

MEMORANDUM TO: Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

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

DATE: May 28, 2010

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Countervailing Duty Determination: Certain Steel Grating from
the People's Republic of China

I. Summary

The participating respondents in this proceeding are the GOC, and the mandatory company respondent, Ningbo Jiulong.¹ On November 3, 2009, the Department published the Preliminary Determination in this investigation. Subsequent to the Preliminary Determination, the Department issued a post-preliminary determination containing a preliminary analysis for the program “Provision of Electricity at Less Than Adequate Remuneration.”²

The Subsidies Valuation Information and Analysis of Programs sections below describe the subsidy programs and the methodologies used to calculate the benefits from these programs. In the instant investigation, we received case briefs from the Petitioners, the GOC, Ningbo Jiulong, and Xinke regarding the Preliminary Determination, the Post-Preliminary Determination, as well as CBP entry documents placed on the record by the Department.³ Rebuttal briefs were submitted by Petitioners, the GOC, and Ningbo Jiulong.

We have analyzed the comments submitted by the parties in their case briefs and rebuttal briefs in the “Analysis of Comments” section below, which also contains the Department’s responses to the issues raised in the briefs. We recommend that you approve the positions we have

¹ For this Issues and Decision Memorandum, we are using short citations to various references, including administrative determinations, court cases, acronyms, and documents submitted and issued during the course of this proceeding, throughout the document. We have appended to this memorandum a table of authorities, which includes these short citations as well as a guide to the acronyms used throughout this memorandum.

² See Post-Preliminary Determination.

³ See CBP Entry Documents. No additional factual information has been placed on the record of this investigation since these CBP entry documents were placed on the record. Thus, there has been no additional factual information received since that time that impacts our decision for this final determination.

described in this memorandum. Below is a complete list of the issues in this investigation about which we received comments from the Petitioners, the GOC, Ningbo Jiulong, and Xinke:

- Comment 1: Application of U.S. Countervailing Duty Law to China**
- Comment 2: Cut-Off Date**
- Comment 3: Selection of Two Mandatory Respondents**
- Comment 4: Application of Adverse Facts Available**
- Comment 5: Department Procedures**
- Comment 6: Provision of Hot-Rolled Steel and Wire Rod for Less than Adequate Remuneration – The Role of Mill Test Certificates**
- Comment 7: Provision of Hot-Rolled Steel and Wire Rod for Less than Adequate Remuneration – Whether These Programs Are Countervailable**
- Comment 8: Provision of Hot-Rolled Steel and Wire Rod for Less than Adequate Remuneration – Appropriate Benchmark**
- Comment 9: Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment**
- Comment 10: Provision of Electricity for Less than Adequate Remuneration**
- Comment 11: Grant Programs**
- Comment 12: Separate CVD Rate for Xinke**

II. Background

Since the publication of the Preliminary Determination, the Department has issued various supplemental questionnaires to the GOC and Ningbo Jiulong. As detailed fully in the “Case History” section of the Federal Register notice issued simultaneously with this Issues and Decision Memorandum, the parties submitted timely responses to the Department’s supplemental questionnaires. On December 4, 2009, Ningbo Jiulong submitted a request for a hearing pursuant to 19 CFR 351.310(c) and the Department’s Preliminary Determination.

The Department conducted verification of the questionnaire responses submitted by the GOC and Ningbo Jiulong from March 8 through March 13, 2010. The Department issued verification reports on April 14, 2010.⁴ The Department issued the Post-Preliminary Determination on April 15, 2010.

On May 4, 2010, Ningbo Jiulong withdrew its request for a hearing.⁵ On May 6, 2010, Department officials met with representatives of Ningbo Jiulong regarding issues in the briefs submitted by their client and by Petitioners.⁶ On May 10, 2010, Department officials met with representatives of Petitioners regarding issues raised in the briefs.⁷

⁴ See GOC Verification Report and Ningbo Jiulong Verification Report.

⁵ See Hearing Request Withdrawal.

⁶ See Ex-Parte Memorandum – Ningbo Jiulong.

⁷ See Ex-Parte Memorandum – Petitioners.

III. Subsidies Valuation Information

A. Date of Applicability of CVD Law to the PRC

Consistent with recent CVD determinations, we have determined that the date from which it is appropriate and administratively feasible to identify and measure subsidies in the PRC for purposes of the CVD law is December 11, 2001, the date on which the PRC became a member of the WTO. Thus, only subsidies provided on or after December 11, 2001, are included in the “Programs Determined to be Countervailable” section, below. The basis for this decision is fully explained in Comment 2, below.

B. Allocation Period

In the Preliminary Determination, consistent with 19 CFR 351.524(d)(2), we used an AUL period as the allocation period for non-recurring subsidies provided on or after December 11, 2001. The AUL applicable to the steel grating industry is 12 years according to the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System. No party in this proceeding has disputed this allocation period. Thus, we have continued to use a 12-year AUL in this final determination.

C. Cross-Ownership

In its initial questionnaire response, Ningbo Jiulong claimed that it was cross-owned with JEE, pursuant to section 351.525(b)(6)(vi) of the Department’s regulations. Ningbo Jiulong claimed that it controlled JEE, even though JEE was 100 percent owned by a local government agency and was a COE. JEE is not a producer of subject merchandise; it purchases wire rod, twists it, and transfers it to Ningbo Jiulong. For purposes of the Preliminary Determination, we found Ningbo Jiulong and JEE not to be cross-owned. Since the Preliminary Determination, we did collect additional information concerning this issue.⁸ However, we find that it is not necessary to reach a final determination concerning whether Ningbo Jiulong and JEE are cross-owned. As discussed in detail below, the verification of the provision of wire rod for LTAR failed, and we have selected an AFA rate to apply to that program. However, we verified that JEE did not apply for or receive benefits under any other programs under investigation, including the grant programs under which Ningbo Jiulong reported receiving assistance.

Because Ningbo Jiulong claimed that it controlled JEE, section 351.525(a)(6)(iii) of the Department’s regulations applies. According to this provision,

{i}f the firm that received the subsidy is a holding company, including a parent company with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries. However, if the Secretary finds that the holding company merely served as a conduit for the transfer of the subsidy from the government to the subsidiary of the holding company, the Secretary will attribute the subsidy to products sold by the subsidiary.

⁸ See, e.g., Ningbo Jiulong SQR3; see also Ningbo Jiulong SQR4.

Thus, the issue of whether Ningbo Jiulong and JEE are cross-owned is only relevant in determining the appropriate sales denominator to apply. Nearly all of JEE's transactions during the POI were with Ningbo Jiulong. Therefore, even if we were to find that JEE is cross-owned with Ningbo Jiulong, the addition of the value of JEE's external sales during the POI to Ningbo Jiulong's sales does not affect the net countervailable subsidy rates for any of the programs under investigation for which we have calculated a rate. Since the inclusion (or exclusion) of the value of JEE's sales in the denominator does not affect the subsidy rates in this final determination, we need not address the issue of whether JEE is cross-owned with Ningbo Jiulong.

IV. Application of Facts Available, Including the Application of Adverse Inferences

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

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

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."⁹ 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."¹⁰ In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less."¹¹

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the

⁹ See Semiconductors From Taiwan.

¹⁰ See SAA, at 870.

¹¹ See Rhone Poulenc.

extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”¹² The Department considers information to be corroborated if it has probative value.¹³ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.¹⁴

When the Department applies AFA, to the extent practicable, it will determine whether such information has probative value by evaluating the reliability and relevance of the information used. In this case, as discussed in detail below in the sections regarding the programs for the provision of hot-rolled steel and wire rod for LTAR and in the Department’s Position to Comment 4, the rates being used as AFA for the hot-rolled steel and wire rod LTAR programs are rates previously calculated for the same programs in other China CVD investigations. With regard to the reliability aspect of corroboration, we note that these rates were calculated in prior final CVD determinations. No information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there are typically no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. For the program for the provision of electricity at LTAR, the Department is calculating a rate using Ningbo Jiulong’s reported information regarding electricity usage and fees paid, but we are relying on information provided by the GOC to determine the benchmark.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.¹⁵

Provision of Hot-Rolled Steel for Less than Adequate Remuneration; Provision of Wire Rod for Less than Adequate Remuneration

After the Preliminary Determination, we sought additional documentation to establish the identities of the producers of hot-rolled steel and wire rod used by Ningbo Jiulong to produce subject merchandise. In particular, we requested that Ningbo Jiulong provide the mill test certificates that it received with its purchases of hot-rolled steel and wire rod, which would identify the producer. As discussed in greater detail below, in the sections “Provision of Hot-Rolled Steel for Less Than Adequate Remuneration,” and “Provision of Wire Rod for Less Than Adequate Remuneration,” and in the Department’s Position on Comment 4, the documents provided by Ningbo Jiulong contained material discrepancies, were unreliable, contained large duplications of data, and were unverifiable. In addition, Ningbo Jiulong itself admitted that the

¹² See SAA, at 870.

¹³ See SAA, at 870.

¹⁴ See SAA, at 869.

¹⁵ See Flowers from Mexico.

mill test certificates that it received from its suppliers had been fabricated and explained to Department verifiers that this was because of various failings of its suppliers' equipment and inventory management. Further, after verification, the Department obtained entry documentation from CBP that cast further doubt on Ningbo Jiulong's explanations regarding its use of producer mill test certificates and the information and documentation Ningbo Jiulong provides to its customers. Although explicitly asked at verification to confirm that it had provided all mill certificates Ningbo Jiulong provided to its customers, it is clear that Ningbo Jiulong did not provide all such documents. Ningbo Jiulong's claims at verification that only on occasion did its customers request mill test certificates and when the customer did, Ningbo would send it a copy of the supplier-produced mill test certificate, were called into question by the CBP information obtained after verification. This documentation indicates that Ningbo Jiulong produced mill certificates and that Ningbo Jiulong failed to inform the Department of these certificates when asked at verification.¹⁶

We find that the use of "facts otherwise available" is warranted pursuant to section 776(a)(2)(A), (C), and (D) of the Act with regard to these two programs because Ningbo Jiulong withheld information that had been requested and provided information that could not be verified. Moreover, we find that Ningbo Jiulong did not act to the best of its ability and that an adverse inference is warranted, pursuant to section 776(b) of the Act, because Ningbo Jiulong did not disclose the problems with the mill test certificates, and failed to disclose that it produced its own mill certificates for its customers despite the Department's request that it provide all mill test certificates. The mill test certificates were integral to the Department's examination of the provision of these inputs for LTAR. Therefore, consistent with the Department's recent practice when the verification of a program fails, the Department has selected an AFA rate for the same program from another CVD investigation of China.

Provision of Electricity for Less Than Adequate Remuneration

With regard to the Provision of Electricity for LTAR, the GOC did not provide the requested information that was essential to the Department's evaluation of whether the GOC's provision of electricity is countervailable. As explained in more detail in the "Analysis of Programs" section below, with regard to our analysis of the Provision of Electricity for Less Than Adequate Remuneration, we are relying on facts otherwise available, and in selecting from among the facts available, we are drawing an adverse inference. As a result, we determine that the GOC, in its provision of electricity, is providing a financial contribution that is specific pursuant to sections 771(5)(D) and 771(5A) of the Act, respectively. In measuring the adequacy of remuneration, we are applying an adverse inference in selecting the benchmark electricity rate. We are comparing the rates paid by Ningbo Jiulong to the highest rates that they would have paid in the PRC during the POI. Specifically, we have selected the highest rate charged in China to large industrial users, for the peak, valley, and normal ranges, as shown in the electricity rate schedules provided by the GOC as Exhibit S3-12.1 to the January 19, 2010 supplemental questionnaire response.

¹⁶ See Ningbo Jiulong Verification Report, at page 13.

V. Analysis of Programs

A. Programs Determined to Be Countervailable

1. Government Provision of Hot-Rolled Steel for Less than Adequate Remuneration

The Department is investigating whether the GOC provided countervailable subsidies through the provision of hot-rolled steel at less than adequate remuneration. In its original questionnaire response, Ningbo Jiulong reported purchasing hot-rolled steel during the POI. The bulk of this hot-rolled steel was reported by Ningbo Jiulong to have been produced by a single company, and purchased directly.

As a result of the GOC's failure to provide requested information for certain companies that produced hot-rolled steel purchased by Ningbo Jiulong during the POI, in the Preliminary Determination we applied adverse facts available and treated those hot-rolled steel producers as "authorities" within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily determined that Ningbo Jiulong received a financial contribution from these companies, in the form of a provision of a good, within the meaning of section 771(5)(D)(iii) of the Act. For other suppliers of hot-rolled steel, the GOC was able to provide some documentation that indicated that they were privately owned companies. However, the GOC did not provide all of the requested documentation. We preliminarily determined that these companies were privately owned, and thus did not provide a financial contribution to Ningbo Jiulong; however, we announced that we would provide the GOC a final opportunity to submit the documentation necessary to demonstrate definitively that these companies were privately owned during the POI. Further, we noted that if such information was not forthcoming, we may apply "facts otherwise available" in accordance with section 776 of the Act.¹⁷ We also preliminarily determined that the provision of hot-rolled steel at LTAR was specific because the recipients are limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act.¹⁸ Although the GOC had stated that the number of industries that purchase hot-rolled steel was "too numerous to mention,"¹⁹ the GOC provided no additional supporting documentation to substantiate that claim.

On December 23, 2009, Petitioners requested the Department require Ningbo Jiulong to submit mill test certificates, issued by the producers of their hot-rolled steel inputs. According to Petitioners, the mill test certificates are issued by the original producer of the liquid steel, at the point at which the chemistry is fixed, and would identify the production source of the hot-rolled steel and verify that the information submitted by Ningbo Jiulong regarding this matter was accurate.²⁰ According to Petitioners, the mill test certificates would allow the Department to trace the source and type of hot-rolled steel purchased by Ningbo Jiulong back to the original manufacturer.²¹ Furthermore, Petitioners claimed, Ningbo Jiulong's compliance with ISO quality standards requires that the steel it uses in its products be traceable to the original

¹⁷ See Preliminary Determination, at 56798-9.

¹⁸ See Kitchen Shelves and Racks from the PRC – CVD (Final Determination), at page 16.

¹⁹ See GOC Initial CVD QR, at page 18.

²⁰ See Petitioner Comments on Mill Test Certificates.

²¹ See Petitioner Comments on Mill Test Certificates, at page 3.

manufacturer; as such, Ningbo Jiulong should maintain all the mill test certificates it receives from the producers of the steel it purchases, and should be able to provide all of these certificates to the Department upon request.²²

Since the identity of the producers of the inputs is key to the Department's analysis of the "Provision of Hot-Rolled Steel for Less than Adequate Remuneration" program, and since all of the requested information regarding the ownership of the producers had not been provided to the Department, the Department issued a supplemental questionnaire to Ningbo Jiulong requesting that it submit mill test certificates indicating the producer and type of steel for each individual purchase of hot-rolled steel during the POI. The Department further requested that the mill test certificates be copies of the documents produced by the original producer of the liquid steel at the point at which the chemistry is fixed. On January 26, 2010, Ningbo Jiulong provided some mill test certificates that it claimed were issued by the producers of the hot-rolled steel it purchased during the POI. However, Ningbo Jiulong reported that it was unable to provide all of the relevant mill test certificates for purchases directly from its largest supplier of hot-rolled steel, because it "received quality certificates twice or three times a month."²³

On February 5, 2010, the Department again asked Ningbo Jiulong to provide the mill test certificates for every hot-rolled steel purchase made during the POI. In this supplemental questionnaire, we made it clear that we were requesting all of the relevant mill test certificates, for the purpose of identifying the ultimate producers of the hot-rolled steel purchased by Ningbo Jiulong. In its February 23, 2010 response, Ningbo Jiulong claimed that it could not supply all of the mill test certificates for the hot-rolled steel it purchased during the POI because "the purchases occurred too long ago."²⁴

Again in a supplemental questionnaire, issued to Ningbo Jiulong on March 2, 2010, the Department asked Ningbo Jiulong to confirm that it had provided all mill test certificates for each purchase of hot-rolled steel during the POI. In its March 4, 2010 response, Ningbo Jiulong stated that additional efforts to search its records had produced additional mill test certificates for hot-rolled steel. However, Ningbo Jiulong reported that the mill test certificates are not accounting documents that are recorded or kept in a centralized location in the ordinary course of business and that it had provided, to the best of its ability, all of the mill test certificates with issuance dates during the POI that it had received. Ningbo Jiulong reiterated that for its hot-rolled steel purchases, "NJMM received quality certificates twice or three times a month."

In the March 2, 2010 supplemental questionnaire, we also asked Ningbo Jiulong to confirm that the mill test certificates that it submitted on the CVD record for each hot-rolled steel purchase during the POI were identical to the mill test certificates for each hot-rolled steel purchase that were submitted for the record in the companion AD investigation to the extent that the two POIs overlap (*i.e.*, 10/01/08-12/31/08), and to identify and submit any such mill test certificates that had already been provided for the AD investigation but had not yet been provided for the CVD record. In its response, Ningbo Jiulong identified one mill test certificate which had

²² See Petitioner Comments on Mill Test Certificates, at pages 3 and 4.

²³ See Ningbo Jiulong SQR3, at 1.

