republic of China on Business Tax*, adopted November 26, 1993, by the 12th session of the Standing Committee of the State Council, became effective on January 1, 1994. (4) *Provisional Regulations of the People's Republic of China on Individual Income Tax*, adopted November 26, 1993, by the 12th session of the Standing Committee of the State Council, became effective on January 1, 1994. (5) *Provisional Regulations of the People's Republic of China on Resource Tax*, adopted November 26, 1993, by the 12th session of the Standing Committee of the State Council, became effective on January 1, 1994. (6) *Provisional Regulations of the People's Republic of China on Enterprises Income Tax*, adopted by the 12th Session of the Standing Committee of the State Counsel on November 26, 1993, became effective on January 1, 1994.

[50] *See Trade Policy Review, The People's Republic of China* (Geneva: World Trade Organization, February 28, 2006), para. 31 at page 39.

[51] *See* Zimmerman, James, *China Law Deskbook, A Legal Guide for Foreign-Invested Enterprises*, 2nd edition (Chicago: American Bar Association, 2005) at page 335.

[52] 2007 Georgetown Memorandum at page 7, citing to *Czechoslovakia Study*, Economic Structure and Its Control Mechanisms, August 1987.

[53] *See* Lardy, Nicholas, *Integrating China into the Global Economy* (Washington, D.C., 2002) at page 40.

[54] *Id.*

trade, providing that they meet certain registration and licensing requirements, indicating that the GOC had greatly reduced its direct oversight, management, and control over international trade.[55]

Given these reforms, the Department considers that it may have been able to evaluate the countervailability of tax-related subsidies, including those related to border measures such as VAT and import tariffs, starting from 1994.

Land-Oriented Subsidies

As noted in the *2007 Georgetown Memorandum* and the August 30, 2006, Memorandum, private land ownership is prohibited in China.[56] All land is owned by some level of government, the distinction being between land owned by the local government or "collective" at the township or village level, as opposed to land owned by the national government (also referred to as state-owned or "owned by the whole people").

As described in the August 30, 2006, Memorandum, the government promulgated the *Land Administration Law* in 1986, which allowed for the ownership of land-use rights and, in certain circumstances, their transfer. This law conflicted with China's Constitution, which banned selling, leasing, and transferring land. Accordingly, Article 10, section 4 of the Constitution was amended in 1988 to allow transfer of land-use rights.[57] However, the concepts of land-use rights and the methods of selling and/or transferring land-use rights were still vague and ill-defined.

[55] All entities that wish to engage in import and export of goods or technologies are required to register with local foreign-trade authorities authorized by the Ministry of Commerce. *See Trade Policy Review, The People's Republic of China* (Geneva: World Trade Organization, February 28, 2006), para. 62 at page 82.
[56] *See* Articles 9 and 10 of the Constitution of the People's Republic of China, as amended in 2004.
[57] *See* August 30, 2006 Memorandum at 41, citing to Ding, Chengri and Song, Yan, *Emerging Land & Housing Markets in China* (Cambridge, MA: Lincoln Institute of Land Policy, 2005) at page 14.

It was not until 1998, when the government promulgated the revised *Land Administration Law* that the first embodiment of long-term land-use rights was codified.[58] Also in that year, China promulgated regulations that specified the types of permitted transactions, including transfer, lease, and equity contribution.[59] By 1999, the year that both the revised *Land Administration Law* and its implementing regulations came into effect, the government had established the legal framework for basic elements of land transactions. For the purposes of this remand, the Department finds that 1999 is the first year in which it could evaluate the countervailability of land-related subsidies in China.

Analysis of Alleged Programs and Application of Adverse Facts Available

To comply with the Court's remand order, the Department issued a questionnaire to the GOC and the four mandatory respondents, in which the Department requested additional information regarding the subsidy programs listed above.[60] The GOC and the mandatory respondents did not respond to our questionnaire.[61] For certain alleged programs, we find that we have sufficient information to determine that no benefit has been provided prior to December 11, 2001. For the remaining programs, as described below, the Department is using facts otherwise available with an adverse inference, pursuant to section 776(a) and (b) of the Act, in evaluating the extent to which any of the investigated programs may have provided a countervailable subsidy prior to December 11, 2001.

[58] *See Land Administration Law of the People's Republic of China*, promulgated August 29, 1998, effective January 1, 1999.
[59] *See* Article 29 of the *Regulations on the Implementation of the Land Administration Law of the People's Republic of China*, promulgated December 27, 1998, effective January 1, 1999.
[60] *See*, in general, Letters to the GOC, Changbao, Jianli, TPCO, and Wuxi dated July 25, 2016 (Questionnaire Pursuant to June 24, 2016 Remand).
[61] *See* Memoranda to File from David Neubacher, Senior International Trade Compliance Analyst, regarding: Receipt of Questionnaires by Certain Respondents (October 28, 2016).

Programs Not Impacted By Application of December 11, 2001, Cut-Off Date

Grants

For the alleged non-recurring grant programs described below, the Department reviewed information on the record to either: (1) establish the programs had an implementation date that occurred after December 11, 2001 (with no information that any were linked to a predecessor program); or (2) demonstrate the program was not used by any respondents.

For TBNA and the Tianjin Economic and Technological Development Area (Science and Technology Fund), the GOC provided documentation that the TBNA was established in 2006 and the resulting subsidies examined within the TBNA were adopted and implemented on the provincial level in 2007.[62] Therefore, we have made no changes from our *Final Determination* with respect to this program, as it was not affected by the Department's application of a uniform cut-off date.

For the Sub-central Government Programs to Promote Famous Export Brands and China World Top Brands, the GOC provided documentation that implementation of the programs occurred in 2005.[63] Therefore, we have made no changes from our *Final Determination* with respect to this program, as it was not affected by the Department's application of a uniform cut-off date.

For Jiangsu Province Famous Brands, the GOC provided documentation that implementation of the program began in 2006.[64] Therefore, we have made no changes from our *Final Determination* with respect to this program, as it was not affected by the Department's application of a uniform cut-off date.

[62] *See* Letter from the GOC dated July 20, 2009 (Response of the {GOC} to the Department's Initial Questionnaire) (*GOC Initial Questionnaire*) at pages 81 – 83.
[63] *See GOC Initial Questionnaire* at pages 69 and 72.
[64] *See* Letter from GOC dated August 26, 2009 (Response from the {GOC} to the Department's First Supplemental Questionnaire) (*GOC First Supplemental*) at page 39.

For the Stamp Exemption on Share Transfers Under Non-Tradeable Share Reform, the GOC only provided a narrative response on its implementation in 2005 without any documentation.[65] However, the Department has previously countervailed the program in another proceeding and found the program to be a recurring subsidy.[66] Thus, we are not including the program in our further analysis, as it was not affected by the Department's application of a uniform cut-off date.

In the Petition, petitioners alleged that the Foreign Trade Development Fund (Northeast Revitalization Program) was countervailable by citing the Department's finding in a prior proceeding.[67] In that prior proceeding, we found the program disbursed funds under the Foreign Trade Development Special Fund Aid Project Plan of 2007, which was announced on February 14, 2007.[68] Therefore, we have made no changes from our *Final Determination* with respect to this program, as it was not affected by the Department's application of a uniform cut-off date.

In the Petition, petitioners alleged that the Five Points, One Line Program was countervailable by citing the Department's finding of countervailability in a prior proceeding.[69] In that proceeding, we found that the Liaoning Provincial Government introduced the program on January 21, 2006, pursuant to the *Opinion of Liaoning Province Encouraging the Expansion of Opening-Up in Coastal Key Developing Areas*.[70] Therefore, we have made no changes from

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[65] *See GOC Initial Questionnaire* at page 30.
[66] *See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) and accompanying Issues and Decision Memorandum (*Thermal Paper from the PRC*) at page 19.
[67] *See* Letter from Maverick Tube Corporation, U.S. Steel, TMK IPSCO, V&M Star LP, Wheatland Tube Corporation, Evraz Rocky Mountain Steel, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (collectively, petitioners) dated April 9, 2009 (Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Oil Country Tubular Goods From the People's Republic of China) (Petition) at page 101 (citing *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) and accompanying Issues and Decision Memorandum (*Line Pipe*) at pages 20 – 21).
[68] *See Line Pipe*, and accompanying Issues and Decision Memorandum at 20-21.
[69] *See* Petition at page 123 (citing *Line Pipe* at pages 24 – 25).
[70] *Id*.

our *Final Determination* with respect to this program, as it was not affected by the Department's application of a uniform cut-off date.