²⁴ See Ningbo Jiulong SQR4, at 5.

inadvertently not been submitted to the CVD record. Moreover, Ningbo Jiulong indicated that that the hot-rolled steel mill test certificates submitted in the two investigations are identical.

On March 8, 2010, Petitioners submitted comments on the mill test certificates provided by Ningbo Jiulong. Petitioners identified several instances in which mill test certificates identifying different heats of steel that were produced on different dates nonetheless show identical patterns of chemical composition. Petitioners included in this submission a statistical probability analysis that examined all the variables in the mill test certificates. Petitioners thus concluded that the probability of such duplications occurring between different heats of steel, produced on separate dates, was virtually zero.

We conducted verification of Ningbo Jiulong's questionnaire responses from March 10 through March 13, 2010. The inconsistencies in the mill test certificates became a central issue at our verification of Ningbo Jiulong. We pointed out pairs of mill test certificates reportedly issued by the producer of the hot-rolled steel, and we asked Ningbo Jiulong to explain how these documents could contain such improbable similarities. Ningbo Jiulong indicated that the producer who sold hot-rolled steel directly to Ningbo Jiulong fabricated mill test certificates whenever its testing machines went down and that the duplications were a result of typographical and data entry errors made when the hot-rolled steel producer updated a previous mill test certificate template.²⁵

Ningbo Jiulong officials provided an envelope at verification, and explained that this envelope contained every mill certificate for each purchase of hot-rolled steel made by Ningbo Jiulong during the POI.²⁶ Ningbo Jiulong explained that it does not receive mill test certificates for every shipment of hot-rolled steel that it receives; rather, it must request them from the delivery driver upon receipt of shipment.

At verification, we noted that one purchase order from Ningbo Jiulong's largest U.S. customer contained language indicating that mill test certificates would be required upon shipment.²⁷ We asked whether any of Ningbo Jiulong's U.S. customers received mill test certificates during the POI with shipments of steel gratings. Company officials told us that they could not recall if mill test certificates were sent to those customers during the POI, but that mill test certificates were sent to U.S. customers on occasion.²⁸ We asked company officials how it determined which mill test certificate to send to its customers, and were told that it chose the certificate to send based on a date close to the production date of the steel grating.²⁹ In determining which date was relevant to each production run, Ningbo Jiulong would regularly select a mill test certificate dated one month prior to the steel grating order date.³⁰ We asked to see copies of the mill test certificates that Ningbo Jiulong sent to its customers, but were told that it did not keep records of the mill test certificates it sent to its customers.

²⁵ See Ningbo Jiulong Verification Report, at pages 15-17.

²⁶ See Ningbo Jiulong Verification Report, at page 11.

²⁷ See Ningbo Jiulong Verification Report, at page 10.

²⁸ See Ningbo Jiulong Verification Report, at page 11.

²⁹ See Ningbo Jiulong Verification Report, at page 11.

³⁰ See Ningbo Jiulong Verification Report, at page 11.

After verification, we learned that in the parallel antidumping investigation of steel grating from the PRC, the Department had obtained certain entry documents from CBP. We requested and obtained permission from CBP to place these proprietary documents on the CVD record.³¹ Accordingly, we placed the documents on the record on April 7, 2010, and provided an opportunity for interested parties to comment on this new factual information.³² The entry documents provided by CBP included mill test certificates issued by Ningbo Jiulong for the production of steel grating, and then provided to its U.S. customer.

Despite in-depth discussions at verification regarding Ningbo Jiulong's procedures for gathering the mill test certificates we requested,³³ and after receiving explicit confirmation from Ningbo Jiulong that it had provided all mill test certificates during the POI,³⁴ the entry documents provided by CBP marked the first time the Department learned about mill test certificates prepared by Ningbo Jiulong for the purpose of sending to its U.S. customers. Petitioners have since noted, and the Department has confirmed, that the chemical composition of the steel recorded in these certificates does not match the composition shown in any of the certificates for the steel inputs, and that it would be impossible to produce gratings with the chemical composition indicated in Ningbo Jiulong's certificates using steel inputs with the chemical composition shown on the input producers' certificates.³⁵

As discussed above in the "Application of Facts Available, Including the Application of Adverse Inferences" section, the mill certificates provided by CBP, which were never before disclosed by Ningbo Jiulong, despite explicit requests to provide all mill test certificates, raise significant issues regarding the verification of the hot-rolled steel information submitted by Ningbo Jiulong.³⁶ The Department spent a significant amount of time at verification attempting to clarify the role that mill test certificates played in the course of Ningbo Jiulong's business, as well as how the documents were received from suppliers and delivered to customers. We persistently asked whether the documents submitted to us constituted the entirety of hot-rolled steel mill test certificates possessed by Ningbo Jiulong, and we were consistently reassured that all such documents were provided to us. Furthermore, at verification we were led to believe that when Ningbo Jiulong did deliver mill test certificates to its U.S. customers, it passed along those certificates that it received with the hot-rolled steel inputs that it used in the production of steel grating; no indication was given to us that Ningbo Jiulong itself prepared mill test certificates to document its production of steel grating. In addition, the Department learned at verification that many of the mill test certificates on the record were fabricated.

³¹ See [CBP Entry Documents Request](#).

³² See [CBP Entry Documents – Opportunity to Comment](#).

³³ See [Ningbo Jiulong Verification Report](#), at page 11.

³⁴ We twice asked Ningbo Jiulong to confirm that we had received all the mill test certificates for the POI, and twice we were told that all of the mill test certificates had been provided; then twice at verification we uncovered additional mill test certificates. See [Ningbo Jiulong Verification Report](#), at pages 13 and 14.

³⁵ See [Petitioners' CBP Comments](#).

³⁶ See [Ningbo Jiulong Verification Report](#), at page 19, in which we explained to Ningbo Jiulong that "we were unable to establish the accuracy of the mill test certificates submitted, and NJMM's information and statements regarding the mill certificates and that the numerous problems with the mill certificates call into question who the actual producers of the steel inputs are," and that problems with the mill certificates also called into question the "reliability of other information submitted by NJMM on the record of this investigation."

Pursuant to section 776(a)(2) of the Act, the Department must apply facts available where a respondent: A) withholds information that the Department has requested; B) fails to provide requested information within the deadlines established, or in the form or manner required by the Department; C) significantly impedes a proceeding; or D) provides information that cannot be verified. Ningbo Jiulong withheld information that the Department requested and failed to make the Department aware, despite numerous opportunities and several inquiries, in questionnaires and at verification, that it prepared and sent its own mill test certificates to its customers. These documents contained basic information that contradicted the producer mill test certificates already submitted to the Department. The contradictions between the two sets of mill test certificates, as well as admissions at verification that the hot-rolled steel mill test certificates were fabricated by the producer that sold the hot-rolled steel directly to Ningbo Jiulong, render both sets of documents unreliable. In addition, the problems found with respect to the mill certificates rendered the information unverifiable. Accordingly, we find that we must apply facts available pursuant to section 776(a)(2)(A), (C), and (D) of the Act.

Furthermore, pursuant to section 776(b) of the Act, where a respondent fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may make adverse inferences in selecting from the facts available. Compliance with the “best of its ability” standard is determined by assessing whether the interested party has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.³⁷ To conclude that a party has not cooperated to the best of its ability and to draw an adverse inference under section 776(b) of the Act, the Department examines two factors: (1) that a reasonable and responsible respondent would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations; and (2) that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to respond fully is the result of the respondent’s lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.³⁸ While intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate, the statute does not contain an intent element.³⁹

And because it did not provide the verifiers with the necessary information needed to confirm the information on the record, we find that Ningbo Jiulong failed to cooperate to the best of its ability. Ningbo Jiulong’s responses with respect to the mill certificates demonstrated a failure to put forth its maximum efforts to investigate and obtain the requested information. Further, we find that Ningbo Jiulong failed to disclose when asked, the universe of mill test certificates, the problems with the mill test certificates, and the fact that it produced its own mill test certificates for its customers. Therefore, adverse inferences are appropriate in this case to ensure that Ningbo Jiulong “does not obtain a more favorable result by failing to cooperated than if it had cooperated fully.”⁴⁰

³⁷ See Nippon Steel.

³⁸ See Nippon Steel, at 1382.

³⁹ See Nippon Steel, at 1382.

⁴⁰ See SAA.

Based on facts otherwise available and the use of adverse inferences, we find that Ningbo Jiulong received a financial contribution when it purchased hot-rolled steel from state-owned enterprises.⁴¹ We continue to find, as we did in the Preliminary Determination, that the industries identified by the GOC as users of hot-rolled steel are limited in number, and hence, the provision of hot-rolled steel is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

For the reasons explained above and in the “Application of Facts Available, Including the Application of Adverse Inferences” section above, we are assigning a countervailing duty rate to Ningbo Jiulong based on adverse facts available, pursuant to section 776(b) of the Act. The use of program-specific net subsidy rate calculated for a cooperating respondent as a total AFA rate is consistent with the Department’s practice.⁴² On this basis, we are applying the rate of 44.91 percent ad valorem, as calculated in CWP from the PRC – CVD Order, to the “Provision of Hot-Rolled Steel for LTAR” program.

2. Government Provision of Wire Rod for Less than Adequate Remuneration

The Department is investigating whether the GOC provided countervailable subsidies through the provision of wire rod at less than adequate remuneration. In its original questionnaire response, Ningbo Jiulong reported purchasing wire rod during the POI. The bulk of this wire rod was reported by Ningbo Jiulong to have been produced by a single company, and sold directly to Ningbo Jiulong.

In its initial questionnaire response, Ningbo Jiulong reported that it purchased twisted wire rod from its affiliated supplier, JEE, which purchases wire rod and processes it into twisted wire rod for NJMM’s use in producing subject merchandise. In the Preliminary Determination, we determined that JEE was a COE, and as such, an authority within the meaning of section 771(5)(B) of the Act.⁴³ We therefore, preliminarily determined that the wire rod purchased by Ningbo Jiulong constituted a financial contribution in the form of a government provision of a good, and that Ningbo Jiulong received a countervailable subsidy to the extent that the price it paid for wire rod was for LTAR.⁴⁴ We determined that the provision of wire rod for LTAR was specific because the industries that use wire rod, as named by the GOC, are limited in number.⁴⁵

As discussed in more detail above in the section, “Provision of Hot-Rolled Steel at Less than Adequate Remuneration,” we asked Ningbo Jiulong to provide mill test certificates for all of its purchases of wire rod during the POI. As with purchases of hot-rolled steel, we made numerous requests in our attempt to examine all of the relevant mill test certificates. The discussions at verification detailed above in the “Provision of Hot-Rolled Steel at Less than Adequate Remuneration” section included the mill test certificates for wire rod purchases. Therefore, all of the difficulties the Department encountered with respect to mill test certificates apply equally to Ningbo Jiulong’s wire rod purchases. Likewise, the documentation provided by CBP presents

⁴¹ See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

⁴² See, e.g., LWTP from the PRC, at “Selection of the Adverse Facts Available Rate” section.

⁴³ See LWRP from the PRC; see also LWRP Decision Memorandum, at Comment 5.

⁴⁴ See Preliminary Determination, at 56800.

⁴⁵ See section 771(5A)(D)(iii)(I) of the Act; see also LWRP Decision Memorandum, at Comment 7.

the same concerns for wire rod as it does for hot-rolled steel. As a result, it is appropriate for the Department to reach the same conclusion for the provision of wire rod at less than adequate remuneration it reached for the provision of hot-rolled steel at less than adequate remuneration. The company provided information that was unverifiable, and the use of facts available and reliance on adverse inferences is warranted.

Pursuant to section 776(a)(2) of the Tariff Act, the Department must apply facts available where a respondent: A) withholds information that the Department has requested; B) fails to provide requested information within the deadlines established, or in the form or manner required by the Department; C) significantly impedes a proceeding; or D) provides information that cannot be verified. Ningbo Jiulong withheld information that the Department requested and failed to make the Department aware, despite numerous opportunities and several inquiries, in questionnaires and at verification, that it prepared and sent its own mill test certificates to its customers. These documents contained basic information that contradicted the producer mill test certificates already submitted to the Department. The contradictions between the two sets of mill test certificates, as well as admissions at verification that the mill test certificates were fabricated by the producer that sold the wire rod directly to Ningbo Jiulong, render both sets of documents unreliable. In addition, the problems found with respect to the mill certificates rendered the information unverifiable. Accordingly, we find that we must apply facts available pursuant to section 776(a)(2)(A), (C), and (D) of the Act.

Furthermore, pursuant to section 776(b) of the Act, where a respondent fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may make adverse inferences in selecting from the facts available. Compliance with the “best of its ability” standard is determined by assessing whether the interested party has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.⁴⁶ To conclude that a party has not cooperated to the best of its ability and to draw an adverse inference under section 776(b) of the Act, the Department examines two factors: (1) that a reasonable and responsible respondent would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations; and (2) that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to respond fully is the result of the respondent’s lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.⁴⁷ While intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate, the statute does not contain an intent element.⁴⁸

And because it did not provide the verifiers with the necessary information needed to confirm the information on the record, we find that Ningbo Jiulong failed to cooperate to the best of its ability. Ningbo Jiulong’s responses with respect to the mill certificates demonstrated a failure to put forth its maximum efforts to investigate and obtain the requested information. Further, we find that Ningbo Jiulong failed to disclose when asked, the universe of mill test certificates, the problems with the mill test certificates and the fact that it fabricated its own mill test certificates

⁴⁶ See Nippon Steel, at 1382.

⁴⁷ See Nippon Steel, at 1382.

⁴⁸ See Nippon Steel, at 1382.

for its customers. Therefore, adverse inferences are appropriate in this case to ensure that Ningbo Jiulong “does not obtain a more favorable result by failing to cooperated than if it had cooperated fully.”⁴⁹

Based on facts otherwise available and the use of adverse inferences, we find that Ningbo Jiulong received a financial contribution when it purchased wire rod from state-owned enterprises.⁵⁰ We continue to find, as we did in the Preliminary Determination, that the industries identified by the GOC as users of wire rod are limited in number, and hence, specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.⁵¹

For the reasons explained above and in the “Use of Facts Otherwise Available and Adverse Facts Available” section above, we are assigning a countervailing duty rate to Ningbo Jiulong based on adverse facts available, pursuant to section 776(b) of the Act. The use of program-specific net subsidy rate calculated for a cooperating respondent as a total AFA rate is consistent with the Department’s practice.⁵² On this basis, we are applying the rate of 15.31 percent ad valorem, as calculated in PC Strand from the PRC, to the “Provision of Wire Rod for LTAR” program.

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

In its questionnaire responses, Ningbo Jiulong reported receiving an income tax credit under this program during the POI. According to the GOC’s questionnaire responses, under this program, a domestically owned company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. In the Preliminary Determination, the Department determined that the income tax credits provided under the program constituted a financial contribution (under section 771(5)(D)(ii) of the Act) and a benefit (in accordance with 19 CFR 351.509(a)(1)). We found that, since the receipt of the tax savings is contingent upon the use of domestic equipment over imported equipment, this program was specific under section 771(5A)(C) of the Act as it constituted an import substitution subsidy.

No new information was provided or obtained after the Preliminary Determination to warrant reconsideration of this finding. Therefore, for purposes of this final determination, we are continuing to find this program to be countervailable, for the same reasons stated in the Preliminary Determination.⁵³ To calculate the net countervailable subsidy rate, we divided the total tax savings under this program as claimed on the tax return filed during the POI by Ningbo Jiulong’s total sales during the POI. On this basis, we determine the net countervailable subsidy rate to be 1.68 percent ad valorem for Ningbo Jiulong.

⁴⁹ See SAA.

⁵⁰ See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act

⁵¹ See PC Strand from the PRC.

⁵² See, e.g., LWTP from the PRC, at “Selection of the Adverse Facts Available Rate” section.

⁵³ See Preliminary Determination, at 56801.

4. Government Provision of Electricity for Less than Adequate Remuneration

On July 13, 2009, Petitioners filed a new subsidy allegation alleging that the GOC provides electricity to steel grating producers by setting artificially low rates through programs at both the national and provincial levels.⁵⁴ Although the Department initiated on the allegation,⁵⁵ in the Preliminary Determination, the Department did not make a finding with respect to the provision of electricity for LTAR, stating:

... there has not been sufficient time for the Department to issue a supplemental questionnaire to the GOC regarding the provision of electricity. Furthermore, the GOC reported that it was still in the process of gathering key information with regard to how Zhejiang Province accounts for its cost elements; how cost increases are factored into the retail price for electricity; and, how these final price increases are allocated across the provinces and across tariff end-user categories. Without this information, the Department is unable to determine whether a benefit was provided to Ningbo Jiulong from the provision of electricity. Therefore, the Department will request from the GOC the additional information needed to complete our analysis of whether this program provides a countervailable subsidy to Ningbo Jiulong.⁵⁶

In the Preliminary Determination, we stated that we intended to seek the additional information necessary to conduct a complete analysis.⁵⁷ Supplemental questionnaires were issued to the GOC on November 12, 2009, and January 4, 2010. The GOC filed responses to these questionnaires, respectively, on December 7, 2009 and January 19, 2010.

On April 15, 2010, the Department issued its Post-Preliminary Determination regarding the provision of electricity for LTAR. The Department applied facts otherwise available and found that the use of adverse inferences was warranted in making the determination that the GOC provided electricity to steel grating producers for LTAR. For the reasons stated in the Post-Preliminary Determination and in the Position to Comment 10 below, we continue to find that adverse facts available is warranted with respect to this program. In applying adverse inferences under section 776(b) of the Act, we continue to find the provision of electricity for LTAR is a financial contribution that is specific pursuant to sections 771(5)(D) and 771(5A) of the Act, respectively.

To measure whether Ningbo Jiulong received a benefit under this program, we first calculated the electricity cost paid by multiplying the monthly KWH consumed at each price category (e.g., valley, normal, and peak, as well as the base rate)⁵⁸ by the corresponding electricity rates charged at each price category. Next, we calculated the benchmark electricity cost by multiplying the monthly KWH Ningbo Jiulong consumed at each price category (e.g., valley, normal, and peak, as well as the base rate) by the electricity rate charged at each price category.

⁵⁴ See New Subsidy Allegations.

⁵⁵ See NSA Initiation.

⁵⁶ See Preliminary Determination, at 56804.

⁵⁷ See Preliminary Determination, at 56804.

⁵⁸ For purposes of this final determination, we are including base electricity rates paid by Ningbo Jiulong during the POI. This is consistent with our practice in recent determinations. See, e.g., PC Strand from the PRC.

For purposes of this final determination, we are applying an adverse inference in selecting the benchmark electricity rates. Specifically, we are comparing the rates paid by Ningbo Jiulong to the highest rates in effect during the POI. Therefore, we have selected the highest rate charged in China to large industrial users, for the valley, normal, and peak ranges, as well as the base rates, as shown in the electricity rate schedules.⁵⁹ This benchmark reflects the adverse inference we have drawn as a result of the GOC's failure to act to the best of its ability in providing the information we requested about its provision of electricity.

To calculate the benefit for each month, we subtracted the electricity cost paid by Ningbo Jiulong during the POI from the monthly benchmark electricity cost. We then summed the monthly benefits Ningbo Jiulong received during the POI. We then divided the benefit by Ningbo Jiulong's total sales for the POI. On this basis, we determine the net countervailable subsidy to be 0.06 percent ad valorem.

5. Other Grant Programs

In the initial questionnaire, we asked Ningbo Jiulong to identify in detail any additional forms of assistance the company received from the GOC.⁶⁰ Ningbo Jiulong reported receiving benefits from 15 additional small grant programs.⁶¹ The GOC did not challenge the countervailability of any of these programs.⁶²

a) Export Grant 2006, 2007, 2008

Ningbo Jiulong reported in its questionnaire responses that it received benefits under the "Export Grant 2008" program during the POI. In the Preliminary Determination, the Department found that this grant constituted a financial contribution (within the meaning of section 771(5)(D)(i) of the Act) and a benefit (in accordance with 19 CFR 351.504(a)). The Department found the grant to be specific (within the meaning of section 771(5A)(B)) as it is contingent on export performance).

For purposes of our final determination, we find the "Export Grant 2008" to be countervailable, for the same reasons stated in the Preliminary Determination.⁶³ Because the grant amount is fixed at a rate per dollar of exports, we find that these export grants are not exceptional and the company can expect to receive them on an ongoing basis. Therefore, we are treating them as recurring under 19 CFR 351.524(c)(2) and allocating the grants received under this program during the POI to the year of receipt. Ningbo Jiulong reported that it received these export grants in prior years; however, because we have determined that these grants are recurring, any benefits received in prior years are attributable to the year of receipt.

To calculate the net countervailable subsidy rate, we first summed all of the grants received

⁵⁹ See GOC SQR3, Exhibit S3-12.1.

⁶⁰ See Initial Questionnaire, at III-15.

⁶¹ See Ningbo Jiulong QR, at Exhibit 13; see also Ningbo Jiulong SQR1, at Exhibit 3.

⁶² See GOC SQR1, at 24; also, at verification, the GOC reiterated and expanded upon this decision, stating that it would not challenge the countervailability of these programs for the purposes of this investigation. See GOC Verification Report, at page 11.

⁶³ See Preliminary Determination, at 56801.

under this program by Ningbo Jiulong during the POI and then divided this amount by Ningbo Jiulong's total export sales during the POI. On this basis, we determine the net countervailable subsidy rate to be 0.09 percent ad valorem for Ningbo Jiulong.

b) Jiulong Lake Town Grant 2008

In its questionnaire responses, Ningbo Jiulong reported that it received this grant during the POI. According to Ningbo Jiulong, this grant is an aggregation of four separate awards provided by Ningbo Zhenhai Jiulong Lake Town Government:

1. The Technical Reform Input Award, which is awarded to only one company;
2. The Advancement in Sales Award, which is awarded to three companies;
3. The District Model Enterprise for Environmental Protection award, which is awarded to only one company; and
4. The Advanced Enterprise in Energy-Saving award, which is awarded to three companies.

In the Preliminary Determination, the Department found that these awards constituted financial contributions within the meaning of section 771(5)(D)(i) of the Act and a benefit in accordance with 19 CFR 351.504(a). The Department also found that, because a limited number of companies received each grant, the program was specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. Additionally, we performed the "0.5 percent test" in accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2). Since the benefits were less than 0.5 percent of total sales, we allocated benefits received under the program to the year of receipt.

There is no new information to warrant reconsideration of our finding in the Preliminary Determination.⁶⁴ Therefore, we are continuing to find the "Jiulong Lake Town Grant 2008" to be countervailable for purposes of our final determination. We divided the sum of all the grants under this program received during the POI by Ningbo Jiulong's total sales during the POI to calculate a net countervailable subsidy rate of 0.04 percent for Ningbo Jiulong.

c) Energy Saving Grant 2008

In its questionnaire responses, Ningbo Jiulong reported receiving benefits, during the POI, under the "Energy Saving Grant 2008" program which is provided by the Ningbo Zhenhai Development and Reform Bureau as an award for investment in energy-saving projects. In the Preliminary Determination, the Department found that this grant constituted a financial contribution within the meaning of section 771(5)(D)(i) of the Act and a benefit in accordance with 19 CFR 351.504(a). The Department also found that this program was limited, as only 19 companies received grants for investments made in energy-saving projects under this program during the POI, thus the Department found this program to be specific (within the meaning of section 771(5A)(D)(iii)(I) of the Act). In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), and as a result of the "0.5 percent test," we allocated benefits received under this program to the year of receipt.

⁶⁴ See Preliminary Determination, at 56801.

There is no new information to warrant reconsideration of our finding in the Preliminary Determination.⁶⁵ Therefore, we determine this program to be countervailable. To calculate the net countervailable subsidy rate, we divided the grant amount by Ningbo Jiulong's total sales during the POI. On this basis, we determine the net countervailable subsidy rate to be 0.14 percent ad valorem for Ningbo Jiulong.

d) Foreign Trade Grant 2008

Ningbo Jiulong reported that it received a grant under the "Foreign Trade Grant 2008" program during the POI. In the Preliminary Determination, the Department found this program provided a financial contribution within the meaning of section 771(D)(i) of the Act and a benefit within the meaning of 19 CFR 351.504(a). Because the grant was contingent upon reaching a minimum level of export sales, we also found the grant to be an export subsidy and therefore specific under section 771(5A)(B) of the Act. In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(a) and (c), and as a result of the "0.5 percent test" performed with Ningbo Jiulong's total exports, we allocated benefits received under this program to the year of receipt.

There is no new information to warrant reconsideration of our finding in the Preliminary Determination.⁶⁶ Therefore, we determine this program to be countervailable. To calculate the net countervailable subsidy rate, we divided the grant amount by Ningbo Jiulong's total export sales during the POI. On this basis, we determine the net countervailable subsidy rate to be 0.01 percent ad valorem for Ningbo Jiulong.

e) Famous Brand Grant 2008

In its questionnaire responses, Ningbo Jiulong reported receiving grants under the "Famous Brand Grant 2008" program during the POI. In the Preliminary Determination, we found this program constituted a financial contribution accordance with section 771(5)(D)(i) of the Act and a benefit according to 19 CFR 351.504(a). We also found the program to be specific within the meaning of section 771(5A)(D)(iv) because it is limited to enterprises located in the Zhenhai District of Ningbo City. In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), and as a result of the "0.5 percent test," we allocated benefits received under the program to the year of receipt.

There is no new information to warrant reconsideration of our finding in the Preliminary Determination.⁶⁷ Therefore, we determine this program to be countervailable. To calculate the net subsidy rate, we divided the benefit by Ningbo Jiulong's total sales during the POI. On this basis, we determine the net countervailable subsidy rate to be 0.02 percent ad valorem for Ningbo Jiulong.

⁶⁵ See Preliminary Determination, at 56802.

⁶⁶ See Preliminary Determination, at 56802.

⁶⁷ See Preliminary Determination, at 56802.

f) Innovative Small- and Medium-Sized Enterprise Grant 2008

Ningbo Jiulong reported that it was a recipient of the “Innovative Small- and Medium-Sized Enterprise Grant 2008” from the Ningbo Zhenhai Development and Reform Bureau during the POI. In the Preliminary Determination, we found this program to be a financial contribution within the meaning of section 771(5)(D)(i) of the Act and a benefit within the meaning of 19 CFR 351.504(a). We also found the program to be specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because it is provided to a limited group of enterprises. Additionally, in accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), we performed the “0.5 percent test” and allocated benefits received under the program to the year of receipt.

There is no new information to warrant reconsideration of our finding in the Preliminary Determination.⁶⁸ Therefore, we determine this program to be countervailable. To calculate the net countervailable subsidy rate, we divided the grant amount by Ningbo Jiulong’s total sales during the POI. On this basis, we determine the net countervailable subsidy rate to be 0.04 percent ad valorem for Ningbo Jiulong.

g) Water Fund Refund/Exemption 2008

In its questionnaire responses, Ningbo Jiulong reported that it received benefits under the “Water Fund Refund/Exemption 2008” program during the POI, and that receipt of these benefits was contingent on it being an exporting company. In the Preliminary Determination, we found the program to provide a financial contribution within the meaning of section 771(5)(D)(i) of the Act and a benefit in accordance with 19 CFR 351.504(a). We also found the program to be specific (within the meaning of section 771(5A)(B)) as eligibility for the receipt of benefits under this program is contingent on the recipient being an exporting company.

There is no new information to warrant reconsideration of our finding in the Preliminary Determination.⁶⁹ Therefore, we determine this program to be countervailable. As noted in the Preliminary Determination, grants under this program are received on a monthly basis, we are treating them as recurring, and allocating the grants received during the POI to the year of receipt. To calculate the net subsidy rate, we summed: (1) the water fund refunds received for January through July 2008; and (2) the value of the water fund payments which was exempted for August through December 2008. We then divided the total benefit by Ningbo Jiulong’s total export sales during the POI. On this basis, we determine the net countervailable subsidy rate to be 0.14 percent ad valorem for Ningbo Jiulong.

h) Product Quality Grant

In its questionnaire responses, Ningbo Jiulong provided an exhibit which identified the “Product Quality Grant” program as a program under which it received benefits during the POI. In the Preliminary Determination, we found that this program constituted a financial contribution within the meaning of section 771 (5)(D)(i) of the Act and that a benefit is received in accordance with 19 CFR 351.504(a). Prior to the Preliminary Determination, neither the GOC

⁶⁸ See Preliminary Determination, at 56802.

⁶⁹ See Preliminary Determination, at 56802.

nor Ningbo Jiulong provided information about the number or types of recipients of grants under this program. Therefore, we relied on facts available pursuant to section 776(a)(1) and (a)(2)(B) of the Act, and found the program to be specific. Additionally, in accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), and as a result of the “0.5 percent test,” we allocated the grant received under this program to the year of receipt.

There is no new information to warrant reconsideration of our finding in the Preliminary Determination.⁷⁰ Therefore, we determine this program to be countervailable. To calculate the net countervailable subsidy rate, we divided the grant amount by Ningbo Jiulong’s total sales during the POI. On this basis, we determine the net countervailable subsidy rate to be 0.02 percent ad valorem for Ningbo Jiulong.

B. Programs Determined To Be Not Countervailable

Cleaning Production Grant 2008

In its questionnaire responses, Ningbo Jiulong reported that it received benefits under the “Cleaning Production Grant 2008” program from the Ningbo Zhenhai Environment Protection Bureau during the POI. In the Preliminary Determination, we found this program is provided to organizations that carry out energy-saving and environmental protection projects, and that grants under this program are provided to a large number of businesses and organizations across a wide range of sectors, including numerous and diverse industries ranging from appliance manufacturers to garment makers and chemical companies, as well as schools, district governments, hospitals, restaurants and a number of individuals. We found that Ningbo Jiulong had not received a disproportionate share of the grants distributed during the POI. As such, we preliminarily determined that Ningbo Jiulong’s receipt of grants under this program were not specific in accordance with section 771(5A)(D)(iii)(I), (II) and (III) of the Act, and therefore is not countervailable.

There is no new information that warrants reconsideration of this finding. Therefore, we are continuing to find this program not countervailable for purposes of our final determination.

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

1. GOC Provision of Steel Bar for Less than Adequate Remuneration
2. GOC Provision of Steel Plate for Less than Adequate Remuneration
3. GOC Provision of Land-Use Rights to SOEs for Less than Adequate Remuneration
4. “Two Free, Three Half” Program
5. Reduced Income Tax Rates for Export-Oriented FIEs
6. Preferential Income Tax Policy for Enterprises in the Northeast Region
7. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
8. Tax Subsidies for FIEs in Specially Designated Geographic Areas
9. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
10. Income Tax Credits for FIEs Purchasing Domestically Produced Equipment
11. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises

⁷⁰ See Preliminary Determination, at 56802.

12. Import Tariff and Value Added Tax (“VAT”) Exemptions for Encouraged Industries Importing Equipment for Domestic Operations
13. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund
14. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
15. Grants to “Third-Line” Military Enterprises
16. Guangdong and Zhejiang Province Program to Rebate Antidumping Fees
17. The State Key Technology Project Fund
18. Export Incentive Payments Characterized as “VAT Rebates”
19. VAT Refunds for FIEs Purchasing Domestically-Produced Equipment
20. Technical Upgrading Grant 2005, 2007

Ningbo Jiulong reported that it received grants from this program in years prior to the POI. In the Preliminary Determination, because of the results of the “0.5 percent test,” these grants were expensed in the year of receipt and were not attributable to the POI. Therefore, we continue to find that this program did not confer benefits during the POI.

21. Power Engine Grant 2005

Ningbo Jiulong reported that it received grants from this program in years prior to the POI. In the Preliminary Determination, because of the results of the “0.5 percent test,” these grants were expensed in the year of receipt and were not attributable to the POI. Therefore, we continue to find that this program did not confer benefits during the POI.

22. Technical Innovation Grant 2006

Ningbo Jiulong reported that it received grants from this program in years prior to the POI. In the Preliminary Determination, because of the results of the “0.5 percent test,” these grants were expensed in the year of receipt and were not attributable to the POI. Therefore, we continue to find that this program did not confer benefits during the POI.

D. Programs For Which Ningbo Jiulong Is Determined to Be Ineligible

In the Petition, Petitioners alleged the existence of certain provincial/municipal programs that are potentially available to producers of certain steel grating. The Department initiated an investigation into these programs prior to respondent selection.

In the Preliminary Determination, the Department found that Ningbo Jiulong was ineligible to receive benefits under these three programs, because the company (and all of its production facilities) is located in the city of Ningbo, Zhejiang Province, and not in the provinces or municipalities that administer the programs listed below. We found no evidence at verification that would alter our Preliminary Determination. Therefore, we continue to find Ningbo Jiulong is ineligible for these programs;

1. Liaoning Province “Five Points, One Line” Program
2. Guangzhou City Famous Exports Brands
3. Grants to Companies for “Outward Expansion” in Guangdong Province

VI. Analysis of Comments

Comment 1: Application of U.S. Countervailing Duty Law to China

The GOC, Ningbo Jiulong, and Xinke argue that under the Act, U.S. CVD laws are not applicable to NMEs, such as China. According to GOC, Ningbo Jiulong, and Xinke, the AD/CVD laws were not designed to apply concurrently to NME AD and CVD proceedings. The Department’s decision to apply CVD law to imports from China, GOC, Ningbo Jiulong, and Xinke state, was based on its decision in CFS from the PRC – CVD and its related Georgetown Steel Memorandum, which concluded that sections 771(5) and (5A) of the Act provided the Department with the discretion to apply CVD law to NME countries.