For Forgiveness of Tax Arrears For Enterprises in the Old Industrial of Northeast China, legal documentation was provided on the record that implementation of the program began in 2006.[71] Therefore, we have made no changes from our *Final Determination* with respect to this program, as it was not affected by the Department's application of a uniform cut-off date.

For the Debt-to-Equity Swap for Pangang, the alleged subsidy program was specific to Pangang.[72] As the Department found no affiliation or cross-ownership issues between any of the mandatory respondents and Pangang prior to December 11, 2001, our analysis of this program was not affected by the Department's application of a uniform cut-off date, and we have not further examined this alleged subsidy for purposes of this final remand.[73]

For Equity Infusions, the Department stated the following in its Initiation Checklist:

> With regard to the Bohai Fund investment in TPCO, Petitioners provided evidence indicating that the Bohai Fund's stated purpose is to focus investments on projects that are in line with the GOC's industrial policies. Thus, Petitioners have supported their allegation that the equity infusion is inconsistent with the usual investment practices of private investors and, consequently, provides a benefit under section 771(5)(E)(i) of the Act.

[71] *See* Petition at page 66 and Exhibit 89 (citing *Notice of the Ministry of Finance and the State Administration of Taxation on Exempting the Tax Arrears of the Enterprises in the Old Industrial Bases of Northeast China*) (effective date, December 6, 2006).

[72] *See* Memorandum from the Department dated April 30, 2009 (Office of AD/CVD Enforcement; Countervailing Duty Investigation Initiation Checklist) (*Initiation Checklist*) at page 19.

[73] *See, generally*, Letter from Changbao dated July 20, 2009 (Questionnaire Response) (*Changbao Initial Response)* at pages 1 -5; Letter from Jianli dated July 21, 2009 (Jianli Group's Initial CVD Questionnaire Response) (*Jianli Initial Response*) at pages 1 – 10; Letter from TPCO dated July 21, 2009 (TPCO's Response to the Department of Commerce's CVD Questionnaire) (*TPCO Initial Response*) at pages 1 – 8; Letter from Wuxi dated July 21, 2009 (CVD Questionnaire Response) (*Wuxi Initial Response*) at pages 1 – 7; Memorandum from the Department dated October 29, 2009 (Jiangsu Changbao Steel Tube Co., Ltd. and Jiangsu Changbao Precision Steel Tube Co., Ltd. Verification Report) (*Changbao Verification Report*) at pages 3 – 4; Memorandum from the Department dated October 28, 2009 (Verification Report: Jianli Group) (*Jjianli Verification Report*) at pages 3 – 5; Memorandum from the Department dated October 29, 2009 (Verification Report: Tianjin Pipe (Group) Corporation ("TPCO Group"), Tianjin Pipe Iron Manufacturing Co., Ltd. ("TPCO Iron"), Tianguan Yuantong Pipe Product Co., Ltd. ("Yuantong"), Tianjin Pipe International Economic and Trading Co., Ltd. ("TPCO International"), and TPCO Charging Development Co., Ltd. ("Charging") (collectively, "TPCO")) (*TPCO Verification Report*) at pages 3 – 6; and Memorandum from the Department dated November 2, 2009 (Wuxi Seamless Oil Pipe Co., Ltd., Jiangsu Fanli Steel Pipe Co., Ltd., and Mengfeng Special Steel Co., Ltd Verification Report) (*Wuxi Verification Report*) at pages 4 – 6.

> Therefore, we also recommend including in our investigation the equity investment in TPCO by the Bohai Fund.
>
> We do not recommend investigating equity infusions in the PRC's OCTG producers on an industry-wide basis. In accordance with 19 CFR 351.507(a)(7), the Department will not investigate an equity infusion in a firm absent a specific allegation by the petitioner which is supported by information establishing a reasonable basis to believe or suspect that a firm received an equity infusion that provides a countervailable benefit within the meaning of 19 CFR 351.507(a)(l). The allegations of equity infusions into the OCTG industry are not firm specific, and, thus, do not satisfy the Department's regulations.[74]

Therefore, because our investigation was limited to the Bohai Fund's investment in TPCO (which occurred after December 11, 2001), we have not evaluated whether another respondent potentially used the program prior to December 11, 2001.

For the Exemptions for SOEs from Distributing Dividends to the State, the GOC provided documentation that the program started in 1993 and continued until 2007.[75] The GOC exempted companies from paying dividends to shareholders during this period.[76] Based on the information on the record, we determine for these final remand results that the program is recurring in nature. Therefore, we have not further analyzed this program, as it was not affected by the Department's application of a December 11, 2001, cut-off date.

Credit-Oriented Subsidies

In this remand, the Department is examining the extent to which any credit-oriented subsidies may have benefited the mandatory respondents prior to December 11, 2001. In the investigation, the Department requested, and the respondents provided, their outstanding lending during the POI.[77] In addition, the Department verified all outstanding lending during the POI.[78]

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[74] *See Initiation Checklist* at pages 34 – 35.
[75] *See GOC First Supplemental* at page 25.
[76] *Id*.
[77] *See, generally*, *Changbao Initial Response* at page 10; *Jianli Initial Response* at page 14; *TPCO Initial Response* at pages 15 – 16; and Letter from Wuxi dated August 25, 2009 (First Supplemental Questionnaire Response) (*Wuxi First Supplemental*) at pages 17 – 18.
[78] *See Changbao Verification Report* at pages 8 – 11; *Jianli Verification Report* at pages 11 – 12; *TPCO Verification Report* at pages 14 – 20; and *Wuxi Verification Report* at pages 2, 8 – 10.

Through the questionnaire responses and verification, the Department was able to establish that all outstanding lending was accounted for and countervailed in the *Final Determination*.[79] Therefore, the Department need not further examine these programs for purposes of the final remand, as our *Final Determination* with respect to these programs was not affected by the Department's application of a uniform cut-off date.

Tax-related Subsidies

In the Petition, petitioners alleged that the VAT and Tariff Exemptions for the Purchase of Fixed Assets Under the Foreign Trade Development Fund was countervailable by citing the Department's finding in a prior proceeding.[80] In that prior proceeding, we found that the program was established on September 14, 2004, by the *Circular of the Ministry of Finance and State Tax Administration on Printing and Distributing the Regulations on Relevant Issues with Respect to Expansion of VAT Deduction Scope in the Northeast Areas*."[81] Therefore, we have made no changes from our *Final Determination* with respect to this program, as it was not affected by the Department's application of a uniform cut-off date.

Land-Oriented Subsidies

For the alleged land programs described below, the Department reviewed information on the record and was able to establish either that: (1) the program had an implementation date that occurred after December 11, 2001, with no information that any were linked to a predecessor program; or (2) other information that demonstrated the program was not used by any respondents.

For TBNA and the Tianjin Economic and Technological Development Area (Science and Technology Fund), the GOC provided documentation that the TBNA was established in 2006

[79] *See OCTG IDM* at pages 6, 12 – 13, and 23 – 26.
[80] *See* Petition at page 68 (citing *Line Pipe* at pages 21 – 22).
[81] *Id*.

and the resulting subsidies examined within the TBNA were adopted and implemented on the provincial level in 2007.[82] Therefore, our analysis of this program was not impacted by the Department's application of a uniform cut-off date, and we have not further examined this program for purposes of this final remand.[83]

For Provision of Land Use Rights for LTAR to Huludao, the alleged subsidy program was specific to Huludao.[84] As the Department found no affiliation or cross-ownership issues between any of the mandatory respondents and Huludao, our analysis of this program was not affected by the Department's application of a uniform cut-off date, and we have not further examined this program for purposes of this final remand.[85]

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" if 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.[86]

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[82] *See GOC Initial Questionnaire* at pages 81 – 83.