According to the GOC, this interpretation is wrong. The GOC argues that the exclusion of the term “non-market economy” from these statutory provisions, combined with its inclusion in other provisions, demonstrates the clear intent of Congress that the Department does not have the authority to apply CVD law to NMEs, and in fact prohibits the Department from doing so. Additionally, Ningbo Jiulong argues that the CIT has found that the legislative history of the unfair trade statutes shows that Congress did not intend for both countervailing and antidumping duties to be imposed concurrently on the same imports from an NME respondent. Specifically, Ningbo Jiulong notes that the CIT has:

1. Pointed to the silence of the CVD statute with respect to its application to imports from NMEs:⁷¹
2. Suggested that the reason Congress has remained silent in this regard is because it did not consider the CVD statute relevant in the NME context.⁷²
3. Suggested if the Department finds what it considers to be evidence of subsidies in NMEs, it must adjust its AD methodology accordingly.⁷³
4. Suggested that had the Department imposed CVDs on imports from a NME, it would have given Congress a reason to amend the CVD statute because Congress views it as separate from statutes that apply to NMEs.⁷⁴

⁷¹ “A review of the legislative history since Georgetown Steel indicates that the AD and CVD statutes do not account for Commerce’s new hybrid treatment. The 1988 Omnibus Trade and Competitiveness Act changed the NME AD law, but the CVD statute was left relatively unchanged. While language was proposed that would have granted Commerce the authority to apply CVD law to NME countries on a case-by-case basis, ultimately such language was not adopted. Additionally, in 1994, the Uruguay Round Agreements Act changed both the AD and CVD laws, but did not add a reference to NME countries to the CVD law. . . [T]he NME AD statute was designed to remedy the inability to apply the CVD law to NME countries, so that subsidization of a foreign producer or exporter in an NME country was addressed through the NME AD methodology.” See GPX, at 1238-39, 1242.

⁷² “Congressional silence regarding the application of the CVD law to NME countries may indicate that Congress never anticipated that the CVD law would be applied while a country remained designated as an NME country.” See GPX, at 1239.

⁷³ “Congress’ silence with respect to domestic subsidies under § 1677a, as with its silence in other areas of the AD and CVD law, may well indicate that Congress did not consider this new hybrid when it enacted the export subsidy adjustment, and not, as Commerce argues, that Congress intended to prohibit adjustments to the NME AD methodology because of domestic subsidies.” See GPX, at 1242.

⁷⁴ “Commerce’s past interpretation of the statutes had only been along clear lines—either a country was an NME country and CVDs were not imposed, or it was an ME country and CVDs could be imposed. Thus, there was no reason for Congress also to amend the CVD law to address concerns unique to NMEs when it amended the AD

The GOC argues that under the proper methods of statutory construction (i.e., the statute’s text, legislative history, and structure), Congress’s intent that the Department should not apply the CVD law to NME countries is clear. First, the GOC argues, section 701 of the Act does not act as a “general grant of authority to conduct CVD investigations,” as the Department claims. That statute does not contain a reference to non-market economies; neither does its companion section concerning the AD law, section 731 of the Act. Yet the Department does not, in the case of AD law, argue that it has discretion to apply AD law to non-market economy countries. It is beyond dispute, the GOC claims, that Congress mandates that antidumping measures be applied to NMEs. Thus, the Department’s claim for support of its discretion in applying section 1671 of the Act to NMEs is inappropriate.

The GOC argues that while sections 771(5) and (5A) of the Act do not refer to non-market economies, section 771(18) defines and provides the analytical framework for determining whether a country is a non-market economy country. That section limits such determinations to AD proceedings. There is no mention of judicial review of NME designations in countervailing duty proceedings. The GOC argues that Congress would not have limited judicial review of a non-market economy designation to AD investigations, and not CVD investigations.⁷⁵

The GOC argues that the AD law makes a clear distinction in the prescribed methods for calculating normal value in investigations involving NME countries versus market economy countries. If Congress had intended the CVD law to be applied to NME countries, it would likewise have created special provisions for calculating subsidies in NME countries. Since such provisions do not exist, it is reasonable to conclude that Congress did not intend that the CVD law be applied to NME countries.

The GOC and Ningbo Jiulong also argue that the Department’s sudden decision to apply CVD law to NMEs violates the rulemaking procedures of the APA, which requires that an agency issue a public notice of the proposed change in the Federal Register and provide an opportunity to comment. The GOC argues that the Department’s long practice of not applying CVD law to NMEs is, in effect, a codification of the Department’s statutory interpretation and therefore a rule. The GOC cites Alaska Hunters in support of its contention: “When an agency has given its regulation a definitive interpretation, and later significantly revises that interpretation, the agency has in effect amended its rule, something it may not accomplish without notice and comment.” In that case, the GOC argues, an agency interpretation that was followed for almost thirty years constituted an authoritative interpretation that could not be altered without notice and comment. The GOC states the Department adopted such an authoritative interpretation when it adopted its definitive interpretation of the relevant CVD law.

According to the GOC, since 1984 the Department has maintained the position that CVD law does not apply to NMEs.⁷⁶ The GOC states the Department reaffirmed this position in Steel

law.” See GPX, at 1239.

⁷⁵ “absurd results are to be avoided and internal inconsistencies in the statute must be dealt with.” See U.S. v. Turkette.

⁷⁶ See Carbon Steel Wire Rod from Poland, at 19736; see also Potassium Chloride from the Soviet Union – Rescission, at 23428.

Products from Austria after giving proper notice and providing a period for comment. In 1998, the GOC adds, after notice and a comment period, the Department issued its final CVD regulations and its interpretation of the term “benefit,” which excluded its application to NMEs.

The GOC argues that the Department’s previous definitive interpretations of the CVD law were promulgated in accordance with APA requirements, and that any change in that definitive interpretation requires that the Department first provide notice and a period for comments. The GOC holds that the Department did not follow APA procedures in reversing its long-standing position concerning the application of CVD law to NME countries. While the Department issued a notice to the public in December 2006, the GOC contends that it never addressed comments made by interested parties before making its decision. Thus, the GOC states, the Department did not afford the parties any meaningful opportunity to participate in the rulemaking process, which is the primary purpose of the APA’s notice and comment requirements. As a result, the GOC contends, these actions in initiating this and other CVD investigations on Chinese products are unlawful and should be revoked.

The GOC, Ningbo Jiulong, and Xinke argue that imposing both countervailing and antidumping duties concurrently on the same imports from an NME results in double counting without providing any further remedy or benefit. The GOC argues that section 772(c)(1)(C) of the Act provides for an offset to the AD margin for export subsidies. This, the GOC contends, is evidence of Congress’s intent to avoid imposing a double remedy. Furthermore, the GOC maintains, “the NME AD methodology of employing surrogate values that are not subsidized effectively removes the costs and financial experience of the respondent from the equation, leaving the company’s factor usage rates as the only authentic data from the respondent company that are used in the normal value calculation.” Thus, the GOC states, regardless of whether a subsidy affects product prices, manufacturing costs, salaries, environmental cleanup, etc., these effects are all removed by the surrogate value methodology, rendering a countervailing remedy duplicative, unnecessary and unlawful.

Ningbo Jiulong argues that CIT has found that the Department’s imposition of CVDs and ADs concurrently on imports from NMEs is unreasonable.⁷⁷ Ningbo Jiulong argues that the CIT came to that conclusion because such a practice carries with it a very strong likelihood that the same unfair trade practice will be remedied twice. According to Ningbo Jiulong, the CIT found that the use of the CVD methodology in NME countries simultaneously trusts and distrusts factual information that the Department obtains from NME companies. Specifically, Ningbo Jiulong argues that a SV is used to ensure an accurate determination of NV for an NME product, while the Department accepts the information received from NME companies regarding subsidies.⁷⁸ Xinke adds that the CIT stated that “if Commerce now seeks to impose CVD remedies on the products of NME countries as well, Commerce must apply methodologies that make such parallel remedies reasonable, including methodologies that will make it unlikely that

⁷⁷ See GPX, at 1240.

⁷⁸ “Here, the export price is not being compared with the price of the good in the PRC in which case both sides of the comparison would be equally affected, but rather, export price, however it is affected by the subsidy, is compared with the presumptively subsidy-free constructed normal value. Without some type of adjustment for this, the imposition of AD duties could very well result in a double remedy.” See GPX, at 1242.

double counting will occur.”⁷⁹ Ningbo Jiulong states since the purpose of unfair trade practices statutes is to remedy the unfair practice, the NME AD statute is sufficient to level the playing field.⁸⁰ Xinke adds that section 772(c)(1)(C) recognizes the potential for double remedy in certain circumstances and it provides for an adjustment to the export price in the dumping calculation for CVD duties assessed due to export subsidies. Ningbo Jiulong and Xinke state that by countervailing the subsidies in the CVD investigation, and by also using surrogate values in the NME calculation in the AD investigation, the Department is unfairly penalizing the respondents in NME investigations twice.

In their rebuttal briefs, Petitioners state that the Department’s application of CVD law to China is supported by law and that the GOC’s and Ningbo Jiulong’s argument that the Department lacks statutory authority to apply CVD law to China is incorrect. In the Preliminary Determination, Petitioners argue, the Department correctly concluded that CVD law applies to non-NMEs.

Regarding the GOC’s contention that the Act prevents application of CVD law, Petitioners explain that language in section 702(1) of the Act clearly establishes that the Department is authorized to apply CVD law to China. Petitioners state that the Act allows the Department to impose CVD rates if it determines “that the government of a country or any public entity within the territory of a country is providing... a countervailable subsidy”⁸¹ Petitioners state that the Act does not restrict the meaning of “country” to entities with particular political or economic systems. As a result, Petitioners state, the Department correctly concluded in CFS from the PRC – CVD that “country” is not confined to market economies. Petitioners add that the statute defines a “Subsidies Agreement country” to include “a WTO member country” and that subsidies provided to such countries are countervailable if they materially injure or threaten to materially injure a U.S. industry.⁸²

In addition, Petitioners state, the statute’s definition of a “countervailable subsidy” is not limited to actions taken by market economies. According to Petitioners, a countervailable subsidy exists where an authority provides: a financial contribution; any form of income or price support (within the meaning of Article XVI of the GATT 1994), or makes a payment to a funding mechanism.⁸³

Petitioners contend that the GOC relies on the Department’s regulations⁸⁴ to argue that Congress intended that NMEs only be subject to AD proceedings. According to Petitioners, the Department rejected these same arguments⁸⁵ and has also stated the CVD law is not limited to MEs.⁸⁶ Petitioners state that the Department found that the context and structure of the

⁷⁹ See GPX, at 1231.

⁸⁰ “Commerce reasonably can do all of its remedying through the NME AD statute, as it likely accounts for any competitive advantages the exporter received that are measurable.” See GPX, at 1243.

⁸¹ See Georgetown Steel.

⁸² See section 701 of the Act.

⁸³ See OCTG from PRC – CVD, Comment 1.

⁸⁴ See sections 701, 731, 751 and 771 of the Act.

⁸⁵ See OCTG from PRC – CVD, Comment 1.

⁸⁶ See OCTG from PRC – CVD, Comment 1.

regulations⁸⁷ permit the Department to conduct CVD investigations for NMEs. As such, Petitioners argue, Congress did not address the issue of restricting the CVDs law to NMEs, adding that, if Congress had intended to exempt NMEs from this law, it would have done so.

Petitioners disagree with the GOC's argument that Georgetown Steel prohibits the Department's application of CVD law to China. According to Petitioners, Georgetown Steel did not find that the statute prohibited application of the CVD law to NMEs, only that the question was within the discretion of the Department.⁸⁸ In Georgetown Steel, Petitioners argue, the Federal Circuit concluded that "Congress has not defined the terms 'bounty' or 'grant' as used in Section 303." As a result of this ambiguity, Petitioners argue, the court was unable to answer the question of whether that section applies to NMEs. Without evidence that Congress had addressed the issue, Petitioners argue, the court deferred to the Department's determination that "a 'bounty or grant,' within the meaning of the CVD law cannot be found in an NME."⁸⁹ According to Petitioners, given the lack of clear Congressional intent, the court concluded that the Department's interpretation of the statute as inapplicable to NMEs was permissible. However, Petitioners add, that at no time did the court state or even imply that the Department's interpretation was the only permissible interpretation.

According to Petitioners, the Department's earlier conclusion that a bounty or grant cannot be found in an NME was based on "the economic realities of these Soviet bloc-economies." Recognizing the factual distinctions between China's current economy and the Soviet-style economies at issue in Georgetown Steel, Petitioners argue, the Department changed course in CFS from the PRC – CVD. Petitioners argue that in CFS from the PRC – CVD, the Department recognized that, in contrast to Soviet-style economies, China's modern economy consists of market mechanisms operating with government forces, and in-turn the Department found that it is possible to determine whether subsidies benefit imports from China. Petitioners add that the Department has concluded that Georgetown Steel does not bar the application of CVD law to NMEs. Therefore, Petitioners state, the Department should continue to exercise its proper legal authority and apply the CVD law to China.

Petitioners hold that the GOC's contention that Sulfanilic Acid from Hungary – CVD bars the application of CVD law to China is flawed. Petitioners argue that the Department did not conclude that it is prohibited from applying U.S. CVD law to any NMEs in Sulfanilic Acid from Hungary – CVD. Petitioners argue that, in that case, the Department made clear that Hungary was considered an NME country prior to January 1, 1998, therefore, it concluded that subsidies provided by Hungary after 1998 were countervailable, but those that it granted before were not. Petitioners state that the Department has consistently held that Sulfanilic Acid from Hungary – CVD is not applicable to all NMEs and it does not bar the application of CVD law to China.⁹⁰

Petitioners state that beginning with CFS from the PRC – CVD, the Department began examining NMEs on a case-by-case basis to determine whether subsidies can be properly identified and measured. Additionally, Petitioners state that, contrary to the GOC's and Ningbo

⁸⁷ See sections 701, 731, 751 and 771 of the Act.

⁸⁸ See CFS from the PRC – CVD, Comment 1.

⁸⁹ See CFS from the PRC – CVD, Comment 1.

⁹⁰ See OCTG from PRC – CVD, Comment 1.

Jiulong's arguments, the Department's imposition of countervailing duties against China does not violate the APA. Petitioners add that the Department's prior policy of not applying CVD law to NMEs was a practice and not a binding rule under the APA. Petitioners also state that the APA's notice-and-comment requirements are inapplicable to "interpretative rules, general statements of policy or procedure, or practice."⁹¹

According to Petitioners, the Department did not create a sweeping rule against ever applying the CVD law to China in its CVD cases initiated in the early 1980s. Petitioners argue that in deciding the wire rod cases that gave rise to Georgetown Steel, the Department analyzed Soviet bloc economies in the early 1980s. Based on the economic realities of Soviet-style economies and the fact that Congress had not spoken to the issue, Petitioners argue, the Department concluded that the practice of applying the CVD law to NMEs was inappropriate. According to Petitioners, this decision was not a blanket prohibition against ever applying the CVD law to NMEs, instead it was a decision rooted in the circumstances of the case.

Petitioners contend that the Department has never promulgated a rule pursuant to the APA regarding the application of the CVD law to NMEs,⁹² and the CIT has agreed. Petitioners add that the CIT has stated that the Department did not promulgate a regulation confirming that it would not apply CVD duty law to NMEs.⁹³ Additionally, Petitioners add that the GOC has clearly not been deprived of notice or the opportunity to comment, given that they have filed a brief and rebuttal brief, and parties have taken advantage of the opportunity to comment, raising the arguments discussed above with respect to the application of countervailing duty law. As such, Petitioners argue, the GOC has not established that the Department has violated the APA with the application of CVD law to Ningbo Jiulong in this investigation. For the reasons stated above, the Department should continue to conclude that the APA does not bar the application of CVD law to China.

While the GOC, Ningbo Jiulong and Xinke contend that the Department lacks the authority to apply both its NME antidumping methodology and CVD law to the companies subject to this proceeding, Petitioners claim that these arguments are misplaced and should be rejected by the Department. Petitioners add that if the Department applies total AFA to Ningbo Jiulong in this proceeding or in the companion AD investigation, the issue of double counting is moot. However, Petitioner states, even if the Department calculates a margin for Ningbo Jiulong, the Department's application of CVD duties and AD duties is entirely appropriate for the reasons discussed below.

Petitioners also contend that, contrary to Ningbo Jiulong's and Xinke's claims, the CIT has not found that the Act does not permit the application of both antidumping and countervailing duties to NME respondents.⁹⁴ Rather, it states only that, if the Department applies both AD and CVD duties to a NME country, it should attempt to reasonably avoid double-counting.⁹⁵ As such, Petitioners argue, Ningbo Jiulong has provided no basis for its argument that the Department

⁹¹ See CFS from the PRC – CVD, Comment 1.

⁹² See CFS from the PRC – CVD, Comment 1.

⁹³ See OCTG from PRC – CVD, Comment 1.

⁹⁴ See GPX.

⁹⁵ See OCTG from PRC – CVD, Comment 2.

cannot apply CVD law to an NME. Neither is the Department required to terminate the CVD investigation, nor to make an adjustment to the NME antidumping methodology. Petitioners add that the GPX is not final, since a final order has not been issued by the CIT and nor have all appellate rights been exhausted, the issues raised in this case are likely to be litigated well into the foreseeable future.

Petitioners add that as the Department has concluded in CVD cases involving China, none of the parties have cited to any statutory authority that would enable the Department to terminate this CVD investigation.⁹⁶ Additionally, Petitioners state the GOC's argument that China must be treated as a ME is baseless. In many prior CVD cases, Petitioners argue, the Department has found the GOC's continued exertion of significant control over market forces in China, which warrants continued treatment as an NME.