[83] Furthermore, since the *Final Determination*, the Department has conducted proceedings pursuant to section 129 of the Uruguay Round Agreements Act and found that the provision of land in the TBNA is not specific under section 771(5A)(D)(iv) of the Act. In connection with that determination, the Department removed the program from TPCO's net subsidy rate (the only company found to have used the program). *See Implementation of Determinations Pursuant to Section 129 of the Uruguay Round Agreements Act*, 81 FR 37180, 37182 (June 8, 2016).

[84] *See Initiation Checklist* at pages 40 – 41.

[85] *See, generally, Changbao Initial Response* at pages 1 -5; *Jianli Initial Response* at pages 1 – 10; *TPCO Initial Response* at pages 1 – 8; *Wuxi Initial Response* at pages 1 – 7; *Changbao Verification Report* at pages 3 – 4; *Jianli Verification Report* at pages 3 – 5; *TPCO Verification Report* at pages 3 – 6; and *Wuxi Verification Report* at pages 4 – 6.

[86] On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and

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 with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act further provides that the Department may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, the Department's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[87] 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."[88]

776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). On August 6, 2015, the Department stated that the amendments to sections 776(b) and 776(c) of the Act would apply to determinations made on or after August 6, 2015. *See also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794 (August 6, 2015). Because this remand redetermination is a determination made after August 6, 2015, we are relying on the TPEA amendments.

[87] *See, e.g., Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011), and accompanying Issues and Decision Memorandum at "V. Use of Facts Otherwise Available and Adverse Inferences;" Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8932 (February 23, 1998).

[88] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA).

Section 776(c) of the Act provides that, in general, 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 of the Act concerning the subject merchandise.[89]

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the Department considers reasonable to use.[90] The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[91]

Application of AFA for Non-Response to the Department's Remand Questionnaire

As discussed above, the Department requested information regarding alleged subsidy programs prior to December 11, 2001. We sent questionnaires to the GOC and the four mandatory respondents.[92] The Department did not receive responses to our questionnaire from the GOC and the mandatory respondents.[93] Based on their non-participation, we find that

[89] *See, e.g.*, SAA at page 870.
[90] *See* section 776(d)(1) of the Act; TPEA, section 520(3).
[91] *See* section 776(d)(3) of the Act; TPEA, section 520(3).
[92] *See* Memoranda to File from David Neubacher, Senior International Trade Compliance Analyst, regarding: Status of Respondent Representation (July 26, 2016); E-mail questionnaire to Tianjin Pipe (TPCO) (July 29, 2016).
[93] *See* Memoranda to File from David Neubacher, Senior International Trade Compliance Analyst, regarding: Receipt of Questionnaires by Certain Respondents (October 28, 2016).

necessary information is not available on the record, that the GOC and the mandatory respondents withheld information that had been requested, and significantly impeded the proceeding, pursuant to sections 776(a)(1), (2)(A), and (2)(C) of the Act. Thus, in reaching our determination, except as described above, we are basing the CVD rates for the mandatory respondents and our findings on facts otherwise available.

Moreover, we find for these final remand results, pursuant to section 776(b) of the Act, that an adverse inference is warranted because neither the GOC nor the mandatory respondents cooperated to the best of their ability to comply with the Department's request for information.

For purposes of calculating the AFA rate for these final remand results, the Department is finding countervailable all remaining alleged programs for which the Department requested a questionnaire response, as described below.

When selecting AFA rates, section 776(d) of the Act provides that the Department may use any countervailable subsidy rate applied for the same or similar program in a countervailing duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Because the GOC and the mandatory respondents failed to participate in this remand proceeding, consistent with section 776(d) of the Act and our established practice,[94] for programs described below, we applied the following approach to select the appropriate subsidy rates for the respective programs at issue: (a) we first applied, where available, the highest above *de minimis* subsidy rate

[94] *See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744 (April 11, 2012), and accompanying Issues and Decision Memorandum at "Non-Cooperative Companies" section; *see also Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 14, 2011) (*Aluminum Extrusions from the PRC Investigation*), and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies" section; *Galvanized Steel Wire from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012), and accompanying Issues and Decision Memorandum at "Non-Cooperative Companies" section.

calculated for an identical program from any segment of this proceeding; (b) absent such a rate, we applied, where available, the highest above *de minimis* subsidy rate calculated for a similar program from any segment of this proceeding; (c) absent an above *de minimis* subsidy rate calculated for the same or similar program in any segment of this proceeding, we applied the highest above *de minimis* calculated subsidy rate for identical, or if not available, a similar program from any CVD proceeding involving the country in which the subject merchandise is produced (*i.e.*, the PRC), provided the producer of the subject merchandise or the industry to which it belongs could have used the program for which the rates were calculated.[95] Absent an above *de minimis* rate for the same or similar program from any CVD proceeding involving the PRC, we applied the highest calculated rate from any program in any CVD proceeding for the PRC. The applied rates are described below.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, in general, 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. The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[96]

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.[97] Furthermore, the

[95] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies" section.
[96] *Id*.
[97] *See* SAA at pages 869 – 870.

Department is not required to estimate what the countervailable subsidy rate would have been if the interested party had cooperated, and is not required to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[98]

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. We find the AFA rates applied here (and described below) to be reliable based on their calculation and application in previous CVD proceedings pertaining to the PRC, and because no information on the record calls their reliability into question. 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.

As explained above, in applying the AFA hierarchy, the Department seeks to identify identical or similar program rates calculated for a cooperative respondent from another segment of this proceeding. Alternatively, the Department seeks to identify identical or similar program rates calculated in any proceeding covering imports from the PRC. Actual rates calculated based on actual usage by PRC 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, as mentioned above, "that the party does not obtain a more favorable result by failing to cooperate than if it

[98] *See* section 776(d) of the Act.

had cooperated fully."[99] Finally, the Department will not use information where circumstances indicate that the information is not appropriate as AFA.[100]

In the absence of record evidence concerning the mandatory respondents' usage of the subsidy programs at issue, and the companies' decision not to participate in this remand proceeding we reviewed the information concerning subsidy programs in other segments of this proceeding and in other PRC proceedings. Where we have a found program-type match (*i.e.*, same or similar programs), we were able to utilize these programs in determining AFA rates for the mandatory respondents (*i.e.*, the programs and their rates are relevant). The relevance of those programs and rates is that they are actual calculated CVD rates for PRC subsidy programs from which the non-cooperative respondents could actually receive a benefit. Due to the lack of participation by the mandatory respondents and the resulting lack of record information concerning their use of various subsidy programs, the Department has corroborated the rates it selected to use as AFA, to the extent practicable.

Grants

For the Export Assistance Grants, Program to Rebate Antidumping Fees, and Grants to Loss-Making SOEs, there is limited information on the record to evaluate the countervailability of these alleged programs. Therefore, using AFA, we are finding for these final remand results that the programs provide a financial contribution pursuant to section 771(5)(D) of the Act, are specific pursuant to section 771(5A) of the Act, and confer a benefit within the meaning of section 771(5)(E) of the Act and 19 C.F.R. 351.504(a).[101] The Department applied the above

[99] *See* SAA, at page 870.
[100] *See, e.g.*, *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22,1996).
[101] *See* Petition at pages 102 – 103 (Export Assistance Grants), pages 103 – 105 (Program to Rebate Antidumping Fees), and page 110 (Grants to loss making SOEs). *See, also, Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative*

AFA methodology and was unable to find an above *de minimis* rate calculated for a cooperative respondent for an identical or similar program in other segments of this proceeding, nor did we find any above *de minimis* rates calculated for a cooperative respondent for an identical program in any proceeding covering imports from the PRC. Therefore, we have selected the highest above *de minimis* subsidy rate calculated for any similar program in the PRC from which the mandatory respondents could actually receive a benefit. Based on the foregoing, we applied a rate of 0.58 percent, the highest above *de minimis* rate calculated from any similar program in any CVD proceeding for the PRC, for the above programs.[102] The total AFA rate for the above programs is 1.74 percent for each mandatory respondent.

For the State Key Technology Project Fund, the Department examined the program in the context of the investigation and found it countervailable for TPCO.[103] The State Key Technology Project Fund was established in September 10, 1999.[104] As such, the Department has no usage information from the mandatory respondents for the years 1999 – 2001. Therefore, the Department, using AFA, is finding a benefit to Changbao, Jianli, TPCO, and Wuxi, pursuant to section 771(5)(E) of the Act.

For Changbao, Jianli, and Wuxi, the Department applied the above AFA methodology and was unable to find an above *de minimis* rate calculated for a cooperative respondent for an identical or similar program in other segments of this proceeding, nor did we find any above *de minimis* rates calculated for a cooperative respondent for an identical program in any proceeding covering imports from the PRC. Therefore, we have selected the highest above *de minimis*

Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008) and accompanying Issues and Decision Memorandum at page 13 (Export Assistance Grants found countervailable).

[102] *See Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) and accompanying Issues and Decision Memorandum (Isos from the PRC) at 13 – 14.

[103] *See OCTG IDM* at pages 15 – 16.

[104] *See GOC Initial Response* at page 57.

subsidy rate calculated for any similar program in the PRC from which the mandatory respondents could actually receive a benefit. Based on the foregoing, we applied a rate of 0.58 percent, the highest above *de minimis* rate calculated from any similar program in any CVD proceeding involving the PRC, to Changbao, Jianli, and Wuxi for this program.[105]

For TPCO, we have information regarding TPCO's use of the State Key Technology Product Fund from December 11, 2001, through the end of 2008 and, on the basis of that information, calculated a countervailable rate of 0.01 percent in the *Final Determination*.[106] Therefore, to determine the extent of subsidization for this program for purposes of these remand results, we followed a similar methodology to that used in *Cold-Rolled Steel from Brazil* and used TPCO's calculated rate in the proceeding as the AFA rate for each of the years that TPCO did not provide a response.[107] Based on the foregoing, for TPCO, we are adding the 0.03 percent to its already calculated rate of 0.01 percent, for a total of 0.04 percent.

Tax-related Subsidies

For the High-Tech Industrial Development Zones, the GOC provided documentation that the program was implemented in 1988.[108] Most of the preferential policies outlined in submitted laws and regulations are for subsidies that would be characterized as recurring subsidies (*e.g.*, tax and import/export programs).[109] However, in the *Circular of the State Council Concerning the Approval of the National Development Zones for New and High Technology Industries and the Relevant Policies and Provisions*, Article 4(5) allows for exemption of customs duties for the

[105] *See Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) and accompanying Issues and Decision Memorandum (Isos from the PRC) at 13 – 14.
[106] *See OCTG IDM* at pages 15–16.
[107] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Final Affirmative Determination*, 81 FR 49940 (July 29, 2016) and accompanying Issues and Decision Memorandum at Comment 3 at pages 24 – 30.
[108] *See GOC Initial Questionnaire* at page 96.
[109] *Id*.

importation of instruments and equipment.[110] As such, we do not have sufficient information on the record to fully evaluate the countervailability of the subsidy, and we determine for these final remand results that the program represents a non-recurring subsidy that may have been used by respondents prior to December 11, 2001. Therefore, using AFA, we are finding for these final remand results that the program provides a financial contribution pursuant to section 771(5)(D) of the Act, is specific pursuant to section 771(5A) of the Act, and confers a benefit within the meaning of section 771(5)(E) of the Act.[111,112]

The Department applied the above AFA methodology and was unable to find an above *de minimis* rate calculated for a cooperative respondent for an identical or similar program in prior segments of this proceeding, nor did we find any above *de minimis* rates calculated for a cooperative respondent for an identical program in any proceeding covering imports from the PRC. Therefore, we have selected the highest above *de minimis* subsidy rate calculated for any similar program in the PRC from which the mandatory respondents could actually receive a benefit. Based on the foregoing, we applied a rate of 9.71 percent, the highest above *de minimis* calculated rate from any program in any CVD proceeding for the PRC, for the above program.[113]

Land-Oriented Subsidies

For the Provision of Land and/or Land Use Rights for SOEs for LTAR, there is limited information on the record to evaluate the countervailability of this alleged program. Therefore,

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[110] *Id*., at Exhibit GOC-FF-1.

[111] Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2); *see also Thermal Paper from the PRC* at page 18.

[112] *See* Petition at pages 125 – 127.

[113] *See New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010) at "C. VAT and Import Duty Exemptions on Imported Material," unchanged in final *New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011).

using AFA, we are finding for these final remand results that the program provides a financial contribution pursuant to section 771(5)(D) of the Act, is specific pursuant to section 771(5A) of the Act, and confers a benefit within the meaning of section 771(5)(E)(iv) of the Act.[114] The Department applied the above AFA methodology and was unable to find an above *de minimis* rate calculated for a cooperative respondent for an identical or similar program in prior segments of this proceeding,[115] nor did we find any above *de minimis* rates calculated for a cooperative respondent for an identical program in any proceeding covering imports from the PRC. Therefore, we have selected the highest above *de minimis* subsidy rate calculated for any similar program in the PRC from which the mandatory respondents could actually receive a benefit. Based on the foregoing, we applied a rate of 1.86, the highest above *de minimis* calculated rate from any similar program in any CVD proceeding for the PRC.[116]

B. Attribution of Subsidies to Certain Subsidiaries

Background

In the *Preliminary Determination*, the Department found that Changbao and Jiangsu Changbao Precision Steel Tube Co., Ltd. (Precision) were cross-owned companies within the meaning of 19 C.F.R. 351.525(b)(vi).[117] The Department attributed Precision's subsidies to its

[114] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) and accompanying Issues and Decision Memorandum at pages 20 – 21.
[115] In the *Final Determination*, the Department calculated an above *de minimis* rate for TPCO in connection with the alleged provision of land-use rights for LTAR in the TBNA. *See OCTG IDM* at 22. However, as noted above, in a recently-completed section 129 proceeding, the Department determined that the provision of land in the TBNA is not specific under section 771(5A)(D)(iv) and removed the rate calculated for that program from TPCO's subsidy rate. Therefore, we do not consider it appropriate to use that rate in applying our CVD hierarchy in this remand.
[116] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules,fFrom the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) and accompanying Issues and Decision Memorandum at page 26 (Provision of Land for LTAR).
[117] *See Preliminary Determination*, 74 FR at 47214.

and Changbao's combined sales under 19 C.F.R. 351.525(b)(6)(ii), as both companies produced the subject merchandise.[118]

For TPCO, the Department preliminarily found each of the following subsidiaries cross-owned pursuant to 19 C.F.R. 351.525(b)(vi): Tianguan Yuantong Pipe Product Co., Ltd. (Yuantong); Tianjin Pipe International Economic and Trading Co., Ltd. (IETC); TPCO Charging Development Co., Ltd. (Charging); and Tianjin Pipe Iron Manufacturing Co., Ltd. (TPCO Iron).[119] The Department attributed subsidies received by Yuantong to TPCO pursuant to 19 C.F.R. 351.525(b)(6)(ii), upon finding that Yuantong had direct involvement in the production of subject merchandise during the POI.[120] Because the TPCO Group exported all subject merchandise through a trading company, IETC, the Department cumulated the benefit from subsidies received by IETC with subsidies provided to TPCO pursuant to 19 C.F.R. 351.525(c).[121] With regard to Charging, the Department found that Charging purchased and provided steel rounds to TPCO, and treated any subsidies conferred by the government's provision of steel rounds as having been transferred to TPCO pursuant to 19 C.F.R. 351.525(b)(6)(v).[122] Finally, because TPCO Iron produced an input in TPCO's production of subject merchandise, the department attributed subsidies received by TPCO Iron to TPCO pursuant to 19 C.F.R. 351.525(b)(6)(iv).[123] Notwithstanding these findings, the Department did not attribute subsidies for each subsidiary as noted above, but attributed the subsidies for each subsidiary under 19 C.F.R. 351.525(b)(6)(iii).[124]

[118] *Id.*
[119] *Id.*, at 47215.
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] *Id.*, at 47215.