According to Petitioners, aside from these facts, no adjustment to the NME antidumping methodology is necessary in order to accomplish the goal of avoiding double-counting, since the AD and CVD statutes are recognized as two separate entities.⁹⁷ Petitioners note the one exception to this approach, as set out in section 772(c)(I)(C) of the Act, is limited to providing for an increase in the export price or constructed export price by the amount of any CVD duty imposed on subject merchandise to offset an *export* subsidy. Petitioners state that no other adjustments to the AD calculations are mentioned, evidence that Congress did not intend for further adjustments are to be made.

Petitioners disagree with the GOC argument that the Department should offset for subsidies beyond just export subsidies. Petitioners state that the GOC speculates that Congress included no domestic subsidy offset because it was ratifying the practice of not applying CVD law in the NME context, and that there is no evidence for this speculation; despite the Department applying CVD law in this context, Congress has not expanded the statute's export subsidy offset to include domestic subsidies, or made any other alteration to the statutory language that would support the argument that the statute's limitation of offsetting to export subsidies may safely be ignored.

Petitioners argue that the GOC's contention that double-counting can be avoided by including an offset for domestic subsidies is flawed on the assumption with respect to how such subsidies affect prices. To date, the Department has properly rejected such a presumption, explaining that while the connection between export subsidies and export prices is direct, the connection between domestic subsidies and export price is indirect and subject to a number of variables⁹⁸ and that presuming domestic subsidies automatically lower export prices is speculative.⁹⁹

⁹⁶ See OCTG from PRC – CVD, at Comment 2.

⁹⁷ “The AD and CVD laws are separate regimes that provide separate remedies for distinct unfair trade practices. The CVD law provides for the imposition of duties to offset foreign government subsidies. Such subsidies may be countervailable regardless of whether they have any effect on the price of either the merchandise sold in the home market or the merchandise exported to the United States. AD duties are imposed to offset the extent to which foreign merchandise is sold in the United States at prices below its fair value. With one exception, AD duties are calculated the same way regardless of whether there is a parallel CVD proceeding.” See Kitchen Shelves and Racks from the PRC – CVD (Final Determination).

⁹⁸ See CFS from the PRC – CVD, at Comment 2.

⁹⁹ See OCTG from the PRC – AD.

Petitioners disagree with the GOC argument that the NME AD methodology assumes that domestic subsidies affect price, requiring the use of SVs. Petitioners argue that the GOC's argument presumes that the use of SVs corrects only for artificially low input prices in NME countries. However, in fact, the use of SVs corrects both for artificially low and artificially high prices. As such the NME antidumping methodology does not simply "correct" for the distortive influence of domestic subsidies, thereby rendering it duplicative of the countervailing duty law. In sum, Petitioners argue that there is no basis for the GOC's, Ningbo Jiulong's or Xinke's contention that the Department lacks the authority to apply both its NME AD methodology and CVD law to the companies subject to this proceeding.

Department's Position:

The Department disagrees with the GOC, Ningbo Jiulong, and Xinke regarding the Department's authority to apply the CVD law to the PRC. The Department's positions on the issues raised have been fully explained in multiple cases.¹⁰⁰

Congress granted the Department the general authority to conduct CVD investigations.¹⁰¹ In none of these provisions is the granting of this authority limited only to market economy countries. For example, the Department was given the authority to determine whether a "government of a country or any public entity within the territory of a country is providing . . . a countervailable subsidy"¹⁰²

In 1984, the Department first addressed the issue of the application of the CVD law to NMEs. In the absence of any statutory command to the contrary, the Department exercised its "broad discretion" to conclude that "a 'bounty or grant,' within the meaning of the CVD law, cannot be found in an NME."¹⁰³ The Department reached this conclusion, in large part, because both output and input prices were centrally administered, thereby effectively administering profits as well. The Department explained that "{t}his is the background that does not allow us to identify specific NME government actions as bounties or grants."¹⁰⁴ Thus, the Department based its decision upon the economic realities of Soviet-bloc economies in existence at that time. In contrast, the Department has recently explained that, "although price controls and guidance remain on certain 'essential' goods and services in the PRC, the PRC Government has eliminated price controls on most products"¹⁰⁵ Therefore, the primary concern about the application of the CVD law to NMEs, as originally articulated in the Carbon Steel Wire Rod from Poland and Carbon Steel Wire Rod from Czechoslovakia cases, is not a significant factor with respect to the PRC's present-day economy. Thus, the Department has concluded that it is able to determine whether subsidies benefit imports from the PRC.

¹⁰⁰ See OCTG from the PRC – CVD, at Comment 1; see also CFS from the PRC – CVD, at Comment 1; see also CWP from the PRC – CVD, at Comment 1; see also LWRP from the PRC, at Comment 1; see also LWS from the PRC, at Comment 1; see also OTR Tires from the PRC, at Comment A.1;

¹⁰¹ See, e.g., sections 701 and 771(5) and (5A) of the Act.

¹⁰² See section 701(a) of the Act. Similarly, the term "country," defined in section 771(3) of the Act, is not limited only to market economies, but is defined broadly to apply to a foreign country, among other entities. See section 701(b) of the Act (providing the definition of "Subsidies Agreement country").

¹⁰³ See Carbon Steel Wire Rod from Poland and Carbon Steel Wire Rod from Czechoslovakia.

¹⁰⁴ See, e.g., Carbon Steel Wire Rod from Czechoslovakia.

¹⁰⁵ See Georgetown Steel Memorandum discussed in CFS from the PRC – CVD.

The Georgetown Steel Memorandum details the Department's reasons for applying the CVD law to the PRC and the legal authority to do so. Georgetown Steel does not rest on the absence of market-determined prices, and the recent decision to apply the CVD law to the PRC does not rest on a finding of market-determined prices in the PRC. In the case of the PRC's economy today, as the Georgetown Steel Memorandum makes clear, the PRC no longer has a centrally-planned economy and, as a result, the PRC no longer administratively sets most prices. As the Georgetown Steel Memorandum also makes clear, it is the absence of central planning, not the presence of market-determined prices, that makes subsidies identifiable and the CVD law applicable to the PRC.¹⁰⁶

As the Department explains in the Georgetown Steel Memorandum, extensive PRC government controls and interventions in the economy, particularly with respect to the allocation of land, labor and capital, undermine and distort the price formation process in the PRC and, therefore, make the measurement of subsidy benefits potentially problematic.¹⁰⁷ The problem is such that there is no basis for either outright rejection or acceptance of all the PRC's prices or costs as CVD benchmarks because the nature, scope and extent of government controls and interventions in relevant markets can vary tremendously from one market to another. Some of the PRC prices or costs will be useful for benchmarking purposes, *i.e.*, they are market-determined, and some will not, and the Department will make that determination on a case-by-case basis, based on the facts and evidence on the record. Thus, because of the mixed, transitional nature of the PRC's economy today, there is no longer any basis to conclude, from the existence of some "non-market-determined prices," that the CVD law is not applicable to the PRC.

The CAFC recognized the Department's broad discretion in determining whether it can apply the CVD law to imports from an NME in Georgetown Steel.¹⁰⁸ The issue in Georgetown Steel was whether the Department could apply CVDs (irrespective of whether any AD duties were also imposed) to potash from the USSR and the German Democratic Republic and carbon steel wire rod from Czechoslovakia and Poland. The Department determined that those economies, which all operated under the same, highly rigid Soviet system, were so monolithic as to render nonsensical the very concept of a government transferring a benefit to an independent producer or exporter. The Department therefore concluded that it could not apply the U.S. CVD law to these exports, because it could not determine whether that government had bestowed a subsidy (then called a "bounty or grant") upon them.¹⁰⁹ While the Department did not explicitly limit its decision to the specific facts of the Soviet Bloc in the mid-1980s, its conclusion was based on those facts. The CAFC accepted the Department's logic, agreeing that, "{e}ven if one were to label these incentives as a 'subsidy,' in the loosest sense of the term, the governments of those nonmarket economies would in effect be subsidizing themselves."¹¹⁰ Noting the "broad discretion" due the Department in determining what constituted a subsidy, the Court then deferred to the Department's judgment on the question.¹¹¹ Thus, the CAFC's decision in

¹⁰⁶ See Georgetown Steel Memorandum, at 5.

¹⁰⁷ See Georgetown Steel Memorandum, at 5; see also Lined Paper Memorandum, at 22.

¹⁰⁸ See Georgetown Steel.

¹⁰⁹ See, e.g., Carbon Steel Wire Rod from Czechoslovakia.

¹¹⁰ See Georgetown Steel.

¹¹¹ Specifically, the Federal Circuit stated that: "We cannot say that the Administration's conclusion that the benefits the Soviet Union and the German Democratic Republic provided for the export of potash to the United

Georgetown Steel does not preclude the Department from applying the CVD law to exports from NME countries, where it was possible to do so. Rather, in that particular instance, the CAFC deferred to the Department, and affirmed its determination that it was unable to apply the CVD law to exports from Soviet Bloc countries in the mid-1980s.

The Georgetown Steel Court did not find that the CVD law prohibited the application of the CVD law to all NMEs for all time, but only that the Department's decision not to apply the law in that instance was reasonable based upon the language of the statute and the facts of the case. Specifically, the CAFC recognized that:

{T}he agency administering the countervailing duty law has broad discretion in determining the existence of a “bounty” or “grant” under that law. We cannot say that the Administration's conclusion that the benefits the Soviet Union and the German Democratic Republic provided for the export of potash to the United States were not bounties or grants under section 303 was unreasonable, not in accordance with law or an abuse of discretion. Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-45, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984).¹¹²

The Georgetown Steel Court did not hold that the statute prohibited application of the CVD law to NMEs, nor did it hold that Congress spoke to the precise question at issue. Instead, as explained above, the Court held that the question was within the discretion of the Department.

Recently, the CIT concurred, explaining that “the Georgetown Steel court only affirmed {the Department}'s decision not to apply countervailing duty law to the NMEs in question in that particular case and recognized the continuing ‘broad discretion’ of the agency to determine whether to apply countervailing duty law to NMEs.”¹¹³ Therefore, the Court declined to find that the Department's investigation of subsidies in the PRC was ultra vires.

The argument that the intent of Congress was that the CVD law does not apply to NMEs is also flawed. Since the holding in Georgetown Steel, Congress has expressed its understanding that the Department already possesses the legal authority to apply the CVD law to NMEs on several occasions. For example, on October 10, 2000, Congress passed the PNTR Legislation. In section 413 of that law, codified in 22 U.S.C. § 6943(a)(1), Congress authorized funding for the Department to monitor “compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China.”¹¹⁴ The PRC was designated as an NME at the time this bill was passed, as it is today. Thus, Congress not only contemplated that the Department possesses the authority to apply the CVD law to the PRC, but authorized funds to defend any CVD measures the Department might apply.

States were not bounties or grants under section 303 was unreasonable, not in accordance with law, or an abuse of discretion.

¹¹² See Georgetown Steel.

¹¹³ See GOC v. United States, citing Georgetown Steel.

¹¹⁴ See 22 U.S.C. § 6943(a)(1) .

This statutory provision is not the only instance where Congress has expressed its understanding that the CVD law may be applied to NMEs in general, and the PRC in particular. In that same trade law, Congress explained that “{o}n November 15, 1999, the United States and the People’s Republic of China concluded a bilateral agreement concerning the terms of the People’s Republic of China’s eventual accession to the World Trade Organization.”¹¹⁵ Congress then expressed its intent that the “United States Government must effectively monitor and enforce its rights under the Agreements on the accession of the People’s Republic of China to the WTO.”¹¹⁶ In these statutory provisions, Congress is referring, in part, to the PRC’s commitment to be bound by the SCM Agreement as well as the specific concessions the PRC agreed to in its Accession Protocol.

The Accession Protocol allows for the application of the CVD law to the PRC, even while the PRC remains classified as an NME by the Department. In fact, in addition to agreeing to the terms of the SCM Agreement, specific provisions were included in the Accession Protocol that involve the application of the CVD law to the PRC. For example, Article 15(b) of the Accession Protocol provides for special rules in determining benchmarks that are used to measure whether the subsidy bestowed a benefit on the company. Paragraph (d) of that same Article provides for the continuing treatment of the PRC as an NME. There is no limitation on the application of Article 15(b) with respect to Article 15(d), thus indicating it became applicable at the time the Accession Protocol entered into effect. Although WTO agreements such as the Accession Protocol do not grant direct rights under U.S. law, the Accession Protocol contemplates the application of CVD measures to the PRC as one of the possible existing trade remedies available under U.S. law. Therefore, Congress’s directive that the “United States Government must effectively monitor and enforce its rights under the agreements on the accession of the People’s Republic of China to the WTO,” contemplates the application of the CVD law to the PRC.¹¹⁷ Neither the SCM Agreement nor the PRC’s Accession Protocol is part of U.S. domestic law. However, the Accession Protocol, to which the PRC agreed, is relevant to the PRC’s and our international rights and obligations. Congress considered the provisions of the Accession Protocol important enough to direct that they be monitored and enforced.

Ningbo Jiulong’s reliance on GPX as authoritative is misplaced because the CIT has not yet reached a final and conclusive decision in that litigation, nor have all appellate rights been exhausted. Nevertheless, the Department does not agree that GPX supports the arguments set forth by the GOC, Ningbo Jiulong and Xinke. Contrary to the Ningbo Jiulong’s claim that GPX absolutely precludes the Department from simultaneously applying the CVD law and the NME methodology under the AD law, the Court in GPX clearly stated that “Commerce may have the authority to apply the CVD law to products of an NME-designated country . . .”¹¹⁸ Moreover, GPX did not find that a double remedy necessarily occurs through concurrent application of the CVD statute and NME provision of the AD statute, only that the “potential” for such double counting may exist.¹¹⁹

¹¹⁵ See 22 U.S.C. § 6901(8).

¹¹⁶ See 22 U.S.C. § 6941(5).

¹¹⁷ See 22 U.S.C. § 6941(5).

¹¹⁸ See GPX, at 1240.

¹¹⁹ See GPX, at 1242-43.

The parties have not cited to any statutory authority that would allow us to terminate this CVD investigation to avoid the alleged double counting or to make an adjustment to the CVD calculations to prevent double counting. If any adjustment to avoid a double remedy is possible, it would only be in the context of an AD investigation. We note that this decision is consistent with the Department’s approach in recent CVD proceedings involving the PRC.¹²⁰

With regard to the parties’ arguments that the Department has violated the APA, the Department does not agree. As an initial matter, the Department notes that the GOC, as well as all other parties in this investigation, have been provided due process through the substantial process that is mandated under the CVD law and the Department’s Regulations (e.g., a hearing, submission of written argument, and submission of rebuttal argument). Nevertheless, the GOC incorrectly claims that the Department has retroactively changed an allegedly binding rule regarding the application of the CVD law to NMEs without employing adequate process under the APA. The Department has never promulgated a rule pursuant to the APA regarding the application of the CVD law to NMEs.

The APA’s notice-and-comment requirements do not apply “to interpretative rules, general statements of policy or procedure, or practice.”¹²¹ As explained in more detail below, the decision as to whether to apply the CVD law to NMEs involves the Department’s practice or policy, not a promulgated rule, and is, therefore, not subject to the APA. An agency has broad discretion to determine whether notice-and-comment rulemaking or case-by-case adjudication is the more appropriate procedure for changing a policy or a practice.¹²² Here, the decision of whether a subsidy can be calculated in an NME hinges on the facts of the case, and should be made exercising the Department’s “informed discretion.”¹²³ The CIT recently agreed, stating that:

While Commerce acknowledges that it has a policy or practice of not applying countervailing duty law to NMEs, see, e.g., Request for Comment, Commerce has not promulgated a regulation confirming that it will not apply countervailing duty law to NMEs. In the absence of a rule, Commerce need not follow the notice-and-comment obligations found in the APA, 5 U.S.C. 553, and instead may change its policy by “ad hoc litigation.” Chenery Corp., 332 U.S. at 203.¹²⁴

The CIT has repeatedly recognized the Department’s discretion to modify its practice and has upheld decisions by the Department to change its policies on a case-by-case basis rather than by rulemaking when it has provided a reasonable explanation for any change in policy.¹²⁵ This is

¹²⁰ See, e.g., Citric Acid from the PRC, at Comment 3.

¹²¹ See 5 U.S.C. 553(b)(3)(A).

¹²² See, e.g., Chenery Corp., 202-03 (“the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency”).

¹²³ See Chenery Corp., 203.

¹²⁴ See GOC v. U.S., at 1282.

¹²⁵ See, e.g., Budd Co. holding that the Department did not engage in rulemaking when it modified its hyperinflation methodology: “because it fully explained its decision on the record of the case it did not deprive plaintiff of procedural fairness under the APA or otherwise”; see also Sonco Steel (formal rulemaking procedures were not

because it is necessary for the Department to have the flexibility to observe the actual operation of its policy through the administrative process as opposed to formalized rulemaking.¹²⁶ The Department provided a fully reasoned analysis for its change of practice in this case. See Georgetown Steel Memorandum.