In the *Final Determination*, the Department did not change its attribution methodology for TPCO and its four subsidiaries, but attributed Precision's subsidies to Changbao's consolidated sales, which included Precision's sales.[125]

In the *Remand Opinion and Order*, the Court found that no attribution rule provided a regulatory basis to attribute subsidies received by Precision and TPCO's four subsidiaries to TPCO's consolidated sales (including the sales of other subsidiaries).[126] In particular, the Court found that 19 C.F.R. 351.525(b)(6)(iii) permits the Department to attribute subsidies received by a *parent* company to the consolidated sales of the parent company and its subsidiaries, but not subsidies received by a *subsidiary*.[127] The Court, thus, found that on remand, "Commerce must explain what authority allows it to attribute subsidies received by subsidiaries in this manner or reconsider its attribution methodology with respect to Precision and TPCO's four subsidiaries."[128]

Analysis

In light of the Court's remand order, the Department has reconsidered the methodology with respect to Precision and TPCO's four subsidiaries. In the *Preliminary Determination*, the Department evaluated how each of these subsidiaries are cross-owned within the meaning of 19 C.F.R. 351.525(6)(vi) and then preliminarily determined how the subsidies to each would be attributable based on a reading of 19 C.F.R. 351.525(b)(6)(ii)–(v) and 351.525(c).[129] However, in the *Final Determination*, we ultimately attributed subsidies to TPCO's four subsidiaries and to Precision under 19 C.F.R. 351.525(b)(6)(iii) and provided no rationale or explanation for applying this regulation to the subsidiaries.

[125] *See OCTG IDM* at 8–9.
[126] *See Remand Opinion and Order* at 50.
[127] *Id.*
[128] *Id.*, at 51.
[129] *See Preliminary Determination* at 47214 – 47215.

Upon further evaluation of this issue, and based on the facts in this case, we agree that we should not have attributed subsidies received by TPCO's and Changbao's subsidiaries pursuant to 19 C.F.R. 351.525(b)(6)(iii). Thus, we will attribute subsidies in accordance with the particular attribution rule applicable to Yuantong, IETC, Charging, and TPCO Iron, and Precision.

In particular, for these final remand results, the Department attributed subsidies received to Precision by applying 19 C.F.R. 351.525(b)(6)(ii) and attributing all of Precision's subsidies to the combined sales of Changbao (unconsolidated) and Precision. [130] In this remand proceeding, the Department requested that TPCO provide further sales information for Yuantong, IETC, Charging, and TPCO Iron.[131] As noted above, TPCO did not respond to the Department's remand questionnaire. However, upon examination of the TPCO's verification report, the Department has been able to discern sales values for each of the four subsidiaries that would be necessary to attribute appropriately any subsidies received using the methodologies described below.

Under 19 C.F.R. 351.525(b)(6)(ii), two or more cross-owned corporations that produce subject merchandise will have their subsidies attributed to the products produced by those corporations. In the investigation, TPCO and its cross-owned subsidiary, Yuantong, produced subject merchandise. Therefore, for Yuantong, we will attribute subsidies to the combined unconsolidated sales of Yuantong and TPCO.[132] At verification, Yuantong classified certain sales under services and described them as for "heat treatment processing."[133] For purposes of

[130] For Precision, the Department collected the unconsolidated sales for Changbao and Precision at verification. *See* Letter from the Department dated October 29, 2009 (Jiangsu Changbao Steel Tube Co., Ltd. and Jiangsu Changbao Precision Steel Tube Co., Ltd. Verification Report) at page 6.
[131] *See TPCO Remand Questionnaire* at "A. Sales," at pages 1 – 2.
[132] For TPCO, we properly attributed subsidies to its consolidated under 19 C.F.R. 351.525(b)(6)(iii). *See Remand Order and Opinion* at pages 41-45.
[133] *See TPCO Group Verification Report* at page 13.

these final remand results, the Department will include these service sales, as described and verified, in Yuantong's sales value for attribution purposes.[134]

Under 19 C.F.R. 351.525(b)(6)(iv), for a cross-owned input supplier whose production of an input product is primarily dedicated to the production of downstream product, we will attribute the input supplier's subsidies to the combined sales (less inter-company sales) between the input supplier and the downstream products. In the investigation, TPCO Iron was identified as a producer of an input that is primarily dedicated to the downstream products. As such, we will attribute TPCO Iron's subsidies to its sales and the unconsolidated sales of Yuantong and TPCO to cover all producers of subject merchandise. This is to ensure that we accurately reflect the subsidy rate that would be assessed to all producers.[135]

Charging does not meet any of the cross-ownership attribution methods under 19 C.F.R. 351.525(b)(6)(ii)–(iv). However, it provided steel rounds to TPCO during the POI. Therefore, we attribute the provision of steel rounds for less than remuneration under 19 C.F.R. 351.525(b)(6)(v) as a transfer of a subsidy from Charging to TPCO. As such, we attribute the subsidy to the unconsolidated sales of TPCO and Yuantong to cover all producers of subject merchandise. This is to ensure that we accurately reflect the subsidy rate that would be assessed to all producers.[136] IETC was identified as a trading company and we will attribute subsidies to

[134] *Id*., at page 13 and Exhibit VE-24. *See, also*, *OCTG IDM* Comment 36 and *Countervailing Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) and accompanying Issues and Decision Memorandum at Comment 4.

[135] *See Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China*, 79 62594 (October 20, 2014) and accompanying Issues and Decision Memorandum at comment 17, page 67 and *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China*, 75 FR 59212 (September 27, 2010), and accompanying Issues and Decision Memorandum at comment 35, page 113.

[136] *See Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China*, 79 62594 (October 20, 2014) and accompanying Issues and Decision Memorandum at comment 17, page 67 and *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed PressesfFrom the People's Republic of China*, 75 FR 59212 (September 27, 2010), and accompanying Issues and Decision Memorandum at comment 35, page 113.

its sales and cumulate any benefits with the subsidies received by TPCO and its 3 subsidiaries under 19 C.F.R. 351.525(c). As the Department will cumulate any subsidies received by IETC, the Department will use IETC's total unconsolidated sales value, without removing inter-company sales as provided, to attribute any subsidies to the company.

C. Ocean Freight Adjustments to the Benchmark

Background

In the *Final Determination*, the Department examined whether steel rounds were provided to the mandatory respondents for LTAR. To measure the adequacy of remuneration, the Department used a tier ii or world market price benchmark, pursuant to 19 C.F.R. 351.511(a)(2)(ii). In using a tier ii benchmark, 19 C.F.R. 351.511(a)(2)(iv) directs the Department to "adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product." The adjustment will "account for delivery charges and import duties."[137] In accounting for delivery charges, the Department added ocean freight charges from international shipping line, Maersk, and data submitted by Jianli's unaffiliated freight forwarder for shipping steel rounds and billets to the PRC.[138] The Department found both of these prices to be reflective of what an importer would have paid to import steel rounds, and found that there was "no information on the record that would lead us to question the accuracy of these submitted ocean freight rates."[139]

In the *Remand Opinion and Order*, the Court found that the Department's findings suggest that it would be inappropriate to include unrepresentative data in the benchmark.[140] But, according to the Court, "a simple comparison of the two quotes undermines the

[137] *See Countervailing Duties: Final Rule*, 63 FR 65347, 65378 (November 25, 1998) (*CVD Preamble*); 19 C.F.R. 351.511(a)(2)(iv).
[138] *See OCTG IDM* at 14.
[139] *Id.*, at 84-86.
[140] *See Remand Opinion and Order* at 36.

representativeness of one of them."[141] In particular, the Court found that when comparing the Maersk and Jianli freight data, there is a considerable price difference that calls into question the representativeness of the rates, and the Department did not address this disparity.[142] On remand, the Court ordered the Department to "explain how Jianli's freight quote and the Maersk data represent the costs a company would have paid to import the merchandise despite their significant price differences in order to continue using an average of both rates or reconsider its freight adjustment."[143]

Analysis

In its August 25, 2009, submission, U.S. Steel submitted Maersk data on the record.[144] A description for deriving the rates from the Maersk website was included in the submission and involved the entering of specific criteria into fields (*e.g.*, date of shipment, shipping location, destination, cargo commodity, equipment, etc.).[145] Based on the entered data, the Maersk website provides an itemized list of charges for freight and other associated fees. The criteria entered into the fields to derive the Maersk rates were: the 15th of each month of the year 2008; port cities of known countries to export steel rounds to Shanghai, PRC based on the commodity "iron, steel, iron and steel articles, metal"; and shipping on a flatrack.[146] As such, the underlying data that establish the Maersk rates on the record are contemporaneous with the POI, reflect shipping routes that would be available to an importer of steel rounds in the PRC, and involve a commodity that is within the general product category of steel rounds (*e.g.*, iron, steel, iron and steel articles, metal).

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[141] *Id.*, at 37.
[142] *Id.*, at 37-38.
[143] *Id.*, at 38.
[144] *See* Letter from U.S. Steel dated August 25, 2009 (Countervailing Duty Investigation of Certain Oil Country Tubular Goods from China) at Exhibits 1, 4 and 6 – 12.
[145] *Id.*, at Exhibits 1 and 4.
[146] *Id.*, at Exhibits 6 – 11.

In its October 5, 2009, submission, Jianli submitted ocean freight rates during the year 2008 from a local freight forwarder. The rates were derived from actual costs and fees associated with shipping steel pipes (mistakenly referred to in the source documentation as "pices") from various port cities to Shanghai, PRC in shipment containers.[147] An affidavit from the freight forwarder, along with sample shipping contracts for May 2008 were included in the submission.[148] The affidavit and contracts lay out the explicit terms and conditions for shipping the merchandise. Like the Maersk data, the Jianli freight data are contemporaneous with the POI, reflect shipping routes that would be available to an importer of steel rounds, and involve a commodity that is within the general product category of steel rounds. In Jianli's submission, the freight forwarder also explained that the Maersk rates may not be typical, as "most shipping companies and the freight forwarders that work with them arrange for the shipment of goods from China to the destinations identified in paragraph 2, above, and then offer lower rates on the China-bound leg of their voyage."[149] The included service contracts also reference this practice, as they include the line item, "3.) DEADFREIGHT APPLIES IF FINAL CGO QTTY IS LESS THAN OR CGO DIMENSION IS DIFFERENT FROM DESCRIBED IN PARA2.)"[150] We also note that one of the provided service contracts lists one of the vessels as "MAERSK DARWIN."[151] Thus, it appears that Jianli's freight forwarder is actually contracting with Maersk.

Based on the foregoing, and in light of the available record evidence, we find that both sets of submitted freight data are reflective of market rates that an importer would have paid to import the merchandise. As the Court observed, there is a price disparity between these two data

[147] *See, generally*, Letter from Jianli dated October5, 2009 (Jianli Group's Submission of Factual Information) (*Jianli FIS*). The freight forwarder confirmed steel pipes and billets would cost the same to ship. *Id.* at 2.
[148] *Id.* at Attachment 1.
[149] *Id.*
[150] *Id.*
[151] *Id.*

sets. However, we find that the pricing disparity is the result of the avenue that an importer may choose to import the product (either by working directly with a shipping company or by contracting with a freight forwarder that then works with a shipping company). The Department's regulations provide only that the Department must adjust benchmark prices to reflect what a "firm actually paid or would pay if it imported the product," including delivery charges.[152] Therefore, so long as the ocean freight costs are reflective of market rates for ocean freight, and representative of the rates of an importer – and not necessarily the respondent specifically – would have paid, then the prices are appropriate to include in our benchmark.[153]

This is not to say the Department would never remove aberrational freight data when adjusting benchmark prices for delivery charges. In *Mechanical Transfer Drives from the PRC*, the Department excluded four months of Maersk freight data for one route, as the pricing was 5 to 10 times higher than other routes for the same time period.[154] Information was placed on the record by an interested party that provided an explanation for the temporary higher rates, and the temporary higher rates were as a result of events outside of the relevant period of investigation.[155] In this instance, however, the disparity is not the result of an event or factor that caused a merely temporary shift in higher prices, and the Maersk and Jianli freight rates are both contemporaneous with the POI. As summarized above, the Jianli freight data are the result of the freight forwarder's service contracts that contained a "deadfreight" rate, but in all other facets is similar to the Maersk data. Although the Jianli freight rates offer a different option for prices (deadfreight through negotiation between the freight forwarder and shipping company), there are

[152] *See* 19 CFR 351.511(a)(2)(iv).
[153] *See OCTG IDM* at Comment 13.D., page 85. *See*, also, *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013*, 80 FR 77318, (December 14, 2015) and accompanying Issues and Decision Memorandum at Comment 5, page 76.
[154] *See Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination*, 81 FR 75307 (October 28, 2016) and accompanying Issues and Decision Memorandum (*Mechanical Transfer Drives from the PRC)* at Comment 7, page 27.
[155] *Id.* at footnote *154.*

no other notable differences that would preclude the Department from finding both sets of data reflective of market rates that are representative of what an importer would pay to import the merchandise. Therefore, the Department continues to find the Maersk and Jianli freight data reflect the price a firm actually paid or would have paid if it imported the product under 19 C.F.R. 351.511(a)(2)(iv) and continues to use the adjusted rates in the tier ii benchmark under the Provision of Steel Rounds for LTAR program.

D. Tying Provision of Steel Rounds for LTAR to TPCO's Stainless Steel Pipe Sales

Background

In the investigation, U.S. Steel argued that the provision of steel rounds for LTAR was tied to production of steel pipe, within the meaning of 19 C.F.R. 351.525(b)(5). Therefore, U.S. Steel argued that the Department should attribute that subsidy only to TPCO Group's sales of steel pipe.[156] In the *Final Determination* the Department addressed U.S. Steel's arguments by stating:

> Based on the facts in this case, we determine that while the attribution rule governing subsidies to parent companies, 19 CFR 351.525(b)(6)(iii), clearly applies to TPCO Group, it is less clear that the product tying regulation under 19 CFR 351.525(b)(5) is also applicable. Therefore, the Department has determined that it is most appropriate to follow the Department's regulation for subsidies provided to parent companies under 19 CFR 351.525(b)(6)(iii). On this basis, we continue to attribute subsidies to TPCO Group to TPCO Group's consolidated sales.[157]

In the *Remand Opinion and Order*, the Court stated, "{it} is not able to discern whether Commerce in fact made a determination that the provision of steel rounds at LTAR is not tied to the sales of seamless pipe in deciding whether to attribute the subsidy to TPCO's consolidated sales."[158] Because the Department was "required to determine whether the subsidy was tied to the production of seamless steel pipe," the Court found that "Commerce's decision to attribute

[156] *See OCTG IDM* at page 127.
[157] *Id.* at page 129.
[158] *See Remand Opinion and Order* at page 53.

the subsidy to TPCO's consolidated sales is unsupported by substantial evidence."[159] Therefore, the Court ordered the Department to determine whether or not 19 C.F.R. 351.525(b)(5) applies to TPCO in regard to this program based on the record of the case.[160]

Analysis

The Department under 19 C.F.R. 351.525(b)(3) "will attribute a domestic subsidy to all products sold by a firm, including products that are exported." However, under 19 C.F.R. 351.525(b)(5)(i), "{i}f a subsidy is tied to the production or sales of a particular product, the Secretary will attribute the subsidy only to that product." The Department has generally stated that we will not trace how subsidies are used by companies, but rather analyze the purpose of the subsidy based on information available at the time of bestowal.[161] For example, in determining whether receipt of a grant was tied to a particular product, the Department examines the grant approval document.[162] However, "{o}nce a firm receives the funds, it does not matter whether the firm used the government funds, or some of its own funds that were freed up as a result of the subsidy, for the stated purpose or the purpose that we evince."[163]

Under 19 C.F.R. 351.525(b)(5) and the Department's established practice, the provision of a good for LTAR is deemed to benefit a company's overall production absent a requirement explicitly made at the time of bestowal—*i.e.*, when the terms for the provision are set—that a good may only be used for a certain subset of a company's production. The Department will

[159] *Id*.
[160] *Id.*
[161] *See, e.g.*, *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) and accompany Issues and Decision Memorandum at Comment 7, pages 41-42 and *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) and accompanying Issues and Decision Memorandum at Comment 3, page 41.
[162] *See, e.g.*, *Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) and accompanying Issues and Decision Memorandum at "8. The Federal Pulp and Paper Green Transformation Program," pages 26 – 27.
[163] *See CVD Preamble* at 65403.