The Department's decision to apply the CVD law in this investigation is also not subject to the notice-and-comment rulemaking of the APA because of the nature of the proceedings before the agency. The "APA does not apply to antidumping administrative proceedings" because of the investigatory and not adjudicatory nature of the proceedings, a principle equally applicable to CVD proceedings.¹²⁷

As these cases evidence, the GOC is incorrect when it characterizes the Department's explanation in CFS from the PRC – CVD as side-stepping the GOC's APA arguments "by simply calling a 'rule' a 'practice.'" In contrast to the GOC's APA arguments which fail to cite any case law, the Department's explanation in CFS from the PRC – CVD (which is reiterated above) evidences that the courts have consistently held that the Department does not create binding rules under the APA when it develops its practice on a case-by-case basis in antidumping and CVD proceedings.

The GOC cites to various determinations where it claims the Department established a rule under the APA that it would not apply the CVD law to China. As discussed above, the GOC's argument premised on these determinations is incorrect because the Department does not create binding rules under the APA through its administrative determinations. Instead, in these determinations the Department expounds on its practice in light of the facts before the Department in each proceeding. Furthermore, in the determinations to which the GOC cites, the Department never found that the Congress exempted China from the CVD law.

For example, the GOC cites to Carbon Steel Wire Rod from Poland arguing that, through that case, the Department created a binding rule that the CVD law cannot apply to NMEs such as China. In that case (as well as the other Wire Rod case) which provided the Department's analysis on the Soviet bloc economies and examined whether the CVD law could be applied, the Department articulated its decisions based on the status of those economies at the time. For example, after analyzing the operation of the market (or lack thereof) in Poland, the Department explained that:

These are the essential characteristics of nonmarket economic systems. It is these features that make NME's irrational by market standards. This is the background that does not allow us to identify specific NME government actions as bounties or grants.¹²⁸

required in determining whether it was appropriate to deduct further manufacturing profit from the exporter's sales price).

¹²⁶ See Ceramica Regiomontana, at 404-05.

¹²⁷ See GSA, at 1359 (citing SAA at 892) ("Antidumping and countervailing proceedings . . . are investigatory in nature.").

¹²⁸ See Carbon Steel Wire Rod from Poland.

The Department concluded that Congress had never clearly spoken to this issue.¹²⁹ In the absence of any statutory command to the contrary, the Department exercised its “broad discretion” to conclude that “a ‘bounty or grant,’ within the meaning of the CVD law, cannot be found in an NME.”¹³⁰ The Department based its decision upon the economic realities of these Soviet bloc economies. It did not create a sweeping rule against ever applying the CVD law to NMEs. Indeed, the Department’s subsequent actions demonstrate that it did not create a rule against the application of CVD law to NMEs. For example, in 1992, the Department initiated a CVD investigation against China, notwithstanding its status as an NME, after determining that certain industry sectors were sufficiently outside of government control.¹³¹ The Department ultimately rescinded the CVD investigation on the bases of the AD investigation, the litigation, and a subsequent remand determination, concluding that it was not a market oriented industry.¹³²

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

In this regard, it is important to note here our practice of not applying the CVD law to non-market economies. The CAFC upheld this practice in Georgetown Steel. In a subsequent determination, the Department continued to explain that it has a practice of not applying the CVD law to NMEs, and did not refer to this practice as a rule. “The Preamble to the Department’s regulations states that . . . it is important to note here our practice of not applying the CVD law to non-market economies. . . . We intend to continue to follow this practice.”¹³³ The claim that the Department has somehow created a rule, when it has neither referred to its practice as such nor adopted notice-and-comment rulemaking for this practice, is erroneous.

Comment 2: Cut-Off Date

Petitioners disagree with the Department’s rationale for using the date of China’s accession to the WTO (December 11, 2001) as the appropriate date from which to identify and measure subsidies. Petitioners argue that U.S. CVD law requires the Department to countervail subsidies granted by all countries, regardless of a country’s WTO membership status. Petitioners contend that U.S. CVD law draws no distinction between WTO and non-WTO countries. Petitioners state that the statute requires the Department to countervail illegal subsidies where such subsidies exist.¹³⁴

¹²⁹ See Carbon Steel Wire Rod from Poland.

¹³⁰ See Carbon Steel Wire Rod from Poland; see also Carbon Steel Wire Rod from Czechoslovakia.

¹³¹ See Lug Nuts from the PRC Initiation.

¹³² See Lug Nuts from the PRC Rescission.

¹³³ See Sulfanilic Acid from Hungary – CVD, at Comment 1.

¹³⁴ “If the administering authority determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy... then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net countervailable subsidy.” See section 701(a)(1) of the Act.

According to Petitioners, the U.S. CVD law does not restrict the definition of a country to only WTO countries. Instead, Petitioners hold, the statute broadly defines country as any foreign country. Therefore, Petitioners contend, even if China was not a WTO member, the U.S. CVD law still requires the Department to determine whether subsidies exist and to impose corresponding countervailing duties. Petitioners add that the statute does not extend preferential treatment to non-WTO countries. Petitioners argue that by using China's WTO accession date as the cut-off date from which to identify and measure China's subsidies, the Department is giving China special treatment while, at the same time, holding WTO members fully accountable for their subsidies. As such, Petitioners argue, the Department's use of the December 11, 2001 cut-off date for China's, coupled with its differential treatment of WTO and non-WTO members, conflicts with its statutory mandate.

Petitioners contend that China's accession documents support holding China fully accountable for its past subsidies. Petitioners state that neither the SCM Agreement, nor Accession Protocol state that subsidies granted prior to China's WTO accession should be ignored. According to Petitioners, the Department states that the language "regarding benchmarks for measuring subsidies and the PRC's assumption of obligations with respect to subsidies" in Article 15(b) of the Protocol of Accession supports "the notion that the PRC economy had reached the stage where subsidies and disciplines on subsidies...were meaningful."¹³⁵ Petitioners argue that this language may support the conclusion that by the date of its accession, China had reached a stage where subsidies were meaningful. However, Petitioners contend, this does not support the Department's conclusion that prior to China's WTO accession, its economy had not yet reached a stage where subsidies were meaningful.

Petitioners state that China's Accession Protocol requires China to recognize its existing subsidy benefits. According to Petitioners, China agreed to notify the WTO of any applicable subsidy granted or maintained in its territory, organized by specific product,¹³⁶ specifically China agreed to "notify the WTO of any subsidy within the meaning of Article 1 of the SCM Agreement, granted or maintained in its territory, including those subsidies defined in Article 3 of the SCM Agreement." Therefore, pursuant to its obligations under the SCM Agreement, Petitioners argue, China notified the WTO of many subsidies implemented before its 2001 accession. Petitioners maintain that instead of granting China an exemption for past subsidies, the WTO required China to notify its members of these measures.

Additionally, Petitioners argue that language in the SCM Agreement specifically states that subsidies the benefits of which can be allocated to the future that were granted prior to the date of entry into the WTO, shall be included in the overall rate of subsidization.¹³⁷ Petitioners argue that China's accession to the WTO does not terminate the ability of WTO members to seek redress for subsidies China provided prior to its accession. Petitioners argue that the accession documents require full recognition of China's existing subsidy benefits. Petitioners argue that, on this basis, the Department should reverse its decision in the Preliminary Determination.

¹³⁵ See OCTG from the PRC – CVD, at Comment 2.

¹³⁶ See Accession Protocol, Article 10.1.

¹³⁷ See SCM Agreement, Annex IV (paragraph 7).

Petitioners argue that when China acceded to the WTO on December 11, 2001, the WTO did not differentiate between China's existing subsidies and its past subsidies. Instead, Petitioners argue, the WTO explicitly required China to cease all subsidy programs and notify WTO members of all subsidies.¹³⁸ As such, Petitioners argue, the Department's preferential treatment of China's past subsidies, therefore, undermines the text and spirit of these WTO documents.

Petitioners also argue that the CIT has found the Department's cut-off date to be arbitrary and unsupported by substantial evidence. Petitioners state that the CIT instructed the Department to "determine the existence of countervailable subsidies based on the specific facts for each subsidy, rather than by examining those subsidies found after an arbitrary cut-off date."¹³⁹ Petitioners note that, in both that case and this investigation, the Department used the WTO accession date as the cut-off date, in part, because a program-by-program, company-by-company approach was not feasible. Petitioners hold that the CIT determined that the application of a cut-off date could cause the Department to impose countervailing duties not equal to the amount of the net countervailable subsidies, since it arbitrarily based decisions on whether the benefit was received after December 11, 2001. Petitioners state the CIT added that this cut-off date prevents the Department from evaluating specific facts for each subsidy, and results in the Department not fully reexamining the relevant economic situation in China.¹⁴⁰ Therefore, Petitioners contend, the CIT remanded the use of the cut-off date to the Department, and ordered the Department to engage in a case-by-case analysis based on the specific facts for each subsidy.¹⁴¹ Petitioners conclude that the same reasoning and analysis are applicable in this case, and therefore, the Department should countervail subsidies conferred prior to December 11, 2001.

Petitioners contend that the Department should measure China's subsidies based on the AUL of assets used to produce steel grating. Petitioners argue that the AUL regulations recognize that non-recurring subsidies granted in the past can provide benefits in the future. According to Petitioners, the Department has frequently used this practice in previous instances regardless of WTO accession dates. Petitioners add that applying these regulations to the case at hand prevents the Department from granting preferential treatment to China. As such, Petitioners argue the AUL of steel grating provides the Department with a more fitting time frame to measure China's subsidies. Petitioners add that the statute expressly directs the Department to use the AUL for determining cut-off dates.¹⁴² Petitioners state that using the statutorily proscribed methodology, the Department should allocate a non-recurring benefit to a producer in China over a 15 year period, beginning in 1993. Petitioners argue that by selecting December 11, 2001 as the cut-off date the Department is ignoring years' worth of subsidies.

The GOC disagrees with Petitioners contention that the Department should not apply any cut-off date when measuring and identifying subsidies in Chinese CVD cases. The GOC holds that none of Ningbo Jiulong's subsidies are affected by the cut-off date because all of their subsidies were provided during the POI and none were nonrecurring. However, the GOC argues, to the extent

¹³⁸ See Accession Protocol, Article 10.3.

¹³⁹ See GPX, at 31.

¹⁴⁰ See GPX, at 29.

¹⁴¹ See GPX, at 31.

¹⁴² "The Secretary will presume the allocation period for non-recurring subsidies to be the AUL of renewable physical assets for the industry concerned as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System." See 19 CFR 351.524(d)(2).

that a cut-off date may be applicable to any of the subsidies in this investigation, that date should be no sooner than January 1, 2005, the beginning of the POI in the first CVD case against China (CFS from the PRC – CVD). The GOC argues that even Petitioners have noted that the CIT has found the December 11, 2001 cut-off date to be arbitrary.

The GOC argues the Department’s cut-off date is inconsistent with the Department’s basis for finding China’s economy sufficient to permit the application of CVD law, and is directly contrary to U.S. law extant during the period prior to January 2005. The GOC argues that Sulfanilic Acid from Hungary – CVD, the Department did not measure subsidies received by the respondent prior to the time when the Department first considered Hungary to be a market economy. The GOC states that this approach was consistent with the Department’s regulations which state that subsidies provided by that country after the change in status are subject to the CVD law.¹⁴³ The GOC argues that there is no reason to depart from this practice here. The GOC states that in both Sulfanilic Acid from Hungary – CVD and CFS from the PRC – CVD, there is a clear determinable date on which the country can be said to have become susceptible to the application of CVD law. As such, the GOC argues, the Department should not countervail subsidies received prior to December 11, 2001.

The GOC argues that when the Department issued its decision in CFS from the PRC – CVD, it issued the Georgetown Steel Memorandum to explain changes that had occurred in China since the original Georgetown Steel decision as justification for the application of CVD law to China. However, the GOC argues, the Georgetown Steel Memorandum is limited to an analysis of economic and market conditions in present-day China, or, at most, for the POI in that case, which began on January 1, 2005. The GOC argues that this memorandum contains no analysis of China’s market economy conditions for any prior period, nor is there any evidence on the record that would permit such an analysis to support the Department’s determination to December 11, 2001 as a cut-off date. As such, the GOC argues, the conclusion that the period between December 11, 2001 and 2005 is susceptible to CVD law without any analysis or evidence is inappropriate. Accordingly, the GOC argues, the Department should not measure any subsidies received prior to January 1, 2005, and should in-turn, apply this as the cut-off date in this investigation if any is required.

Department’s Position:

Consistent with recent PRC CVD determinations, we continue to find that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law, and have adopted December 11, 2001, the date on which the PRC became a member of the WTO, as that date.¹⁴⁴

We have selected this date because of the reforms in the PRC’s economy in the years leading up to that country’s WTO accession and the linkage between those reforms and the PRC’s WTO

¹⁴³ “Where the Department determines that a change in status from non-market to market is warranted, subsidies bestowed by that country after the change in status would become subject to the CVD law.” See CVD Preamble, at 65360.

¹⁴⁴ See, e.g., OCTG from the PRC – CVD, at Comment 3; see also Kitchen Shelves and Racks from the PRC – CVD (Final Determination), at Comment 3.

membership.¹⁴⁵ The changes in the PRC's economy that were brought about by those reforms permit the Department to determine whether countervailable subsidies were being bestowed on Chinese producers. For example, the GOC eliminated price controls on most products; since the 1990s, the GOC has allowed the development of a private industrial sector; and in 1997, the GOC abolished the mandatory credit plan. Additionally, the PRC's Accession Protocol contemplates application of the CVD law. While the Accession Protocol, in itself, would not preclude application of the CVD law prior to the date of accession, the Protocol's language in Article 15(b) regarding benchmarks for measuring subsidies and the PRC's assumption of obligations with respect to subsidies provide support for the notion that the PRC economy had reached the stage where subsidies and disciplines on subsidies (e.g., countervailing duties) were meaningful.

We also disagree with the GOC's argument that cut-off date should be no sooner than January 1, 2005. Specifically, we disagree that Sulfanilic Acid from Hungary – CVD is controlling here. The Department has revisited its original decision not to apply the CVD law to NMEs and has determined that it will reexamine the economic and reform situation of the NME on a case-by-case basis to determine whether the Department can identify subsidies in that country.

Regarding petitioners' concern that adoption of a December 11, 2001, cut-off date for application of CVD law to the PRC is improper, we note that the Department is simply acknowledging its ability to identify and measure subsidies as of December 11, 2001, based on the economic conditions in the PRC. Therefore, the Department is fully within its authority in not applying the countervailing duty law to the PRC prior to December 11, 2001.¹⁴⁶

We acknowledge that there was not a single moment or single reform law that suddenly permitted us to find countervailable subsidies in the PRC. Many reforms in the PRC, such as the elimination of price controls on most products, were put in place before the PRC acceded to the WTO.¹⁴⁷ However, the Department has identified certain areas, such as in the credit and land markets, where the PRC economy continues to exhibit non-market characteristics.¹⁴⁸ These examples only serve to demonstrate that economic reform is a process that occurs over time. This process can also be uneven: reforms may take hold in some sectors of the economy or areas of the country before others.

We have rejected the approach of making specific findings for specific programs, opting instead for a uniform date of application based on the economic changes that have occurred across the entire Chinese economy. The cumulative effects of the many reforms implemented prior to the PRC's WTO accession give us confidence that by the end of 2001, subsidies in the PRC could be identified and measured.

Petitioners have further argued that our AUL regulations require that we investigate subsidies given over the entire AUL period. For the reasons explained above, if subsidies cannot be

¹⁴⁵ See WTO Working Party Report – 10/1/2001.

¹⁴⁶ See Georgetown Steel.

¹⁴⁷ See Georgetown Steel Memorandum.

¹⁴⁸ See Georgetown Steel Memorandum.

meaningfully identified and measured before December 11, 2001, then these regulations are inapplicable.

Lastly, reliance on GPX is misplaced because that decision is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted. For these reasons, and consistent with OCTG from the PRC – CVD and other recent the PRC CVD cases, the Department finds that it can determine whether the GOC has bestowed countervailable subsidies on Chinese producers from the date of the PRC’s WTO accession.¹⁴⁹

Comment 3: Selection of Two Mandatory Respondents

The GOC argues that the Department erred in selecting only two respondents in this investigation, one of which was released because it does not produce steel grating while the other faces a potential AFA ruling. Such a company-specific punitive rate is not representative of the entire industry. The Department has few options for calculating the all-others rate for the rest of the industry, and if the Department does apply AFA to Ningbo Jiulong in the final determination, this rate should not be used as the basis of the all-others rate.

In calculating CVD margins, the Department has the option of calculating an individual rate for each exporter/producer of subject merchandise, or, when there is a large number of exporters or producers, section 777A(e)(2) of the Act allows the Department to use a statistically valid sample of exporters/producers, or to assign a rate to the exporters/producers accounting for the largest volume of the subject merchandise from the exporting country. The GOC contends that the Department improperly chose the latter option.

The GOC cites to Carpenter Tech, wherein the Department selected two respondents from a pool of eight. There, the Department cited similar needs to limit the number of respondents to examine. The GOC argues that the decision in Carpenter Tech does not refer to whether the pool of potential respondents was large, but whether the Department’s implicit construction that any number of exporters/producers larger than two respondents was a “large number of exporters or producers” was within the meaning of the statute. According to the GOC, by determining that it could only examine a maximum of two respondents, the Department was implicitly stating that any number greater than two was a large number. The GOC argues the court did not believe the statute could be construed in that particular manner. The GOC argues that the situation is relevant to the current investigation because of similar facts; regardless of the size of the pool of potential respondents, the Department should have selected more than two respondents. Furthermore, the GOC also cites to Zhejiang to support its argument (explaining that “the number of exporters and producers initially involved in this review, four, does not appear to satisfy the requirement that the number be ‘large’ under any ordinary meaning of the word.”)

Petitioners argue that the Department’s selection of two mandatory respondents is consistent with the law. Where the Department determines that it is not practicable to determine individual subsidy rates given the large number of exporters or producers involved in the investigation, the Department can limit its examination to exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that the administering authority

¹⁴⁹ See OCTG from the PRC – CVD, at Comment 3.

determines can be reasonably examined. The Department, Petitioners argue, has broad discretion in allocating resources for the purpose of reviewing respondents when it determines that it is impracticable to assign an individual subsidy rate to each potential exporter or producer.

According to Petitioners, the GOC is mistaken in its reliance on Carpenter Tech. In that case, Petitioners argue, the CIT admonished the Department for starting its analysis with the determination that it would examine a maximum of two exporters/producers, rather than determining that it was impracticable to review eight respondents because the number of exporters and producers was too large. Petitioners distinguish this case by arguing that the Department must, as a precondition of selecting a limited number of respondents, determine that a large number of exporters or producers exists and that it would be impracticable to examine them all. Petitioners continue by pointing out that the Department began its analysis in this investigation with the determination that, due to the large number of exporters/producers identified by Customs and Border Protection, it would not be practicable to examine all possible exporters/producers. The Department then properly exercised its authority to limit the investigation to those exporters/producers accounting for the largest volume of subject merchandise that could reasonably be examined.

Petitioners also refute the GOC's reliance on Zhejiang, arguing that the court in that case focused on the absolute number of exporters or producers who are possibly subject to examination when it determined that four such exporters or producers was not a large number under any ordinary understanding of the word. Leaving aside the issue of whether or not four producers or exporters is too large a number for the Department to examine, Petitioners state that the much larger number of potential respondents in this case precludes the applicability of Zhejiang, and is too large a number regardless of the context of the Department's administrative circumstances.

Finally, Petitioners point out that the cases cited in support of the GOC's position involve antidumping cases and are thus not applicable in the CVD context. While there might be reasons for variations in levels of dumping among different respondents, it is reasonable for the Department to conclude that the rate of government subsidization across companies is relatively consistent for the same products and therefore the same interests as the cases the GOC cited are not at issue.

Department's Position:

The Department does not agree with the GOC's interpretations of Carpenter Tech and Zhejiang. The statute at issue in Carpenter Tech and Zhejiang is section 777A(c) of the Act, the antidumping analogue to the CVD law found in section 777A(e) of the Act. Assuming that the two provisions reflect a similar intent of Congress and could be construed similarly, the statutes generally require that the Department shall determine an individual margin rate for each known exporter and producer of the subject merchandise. However, the statute also creates an exception to the general requirement, under which the Department is authorized to apply the weighted average of margin determinations for fewer than all of the exporters or producers of the subject merchandise if it is not practicable to determine individual margins "because of the large number of exporters or producers involved in the investigation or review."¹⁵⁰ Where the Department determines that because of the large number of exporters and producers to be examined it is not

¹⁵⁰ See sections 777A(c)(2) and 777A(e)(2) of the Act.

practicable to calculate individual rates for all such exporters and producers, the statute permits the Department to determine the countervailable subsidy rates for a reasonable number of exporters or producers, which may be selected by using statistically valid sampling or by examining the “exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that the administering authority determines can be reasonably examined.” See section 777A(e)(2)(A)(ii) of the Act.

We disagree with the GOC’s claim that the Department improperly applied the statute to examine exporters and producers accounting for the largest volume of exports of the subject merchandise. While the Zhejiang decision never became final and conclusive as the case was subsequently dismissed, the Department’s decision in this case is consistent with the CIT’s holding in Zhejiang. In accordance with the Zhejiang decision, the Department first determined whether there is a “large number” of exporters and producers of the subject merchandise.¹⁵¹ Thus, it is uncontroverted that where there is a large number, the statute permits the Department to exercise its discretion to limit the number of mandatory respondents by the means described in section 777A(c)(2) of the Act, and, by extension section 777A(e)(2) of the Act.¹⁵²

In both Carpenter Tech and Zhejiang, the CIT indicated that the Department cannot justify limiting its examination to the exporters and producers accounting for the largest volume of the subject merchandise from the exporting country based on the Department’s workload or resource constraints.¹⁵³ The CIT in Carpenter Tech relied heavily upon the “Respondent Selection Memorandum” which, in the court’s opinion, explains that the Department improperly initiated the decision making process with regard to respondent selection by determining that it could “examine a maximum of two exporters/producers” in that case, before determining that eight was too large a number of respondents to examine.¹⁵⁴ The CIT concluded that the Department implicitly construed 777A(c)(2) such that any number of exporters/producer larger than two was a “large number of exporters or producers” within the meaning of that term as used in the statute. By beginning its respondent selection process with an analysis of its available resources, the Carpenter Tech court stated, the Department’s conclusion that eight potential respondents were too many was “essentially meaningless.”¹⁵⁵ In Zhejiang, the court found that the number of exporters and producers initially involved in that review, four, “does not appear to satisfy the requirement that the number be ‘large’ under any ordinary understanding of the word,”¹⁵⁶ and that “Commerce may not rely upon its workload caused by other antidumping proceedings in assessing whether the number of exporters or producers is “large”.”¹⁵⁷

We note that, like Zhejiang, Carpenter Tech is also not final and conclusive, nor have all appellate rights been exhausted in that case. Nevertheless, Carpenter Tech and Zhejiang are both not applicable to this investigation. In the respondent selection process, presented in the Respondent Selection Memorandum, we first noted that the petition named 16 exporters and/or

¹⁵¹ “[the Department] has no authority to limit the number of mandatory respondents it reviews unless there is a large number of exporters or producers.” See Zhejiang, at 1264.

¹⁵² See Zhejiang, at 1263.

¹⁵³ See Zhejiang, at 1263-1264; see also Carpenter Tech, at 1343.

¹⁵⁴ See Carpenter Tech, at 1342.

¹⁵⁵ See Carpenter Tech, at 1343.

¹⁵⁶ See Zhejiang, at 1264.

¹⁵⁷ See Zhejiang, at 1263-4.

producers of steel grating. The Department further stated that, based on CBP data, there was an extremely large number of possible exporters and/or producers that exported steel grating to the United States during the POI that might serve as potential respondents.¹⁵⁸ This number, which is business proprietary information, far exceeds the potential eight respondents at issue in Carpenter Tech, or the four in Zhejiang. Consistent with its authority under section 777A(e)(2) of the Act, based on the extremely large number of potential respondents in this investigation, the Department reasonably analyzed its available resources and determined that it could not individually examine each potential exporter or producer. Rather, in light of its resources, the Department determined that it could investigate two companies which export steel grating to the United States.¹⁵⁹ As the Zhejiang court noted, the Department “has broad discretion in allocating its resources where the statute permits Commerce to limit its review.”¹⁶⁰ Contrary to the GOC’s arguments, the Department first determined that the number of potential respondents was too large to assign every potential respondent an individual rate, and therefore the conclusion that the Department could only select two mandatory respondents in this investigation is in accord with the statute.

With regard to the argument that the Department’s respondent selection methodology unreasonably resulted in only one remaining mandatory respondent in this investigation, the Department does not agree that this was unreasonable. In this investigation, the Department selected two mandatory respondents to investigate. After receiving and reviewing the questionnaire responses of one of the mandatory respondents, USSL, the Department determined that because USSL was not a steel grating exporter or producer, it would be an inappropriate mandatory respondent in this investigation.¹⁶¹ However, because that determination was made on October 23, 2009, three days before the preliminary determination, the Department determined that it could not select an additional mandatory respondent to investigate. Three days before the preliminary determination left the Department with insufficient time to select and complete an examination of another respondent within the statutory time limits. Because there is only one respondent in this investigation for which the Department has calculated a company-specific rate, consistent with our practice and in accordance with section 705 of the Act, its rate serves as the “all others” rate.¹⁶²

Comment 4: Application of Adverse Facts Available

Petitioners argue that the Department should apply total adverse facts available to determine the CVD rate applied to Ningbo Jiulong. Petitioners claim that Ningbo Jiulong has provided false documents to the Department, misled the Department at verification, contradicted itself with respect to the existence of documents, made factual claims that it has later withdrawn or which have been shown to be inaccurate, inappropriately delayed the submission of requested information, and failed to provide accurate and complete data. As a result, Petitioners claim, the record is unreliable with respect to key information in this investigation, including the nature and

¹⁵⁸ See Respondent Selection Memorandum, at page 2.

¹⁵⁹ See Respondent Selection Memorandum, at pages 2 and 3.

¹⁶⁰ See Zhejiang, at 1264.

¹⁶¹ See USSL Memorandum.

¹⁶² See, e.g., Hot-Rolled Steel from Thailand; see also Pure Magnesium From Israel.

source of the input steel used in the production of the subject merchandise, Ningbo Jiulong's U.S. sales transactions, and its financial statements.

Petitioners argue that the Department should, as it did in the Preliminary Determination, continue to find that the provision of steel inputs for LTAR is a countervailable subsidy and to apply adverse inferences with respect to this program. Petitioners state that the record with respect to the source of Ningbo Jiulong's steel inputs is wholly unreliable. Petitioners argue that Ningbo Jiulong has misrepresented, obscured, and falsified the record with respect to the identity of its major steel input suppliers. As a result, Petitioners claim, the Department is not able to determine the identity of Ningbo Jiulong's input suppliers, making it impossible to calculate an accurate CVD rate. Moreover, as discussed below, Petitioners argue the Department should consider Ningbo Jiulong's suppliers to be government authorities.

Petitioners point to the Department's own statement at verification, that there were "numerous problems" with the mill test certificates that "call into question who the actual producers of the steel inputs are."¹⁶³ At verification, Petitioners note, the Department confronted Ningbo Jiulong with a series of problematic issues related to the mill test certificates of its largest hot-rolled steel and wire rod suppliers. Many of these mill test certificates contained identical data in the chemical composition section, as well as other unusual and unexplained data inconsistent with commercial steel production. In particular, Petitioners claim that statements by Ningbo Jiulong at verification constitute admissions that Ningbo Jiulong's largest hot-rolled steel supplier provided inaccurate mill test certificates due to employee mistakes and clerical errors in preparing the documents.

Petitioners claim there are also inconsistencies with the certificates provided by the largest wire rod supplier. According to Petitioners, it was Ningbo Jiulong who first stated that they were in fact prepared by an intermediate trading company. Petitioners claim that Ningbo Jiulong was unable at verification to explain how the trading company was able to provide it with certificates from two different factories, if in fact the trading company prepared the certificates itself.

Petitioners believe that Ningbo Jiulong's attempt to lay the blame for the inaccurate mill test certificates on its suppliers is not credible. According to Petitioners, it is not reasonable to assume that two unrelated steel producers, producing two different steel products, used virtually the same method to create and alter mill test certificates. Thus, Petitioners conclude that the documents were instead fabricated by Ningbo Jiulong itself. Petitioners note that the Department has previously found that claims that unrelated suppliers with no personal interest in a trade remedy proceeding have engaged in an identical subterfuge simply are not credible.¹⁶⁴

Further, Petitioners point out that CBP information placed on the record by the Department included an entirely new set of mill test certificates created by Ningbo Jiulong, casting additional doubt on the reliability of the mill test certificates on the record. Specifically, Petitioners argue, these new mill certificates undermine Ningbo Jiulong's claims with respect to the quality and source of its steel inputs. According to Petitioners, information contained in these documents conflicts with information in the supplier mill certificates, and raises the possibility that the steel

¹⁶³ See Ningbo Jiulong Verification Report, at page 19.

¹⁶⁴ See Ironing Tables from the PRC – AR, at Comment 1.

used by Ningbo Jiulong to manufacture steel grating did not originate from the identified input suppliers. These documents, combined with other unreliable information provided by Ningbo Jiulong, Petitioners claim, render all the information Ningbo Jiulong provided suspect and unreliable.

Petitioners note that, according to ISO quality standards that Ningbo Jiulong claims to satisfy, steel used in the production of goods must be traceable to its source. Petitioners also state that deliveries to Ningbo Jiulong's customers must be accompanied by mill certificates, which would necessarily require that steel be traced back to the original source. Petitioners claim mill certificates provided with the CBP documentation contradict Ningbo Jiulong's prior statements that it cannot trace its input steel through its production process, undermining the integrity of the supplier mill test certificates on the record by Ningbo Jiulong.

Petitioners also contend that the mill certificates provided with the CBP documentation indicate that Ningbo Jiulong has misrepresented the quality and carbon content of its input steel; those mill certificates are not reconcilable with the type of steel identified in the supplier mill certificates that were provided. Therefore, according to Petitioners, Ningbo Jiulong has misled the Department about the type and grade of input steel used in the production of steel grating. Petitioners point out that Ningbo Jiulong's largest U.S. customer indicates in its product catalog that it uses the type and grade of steel identified in the mill certificates provided with the CBP documentation, rather than the type and grade of steel identified in the original supplier mill certificates, and that the purchase orders sent to Ningbo Jiulong call for this product as well.

Petitioners claim that the lack of accurate documentation by Ningbo Jiulong calls into question the very source of its steel inputs. According to Petitioners, the grade and carbon content information recorded in the mill certificates provided by CBP are not reconcilable with the supplier certificates, and identify a type and grade of steel input that is more commonly produced by state-owned enterprises. Providing the Department with falsified mill certificates, Petitioners argue, was a way to disguise the source and type of the steel used in its production process, making it impossible for the Department to identify the actual producers of the steel inputs and rendering the input subsidies non-countervailable. Petitioners argue, therefore, that Ningbo Jiulong has not cooperated to the best of its ability and has seriously impeded the Department's investigation, which calls for an application of total adverse facts available.

Petitioners also argue that the documents obtained from CBP show that Ningbo Jiulong has not reported all of its affiliations, and that transactions with affiliates distorted the sales denominator reported by Ningbo Jiulong. According to Petitioners, the commercial invoice provided to CBP was not issued by Ningbo Jiulong. The third party who issued the invoice, according to Petitioners, must be an unreported affiliate, since documents show a substantial profit for the provision of minimal services. Petitioners contend this unreported affiliation indicates that Ningbo Jiulong has been less than forthright about its U.S. sales transactions and undermines the reliability of its reported sales denominator. Even if no relationship exists, Ningbo Jiulong has not been forthright in revealing its U.S. sales procedures, and has therefore severely impeded the Department's investigation. This justifies the application of total adverse facts available.

Petitioners also argue that Ningbo Jiulong's financial records are unreliable because the company violated accounting principles when it inaccurately recorded a significant line item on its financial statement for an extended period of time. This line item was rerecorded in 2008 on the advice of Ningbo Jiulong's auditors with no explanation provided by Ningbo Jiulong in its financial statement. Petitioners argue that Ningbo Jiulong's practice of altering its recording process as it pleases renders its financial statements completely unreliable. Furthermore, Petitioners claim that Ningbo Jiulong failed to timely disclose that its financial statements prior to 2006 were not audited, contrary to Ningbo Jiulong's claims on the record. The absence of any independent auditing prior to 2006, state Petitioners, casts further doubt on Ningbo Jiulong's past financial statements and the reliability of information that it provided. Petitioners argue that if the Department cannot rely on Ningbo Jiulong's financial statements, it cannot confirm the receipt or non-receipt of subsidies, and will be unable to calculate a proper CVD rate. When a company's financial reporting system is not credible or reliable, as Petitioners argue, neither is the information provided by the respondent to the Department. When this occurs, the Department has no recourse but to apply adverse facts available.¹⁶⁵

Petitioners state that pursuant to section 776(a)(2) of the Act, the Department must apply facts available where a respondent: 1) withholds information that the Department has requested; 2) fails to provide requested information within the deadlines established, or in the form or manner required by the Department; 3) significantly impedes a proceeding; or 4) provides information that cannot be verified. Furthermore, where a respondent fails to cooperate to the best of its ability, the Department may make adverse inferences. Petitioners argue that these elements are present, justifying the application of total adverse facts available.

Ningbo Jiulong claims that it provided the Department with unaltered mill test certificates from its suppliers, exactly as it received them, and that the record substantiates this claim. Ningbo Jiulong provided statements and authenticated copies of mill test certificates from its suppliers indicating that the submitted documents were provided in their original form. Ningbo Jiulong points out that these submissions have not been rebutted on the record, and are the only direct, relevant evidence of the source of the documents. Furthermore, Ningbo Jiulong argues, it cannot be held responsible for explaining discrepancies in certificates supplied to it by its input suppliers.

Ningbo Jiulong argues that the similarities in the discrepancies between mill test certificates from two different suppliers are not so unlikely or impossible as Petitioners contend. There is the possibility that data from previous templates were in some cases replicated on newer mill test certificates. Ningbo Jiulong argues that this does not make them unreliable – rather it makes them *representative* as they were clearly based on previous results for the same type of steel. Ningbo Jiulong also points out that Petitioners identified different patterns of repetition between the hot-rolled steel and wire rod mill test certificates. Specifically, Petitioners pointed out that the first several rows of the majority of the steel wire rod certificates repeated, a pattern not found in the hot-rolled steel certificates. Moreover, the prevalence of repeated heat values is significantly higher for the wire rod certificates as compared to the hot-rolled steel certificates. Ningbo Jiulong argues that, if as Petitioners claimed, it had fabricated the certificates itself, the same patterns and percentage of repetition would be expected to reappear. Moreover, if Ningbo

¹⁶⁵ See Citric Acid from the PRC, at pages 80 and 81.