only a find that a subsidy is tied to a particular product when the intended use is known to the subsidy giver (in this case the GOC) and so acknowledged prior to concurrent with the bestowal of the subsidy. [164] In making this determination, the Department analyzes the purpose of the subsidy based on information available at the time of bestowal.[165]

In the instant case, the Department has examined the Provision of Steel Rounds for LTAR program to the extent that the producers and/or suppliers of the steel rounds and billets are authorities within the meaning of section 771(5)(B) of the Act and measured any benefit by the "difference between the delivered world market price and what each respondent paid for steel rounds during the POI."[166] These transactions were multiple purchases over the year 2008, the POI, from state-owned producers and/or suppliers of steel rounds and billets and were not accompanied by any documents or statements from the GOC or from the state-owned producers and suppliers on the purpose or intended use of the good in question under this program.[167] Therefore, we continue to find this LTAR subsidy program not to be tied to a particular product within the meaning of 19 C.F.R. 351.525(b)(5) and to attribute subsidies provided under this program to the applicable total sales of the recipient rather than to only sales of seamless pipe tubes. In the case of TPCO, we will attribute any purchases to TPCO Group under 19 C.F.R. 351.525(b)(6)(iii) and the other subsidiaries based on the analysis above in the section, titled "B. Attribution of Subsidies to Certain Subsidiaries."

[164] *See CVD Preamble* at 65402.
[165] *Id.* at 65403.
[166] *See OCTG IDM* at pages 13 and 15.
[167] *See* Memorandum from the Department dated October 29, 2009 (Verification Report of TPCO) at "C. Provision of Steel Rounds for {LTAR}," pages 20 – 28.

E. Inclusion of SBB East Asia pricing data in the Steel Rounds Benchmark

Background

In the *Final Determination*, the Department included SBB East Asia pricing data in the steel rounds benchmark. Our rationale for including this data source was its probative value as a price that a PRC importer would pay for steel rounds, its use in a prior Department proceeding, and our finding that the prices were reflective of the cost of delivering the product to the region in which the respondent OCTG producers operated.[168]

In subsequent administrative proceedings, the Department did not include SBB East Asia pricing data in benchmarks, because we found the price series could include import prices to countries other than the PRC (which would not be available to Chinese purchasers).[169] Additionally, the SBB East Asia pricing data was inclusive of freight and there was no information on the record to adjust the freight to a delivered PRC price.[170] The Department requested a voluntary remand to reconsider our inclusion of SBB East Asia pricing data in this proceeding, which the Court granted.[171]

Analysis

In the *Final Determination*, the Department followed 19 C.F.R. 351.511(a)(2) for identifying an appropriate market-based benchmark to measure the adequacy of remuneration of for steel rounds and billets. In determining an appropriate benchmark, the Department first looked to market prices from actual transactions within the country under investigation for the

[168] *See OCTG IDM* at Comment 13.C., pages 76-77.
[169] *See Pre-Stressed Concrete from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) and accompanying Issues and Decision Memorandum at Comment 14, pages 82 – 83 (*Pre-Stressed Concrete*) and *Certain Seamless Carbon and Alloy Steel Standard, Line, and pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010) and accompanying Issues and Decision Memorandum at Comment 9A, page 69 (*Seamless Pipe*).
[170] *See Seamless Pipe*, and accompanying Issues and Decision Memorandum at Comment 9A, page 69.
[171] *See Remand Opinion and Order* at pages 29 – 30.

government provided good (*e.g.*, actual sales, actual imports, or competitively run government auctions) (tier i).[172] In instances where actual transactions within the country are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy. The Department found that PRC prices for steel rounds and billets were unusable as tier i benchmarks; therefore, the Department resorted to the next alternative in the hierarchy to find an appropriate benchmark.[173]

The SBB East Asia pricing data submitted on the record are reflective of freight-inclusive import prices for the region of East Asia.[174] It is unclear from the record information whether the prices include PRC imports that would be considered part of the region, East Asia. In other administrative proceedings, we examined import pricing data from "East Asia" and found the pricing series unusable because it could reflect prices that are not available in the PRC (because it could reflect import prices for other countries).[175] However, upon further consideration, we find the fact that the SBB East Asia pricing data could include PRC import prices to present a more compelling rationale for removing the data source from our benchmark. As noted above, the Department found prices for steel rounds and billets within the PRC to be distorted and, thus, moved from a tier i to a tier ii benchmark. As such, the potential inclusion of PRC import prices in the SBB East Asia pricing data would constitute a tier i benchmark under 19 C.F.R. 351.511(a)(2)(i) (*e.g.*, actual import transactions) and cannot be considered for purposes of a tier ii benchmark. For this reason, the Department has removed the SBB East Asia pricing data from its steel rounds and billet benchmark in calculating a subsidy rate for the mandatory respondents under the Provision of Steel Rounds for LTAR program.

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[172] *See OCTG IDM* at page 13 and 19 C.F.R. 351.511(a)(2)(i).
[173] *See OCTG IDM* at 14 and 19 C.F.R. 351.511(a)(2)(ii).
[174] *See* Letter from TPCO dated September 17, 2009 (TPCO's factual information submission regarding steel billet pricing) at Attachment 1.
[175] *Pre-Stressed Concrete*, and accompanying Issues and Decision Memorandum at Comment 14, pages 82 – 83 and *Seamless Pipe* and accompanying Issues and Decision Memorandum at Comment 9A, page 69.

IV. INTERESTED PARTY COMMENTS ON DRAFT REMAND RESULTS

On December 5, 2016, the Department released the *Draft Remand Results* and accompanying documents to all interested parties.[176] The Department invited interested parties to comment on the *Draft Remand Results* by December 12, 2016, and U.S. Steel filed timely comments.[177]

Issue 1: The Department's Cut-Off Date Analysis

U.S. Steel argues that the Department did not follow the Court's instructions in identifying and measuring subsidies received by respondents prior to the December 11, 2001, cut-off date. Rather, the Department identified four *types* of subsidies: grants, credit oriented subsidies, tax-related subsidies, and land oriented subsidies. It then proceeded to assess these groups of subsidies instead of the individual subsidy programs at issue. For the final determination, the Department should evaluate each individual subsidy program.

If the Department continues to asses each subsidy type, U.S. Steel argues that the Department should revise its findings as to when it is able to evaluate two of its four subsidy types. For credit-oriented subsidies, U.S. Steel argues that the Department should determine it is able to evaluate these subsidies from 1993, not 1996. For land-oriented subsidies, the Department should be able to evaluate subsidies from 1986, not 1999.

Department's Position

In complying with the Court's *Remand Opinion and Order*, the Department only considered the investigated programs that might have been impacted by the Department's application of a December 11, 2001, cut-off date (*e.g.*, non-recurring and credit or lending mechanisms). The Department categorized these investigated programs by grants, credit-

[176] *See Draft Remand Results.*
[177] *See* Letter from U.S. Steel dated December 12, 2016 (Comments on Draft Determination).

oriented subsidies, tax-related subsidies, and land-oriented subsidies. The Department then evaluated each category to determine the starting point upon which it may have been able to identify and measure the particular type of subsidy. The next step in the process would have been to evaluate the countervailability of each program from the starting point or year established for the particular category. However, in this remand, the Department did not have complete responses from the GOC and the four mandatory respondents regarding subsidies provided prior to the 2001 cut-off date.

As noted above, the GOC and the four mandatory respondents did not respond to our request for information on the potentially impacted programs. Therefore, the Department evaluated each of the investigated programs based on record information, and found for certain programs that it had sufficient information to determine that no benefit had been provided prior to December 11, 2001 (in other words, the Department found that its analysis of these programs was not impacted by its application of a uniform cut-off date). For the remaining programs, as described above, the Department used AFA, pursuant to section 776(a) and (b) of the Act, in evaluating the extent to which any of the investigated programs may have provided a countervailable subsidy prior to December 11, 2001.

U.S. Steel's arguments regarding a cut-off date analysis for each individual program are misplaced. As the Department explained in the *Draft Remand Results*, our initial analysis grouped the potentially impacted investigated programs (*e.g.*, non-recurring subsidies and credit/lending subsidies) by type and we then analyzed the different types of subsides within the context of the government bestowal, which is similar for the individual programs being examined under each type, to arrive at a date for identifying and measuring this type of

subsidy.[178] As such, there is no reason to repeat the same analysis for each investigated program being examined and, moreover, U.S. Steel has not explained why it would make sense to have a different cut-off date for one income tax program versus another, or one lending program versus another, or one grant program versus another. Further, we note that the Court in the past has affirmed a remand analysis that established cut-off dates based on the type of subsidy.[179]

Finally, U.S. Steel's alternative claim that we should have selected different dates for identifying and measuring "land-oriented subsidies" and "credit-oriented subsidies" is moot. As explained above, the Department determined that it verified all outstanding lending during the POI, and that all outstanding lending was accounted for and countervailed in the *Final Determination*. As a result, there was nothing for the Department to examine further, and the specific date that the Department identified as the earliest it could identify and measure "credit-oriented subsidies" did not impact the Department's analysis in the *Draft Remand Results*. Moreover, of the three land-oriented subsidies examined in the investigation, the Department was able to determine in the *Draft Remand Results* that two programs did not exist prior to 2001. For the remaining program on which the Department had no information, Provision of Land and/or Land Use Rights to SOEs for LTAR, the Department used AFA. Therefore, again, the specific date that the Department identified as the earliest it could identify and measure "land-oriented subsidies" did not impact the Department's analysis in the *Draft Remand Results*. Thus, U.S. Steel's arguments to adjust the starting point for these subsidy categories is moot.

Issue 2: Attribution of Subsidies to Changbao and TPCO's Subsidiaries

U.S. Steel concurs with the Department's method for attributing subsidies to Changbao and TPCO's subsidiaries.

[178] *See Draft Remand Results* at pages 11 – 12.
[179] *See GPX Int'l Tire Corp. v. United States*, 893 F. Supp. 2d 1296 (CIT 2013).

Department's Position

The Department has made no adjustments to its attribution of subsidies received by Changbao and TPCO's subsidiaries, as set forth above.

Issue 3: Whether the Provision of Steel Rounds for LTAR is a Tied Subsidy

U.S. Steel asserts that the GOC made statements on the record that steel rounds were for the production of OCTG and the record contained other "contextual evidence" of the intended purpose of the subsidy program.[180] Moreover, U.S. Steel argues that there is no reason for the Department to require evidence in the form of "documents or statements" accompanying transactions when the record evidence clearly demonstrates the intention of the subsidy. Finally, U.S. Steel asserts that there is no record evidence that suggests steel rounds were used to produce goods other than OCTG.

Department's Position

U.S. Steel is incorrect when it argues that the provision of steel rounds is tied to a particular product within the meaning of 19 C.F.R. 351.525(b)(5)(i). U.S. Steel has failed to provide any legal authority or any cite to relevant information on the record to support the contention that the provision of steel rounds is tied to the production of seamless pipe.

As noted above, in order to determine whether a subsidy is tied to a particular product under 19 C.F.R. 351.525(b)(5)(i), the Department has stated that a product is "tied" when the intended use is known by the subsidy giver and so acknowledged prior to or concurrent with the subsidy.[181] The CIT in *Samsung Electronics* found that "Commerce's concern with what the government providing the subsidy knew at the time it provided the subsidy is entirely consistent

[180] *See GOC Initial Questionnaire* at page 49.
[181] *See CVD Preamble* at 65402.

with the regulation."[182] Here, there is no information on the record to demonstrate that the intended use of the investigated subsidy program was known by the subsidy giver and so acknowledged prior to, or concurrent with, the subsidy. The statement cited by U.S. Steel from the *GOC Initial Questionnaire* that the steel rounds at issue were "billets in round shape that can be used to produce OCTG,"[183] is insufficient to demonstrate that the investigated program is tied to a particular product. This statement was not made at the time the subsidy was provided, and the mere fact that a good "can be used" does not demonstrate that the provision of that good is tied to a particular product within the meaning of 19 C.F.R. 351.525(b)(5). Further, although U.S. Steel refers to "other contextual evidence of the intended purpose," U.S. Steel fails to cite any such evidence. Therefore, we continue to attribute subsidies received under the Steel Rounds for LTAR program to the TPCO Group and its subsidiaries, as described above, in accordance with 19 C.F.R. 351.525(b)(3).

Issue 4: Inclusion of Jianli's Reported Freight in the Steel Rounds for LTAR Benchmark

U.S. Steel argues that the Department has still not explained the disparity between the Maersk and Jianli-provided freight rates and how "market rates" could be so different for the same service. U.S. Steel further argues that the Jianli freight rates are not reliable and represent a special arrangement worked out with a local freight forwarder or an actual price Jianli paid on a single occasion through some special deal. In contrast, Maersk prices are publicly available, reflective of what it charges all customers, and representative of what a typical importer would pay. Finally, U.S. Steel asserts that removing the Jianli freight rates from the benchmark would be consistent with the Department's practice of excluding aberrational freight data.[184]

[182] *See Samsung Electronics Co., Ltd v. United States*, 973 F. Supp. 2d 1321, 1330 (CIT 2014).
[183] *See GOC Initial Questionnaire* at page 49.
[184] *See Beijing Tianhai Industrial Co., Ltd. v. United States*, 52 F. Supp. 3d 1351, 1374 (CIT 2015) (*Beijing Tianhai)*.

Department's Position

The Department examined the Maersk and Jianli freight data and determined that both sets of data were contemporaneous with the POI, reflected shipping routes that would be available to an importer of steel rounds, and involved a commodity that is within the general category of steel rounds. U.S. Steel's assertion that the Jianli data are not reliable or are made pursuant to a special arrangement or special occasion is speculative and is not supported by record information. Additionally, with respect to U.S. Steel's argument that "there is no reason to believe this quote is representative of what a typical importer would pay on a normal basis," we disagree. As explained above, the record reflects that the prices provided by Jianli are actual shipping charges paid by the freight forwarder's customers during calendar year 2008.[185] The data are not limited to Jianli's own transactions or to certain limited sales, but are reflective of freight forwarder's actual shipping charges during the POI. Thus, U.S. Steel has offered no support for its proposition that the Jianli pricing data reflect a "special deal" and are otherwise not representative of the freight forwarder's normal course of business.

The Department also addressed the pricing disparity between the two sets of data, and explained why it continued to find that both sets of data are reflective of market rates that an importer would have paid to import the merchandise. U.S. Steel does not counter the Department's finding that offering lower prices on the China-bound leg of the trip is "an avenue that an importer may choose to import the product,"[186] but rather only attempts to discredit the submitted information. We are not persuaded that the data are somehow limited or only reflect special deals by a local freight forwarder, as the data reflect actual shipping costs experienced by the freight forwarders' customers over the course of calendar year 2008 and from multiple ports.

[185] *See Jianli FIS* at pages 2-3 and Attachment 1.
[186] *See Draft Remand Results* at page 43.

Finally, we find that U.S. Steel's cite to *Beijing Tianhai* is inapposite. The Jianli freight data are not restricted to the unique circumstances of one company. Rather, the data appear to reflect the freight forwarder's normal course of business and an option that is available to importers when transporting materials from one port to another. As such, we continue to find the Maersk and Jianli pricing data reflect the price a firm actually paid or would have paid if it imported the product under 19 C.F.R. 351.511(a)(2)(iv).

V. FINAL RESULTS OF REMAND DETERMINATION

We have implemented the changes discussed above. As a result of this final remand determination, we are assigning the following revised subsidy rates:

Producer	Section 129 Determination[187]	Final Remand Redetermination
Changbao	12.46%	28.70%
Jianli	15.78%	30.56%
TPCO	7.71%	21.48%
Wuxi	14.95%	29.48%
All Others	12.26%	27.08%

12/20/2016

X 

Signed by: PAUL PIQUADO
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

[187] The rates determined in the *Final Determination*, as amended, have been revised as a result of proceedings conducted under section 129 of the Uruguay Round Agreements Act. *See Implementation of Determinations Pursuant to Section 129 of the Uruguay Round Agreements Act*, 81 FR 37180, 37182 (June 8, 2016).