Jiulong was going to fabricate the mill test certificates, there is no explanation offered by Petitioners as to why Ningbo Jiulong would not have made its record of mill test certificates as complete, thorough, and verifiable as it did its actual books and accounting records. The incompleteness and discrepancies in the certificates stand in stark contrast to the accuracy and completeness of the company's actual accounting practices, Ningbo Jiulong claims.

Ningbo Jiulong argues that the Department has plenty of record evidence from which to draw "facts available," thus eliminating any need to apply total adverse facts available. Ningbo Jiulong claims that, because the majority of submitted mill test certificates were not found to have any discrepancy, the Department could disregard the discrepant heat values and/or certificates and rely on the remaining certificates and heat values. The Department can also find information related to steel properties on commercial documents and purchase orders from Ningbo Jiulong's U.S. customers, from the remaining mill test certificates, Ningbo Jiulong's independent tests, and the billet certificates provided by the company's supplier of hot-rolled steel. All these documents are consistent in indicating that low-carbon steel was consumed in the production of the steel inputs.

Ningbo Jiulong points out that only one mill certificate from the POI was included in the package of documents from CBP. One such certificate is not so significant that Ningbo Jiulong's long record of cooperation in this case should be disregarded, exposing Ningbo Jiulong to the possible application of total adverse facts available. Moreover, Ningbo Jiulong argues, the documents given to the Department by CBP do not meet the requirements of a mill test certificate by any reasonable definition of the term. The certificates do not bear the name of any steel manufacturer, and there are no heat numbers for the chemistry results, but instead only dates; as a result the documents cannot be used to identify suppliers of steel inputs. Without heat numbers or manufacturer names, Ningbo Jiulong points out, these mill certificates could not possibly be tied back to the mill test certificates provided by its suppliers.

Ningbo Jiulong also takes issue with Petitioners' claim that ISO standards require input steel to be traceable from purchase, through production, to the final sale. Ningbo Jiulong claims that Petitioners have not clearly shown that ISO standards require that level of detail in tracing raw materials, or that any steel companies normally maintain such records. Ningbo Jiulong argues that such a practice is simply not standard industry practice, and that to accept Petitioners' claims leads to an impossibly high standard of record keeping for producers of steel products that will make verification for any company impossible.

Ningbo Jiulong next points out that the Department, in its questionnaires, only requested the original mill test certificates from the suppliers who produced Ningbo Jiulong's input steel. Specifically, the Department asked for mill test certificates associated with purchases of inputs, as opposed to those associated with sales of finished goods. Ningbo Jiulong provided these documents. Ningbo Jiulong points out that Petitioners made the Department aware of the possibility of a second set of customer mill test certificates as early as September 18, 2009.¹⁶⁶ Had the Department wanted mill certificates provided to customers, Ningbo Jiulong argues, it had ample time and opportunity to request them prior to verification. Ningbo Jiulong claims that, when the AD investigators asked for other types of mill certificates, the company provided

¹⁶⁶ See Petitioners' Deficiency Comments.

them to the investigators. In the CVD investigation, Ningbo Jiulong notes, the Department did not ask for these documents. Ningbo Jiulong argues that the Department should not draw any inferences from these documents, which were placed on the record at the very end of the investigation; to do so would be extremely prejudicial to Ningbo Jiulong.

Ningbo Jiulong also takes issue with Petitioners' claim that it misrepresented the steel used in producing its steel grating. Ningbo Jiulong claims that all its purchased steel, as confirmed by the mill test certificates, falls within the definition of low-carbon steel. Moreover, discrepancies between original mill test certificates, and those provided to customers, Ningbo Jiulong claims, are less than 0.1 percent of carbon content. Furthermore, Ningbo Jiulong points out that Petitioners have not been able to point to any discrepancies in the specifications (*i.e.*, gauge, width, thickness) of the steel inputs indicated on the mill test certificates. Put simply, Ningbo Jiulong argues, minor discrepancies in chemical content do not render the entire document worthless when every other specification is traceable to verified record documents.

With regard to the information gathered from CBP, Ningbo Jiulong maintains that it has no insight into the relationship between its U.S. customer and that company's buying agent as the details of the arrangement between those two parties are outside of its control and knowledge. Furthermore, Ningbo Jiulong notes that Petitioners' have not presented the Department with any information to support its claim that Ningbo Jiulong is affiliated with this buying agent. To the extent that Petitioners base this allegation on documents obtained by the department from CBP, Ningbo Jiulong states that the Department has not issued any deficiency questionnaire regarding those documents which, Ningbo Jiulong claims, it has had no opportunity to directly address or refute. Where no such questionnaire has been issued, Ningbo Jiulong claims, Petitioners cannot impugn the information already verified by the Department. Moreover, Ningbo Jiulong points out that it was not legally responsible for the documentation provided to CBP; thus, it argues, it should not be held accountable for what the importer of record may have submitted to CBP. Unlike the documents obtained from CBP, Ningbo Jiulong notes, the documents that it submitted to the Department tied to its records, audited financial statements and tax filings during verification.

Ningbo Jiulong argues that Petitioners' allegation that its books and records are unreliable is not supported by the record. The fact that Ningbo Jiulong did not always produce audited financial statements is irrelevant: “{t}he Department does not reject questionnaire responses simply because the respondent does not have an audited financial statement. In such situations, the Department looks to other financial records, prepare for purposes independent of the antidumping proceeding, such as tax statements, which attest to the veracity of a respondent's accounting system and information submitted to the Department.”¹⁶⁷ Accordingly, Ningbo Jiulong claims, the Department verified numerous linking documents without discrepancy, including Ningbo Jiulong's cost and sales ledgers and its tax files.

Petitioners' claim that Ningbo Jiulong's decision to reclassify certain assets renders its financial documents unreliable is also without merit, Ningbo Jiulong argues. Ningbo Jiulong notes that the reclassification arose out of a reasonable disagreement between accounting firms; this does not render the entire financial accounting system of the company unreliable.

¹⁶⁷ See Chrome Plated Lug Nuts from Taiwan.

Finally, Ningbo Jiulong argues that it is not appropriate for the Department to apply total adverse facts available. Such a decision is only appropriate when a respondent fails to cooperate to the best of its ability with the Department's requests for information and/or significantly impedes the investigation. That is not the case here, Ningbo Jiulong argues, as it answered every questionnaire issued by the Department and agreed to extend the final determination deadline fully, permitting the Department time to add new programs to its investigation and to pursue Petitioners' allegations concerning the mill test certificates. There is no question, Ningbo Jiulong argues, that it consumed anything but low-carbon steel in its production of steel grating. Further, Ningbo Jiulong claims that it did not submit the supplier mill test certificates as part of its record keeping system, or certify to the Department that they were in every respect correct. Ningbo Jiulong's only obligation, it claims, was to submit the mill test certificates to the Department exactly as it received them, which it did. There is, Ningbo Jiulong concludes, simply no evidence that its responses to the Department's investigation are inaccurate.

Ningbo Jiulong argues that if the Department does draw adverse inferences for the final determination, they must be limited to facts that are reasonably disputable. Ningbo Jiulong point out that Petitioners have never cited to any deficiencies with respect to the manufacturer or input specifications identified in the mill test certificates. Furthermore, Ningbo Jiulong notes, the Department verified records relating to the identity of Ningbo Jiulong's suppliers. The only point at issue with the mill test certificates remains the chemistry of the steel; it is to this point, Ningbo Jiulong argues, that the Department should confine any adverse inferences that it will make. Any defects in the mill test certificates, on their own, should not be found to impugn Ningbo Jiulong's diligent reporting that was fully verified by the Department, Ningbo Jiulong claims.

Department's Position:

In this final determination, we have not applied total AFA to Ningbo Jiulong. Rather, we have applied partial AFA with respect to Ningbo Jiulong's use of the GOC programs for the provision of hot-rolled steel and wire rod at LTAR. As AFA, we have selected the highest calculated rate for the same program from other CVD investigations of products from China. As discussed further below, based upon the information provided in Ningbo Jiulong's responses, at verification, and obtained from CBP, we have concluded that Ningbo Jiulong failed verification of the two steel input LTAR programs.

In this investigation, the Department requested that Ningbo Jiulong provide mill test certificates in order to confirm which steel products were used in the production of steel gratings, and to identify the actual producers of the steel inputs used in the production of steel gratings. The identity of the producers of the inputs is key to determining whether the government has provided the inputs for LTAR. Without accurate and complete information on the input products and the producers of those products, the Department is unable to evaluate whether the government has provided the inputs for LTAR.¹⁶⁸ However, Ningbo Jiulong was less than forthcoming with respect to these mill certificates. Ningbo Jiulong reported that it was unable to provide the Department with mill test certificates for every purchase of hot-rolled steel and wire

¹⁶⁸ See [Ningbo Jiulong Supplemental Questionnaire3](#).

rod it made during the POI.¹⁶⁹ When we asked Ningbo Jiulong to confirm that it had submitted all the mill test certificates in its possession,¹⁷⁰ it reported that it had found more of them.¹⁷¹ When we again asked Ningbo Jiulong to confirm that it had provided all of the mill test certificates in its possession,¹⁷² including any submitted on the record of the companion antidumping duty investigation that were contemporaneous with the CVD POI, Ningbo Jiulong reported that it had found two more mill test certificates that it had left out inadvertently.¹⁷³ Ningbo Jiulong also submitted a copy of a wire rod mill test certificate, supposedly already on the record but with a different serial number.¹⁷⁴ Ningbo Jiulong reported, and the Department confirmed, that these two certificates contained the identical information, but different serial numbers. At verification, Ningbo Jiulong stated that this was because the two mill test certificates came from two different factories operated by the producer of the wire rod; when asked how two different factories could generate two different mill test certificates on the same date with identical content, company officials explained that they did not think it was possible,¹⁷⁵ clearly indicating that at least one of the mill test certificates was fabricated.

With respect to the mill test certificates provided by Ningbo Jiulong, Petitioners provided an analysis which demonstrated that the documents could not accurately represent the hot-rolled steel products that Ningbo Jiulong purchased for the production of gratings. Specifically, Petitioners analyzed the chemical composition of the products as recorded in the mill test certificates and noted that information about the chemical composition was impossible, and that the chemical composition in several different mill test certificates was identical or nearly identical. Petitioners also noted the same pattern of inconsistencies occurred on mill test certificates for both the hot rolled steel and the wire rod purchases although the products were produced by two different entities. Moreover, Petitioners pointed out mill certificates with the same certificate number but different information regarding heat numbers and chemical composition, as well as certificates where the sequencing of the certificate number did not synchronize chronologically with the data on the certificates.

At verification, Department verifiers sought to clarify the discrepancies noted by Petitioners on the mill test certificates and establish whether the mill test certificates that Ningbo Jiulong provided to the Department were a reliable basis with which to confirm the identities of the producers of the steel inputs as reported by Ningbo Jiulong. As described in the verification report, Ningbo Jiulong provided the Department verifiers with a series of ad hoc explanations regarding the completeness and accuracy of the mill test certificates it was able to provide on the record. Throughout, Ningbo Jiulong maintained that the mill test certificates it had provided to the Department were the certificates Ningbo Jiulong received from its suppliers. Ningbo Jiulong officials confirmed that the mill certificates at issue contained erroneous and duplicated data, and that the same types of errors were found in the mill certificates generated by two independent suppliers. However, Ningbo Jiulong claimed that any alteration or fabrication of data contained in those documents was the responsibility of the suppliers that generated the documents and

¹⁶⁹ See [Ningbo Jiulong SQR3](#).

¹⁷⁰ See [Ningbo Jiulong Supplemental Questionnaire4](#).

¹⁷¹ See [Ningbo Jiulong SQR4](#).

¹⁷² See [Ningbo Jiulong Supplemental Questionnaire5](#).

¹⁷³ See [Ningbo Jiulong SQR5](#).

¹⁷⁴ See [Ningbo Jiulong SQR5](#), at 4.

¹⁷⁵ See [Ningbo Jiulong Verification Report](#), at 18.

provided them to Ningbo Jiulong. Ningbo Jiulong explained to the Department verifiers that it had contacted its suppliers with respect to the mill certificates and that each supplier had confirmed that it had provided Ningbo Jiulong the mill certificates at issue in this investigation. Ningbo Jiulong claimed that its suppliers had offered explanations for the unreliable data found on the mill certificates, such as mechanical problems with testing equipment, clerical errors, and issues related to tracking inventory. Thus, Ningbo Jiulong was unable to provide the Department with a plausible explanation of why two independent suppliers of different steel products would generate mill test certificates with the same inaccurate chemical and technical data related to the input at issue. As such, the Department was unable to verify the authenticity or reliability of these mill test certificates.

After verification, the Department obtained entry documents from CBP, which included mill test certificates generated by Ningbo Jiulong itself. Despite a lengthy discussion at verification of mill certificates and the documents Ningbo Jiulong provides to its customers, Ningbo Jiulong never disclosed that it generates its own mill test certificates. As described in the verification report, the Department verifiers reviewed documents related to one of Ningbo Jiulong's United States sales of subject merchandise with Ningbo Jiulong officials and noted that the customer's purchase order specified that it required mill test certificates.¹⁷⁶ The Department verifiers asked Ningbo Jiulong whether Ningbo Jiulong had provided the required mill test certificates to its customer during the POI. Ningbo Jiulong stated that it couldn't recall whether they sent any mill certificates to its customer during the POI and that, despite the language on its purchase order, the customer normally does not require mill test certificates. Moreover, in response to the Department's questions regarding what mill certificates it sends to its customers, Ningbo Jiulong stated that it "chooses a mill certificate based on a date close to the production date of the steel grating" and that it regularly selects "a mill certificate dated one month prior to the steel grating order date."¹⁷⁷ The Department asked Ningbo Jiulong officials to show it copies of the mill certificates that it occasionally provided to its U.S. customer when it requested such documentation. Ningbo Jiulong officials stated that it did not keep copies of the mill certificates that it sent to its U.S. customer.¹⁷⁸ Ningbo Jiulong continued to explain that the mill certificates sent to the customer could not be tied to specific steel used in the production of that customer's grating.

However, the documentation provided by CBP does not include supplier mill certificates selected by Ningbo Jiulong. Rather, it includes several Ningbo Jiulong-generated mill certificates. As an initial matter, these Ningbo Jiulong-generated mill certificates provided to its customer are dated well after the production date of the gratings covered by that certificate rather than one month prior to the order date. Moreover, these Ningbo Jiulong-generated mill certificates show chemical and technical data which does not resemble the respective data shown on the mill test certificates from the suppliers that Ningbo Jiulong submitted on the record of this proceeding. Further, a comparison of Ningbo Jiulong-produced certificates with the steel input producer mill test certificates shows gratings with chemical properties that cannot be produced using the same steel. Because of Ningbo Jiulong's failure to address adequately at verification the inconsistencies and to provide a plausible explanation for these anomalies, and because

¹⁷⁶ See [Ningbo Jiulong Verification Report](#), at page 10.

¹⁷⁷ See [Ningbo Jiulong Verification Report](#), at page 11.

¹⁷⁸ See [Ningbo Jiulong Verification Report](#), at page 11.

Ningbo Jiulong failed to disclose that it produced its own mill test certificates when the Department verifiers asked what mill test certificates are provided to the United States customer, the Department must conclude that Ningbo Jiulong withheld information that was requested and failed to provide information that could be verified with respect to the provision of hot-rolled steel and wire rod at LTAR.

Despite the failure of verification with respect to these two LTAR programs, the Department was able to verify other aspects of Ningbo Jiulong's questionnaire responses. The Department was able to verify information provided by Ningbo Jiulong with respect to its receipt of benefits under other subsidy programs (some self-identified in Ningbo Jiulong's initial questionnaire response), and with regard to the values of Ningbo Jiulong's sales and exports during the POI.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission... in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available."¹⁷⁹

In this case, Ningbo Jiulong submitted inaccurate and unreliable information concerning its purchases of hot-rolled steel and wire rod. At verification, Ningbo Jiulong admitted that the documents it submitted contained errors and did contain duplicated data related to the chemical and technical qualities of the inputs at issue. Although Ningbo Jiulong argues that it cannot be

¹⁷⁹ See SAA, at 870.

held responsible for inaccuracies and problems with documents that were provided to Ningbo Jiulong by other parties, we find that argument to be unpersuasive. Even if we were to accept that two independent suppliers producing two different steel products prepared mill certificates that contained many of the same errors not only in content, but also with duplicate numbers containing different content, and out of sequence certificate numbers and dates, we do not find it plausible that Ningbo Jiulong, as a producer of steel gratings, would not have noticed the problems in the normal course of business, and reported the issue to us. It was not until Petitioners pointed out these significant problems that Ningbo Jiulong attempted to explain the inconsistencies. This serious lapse was then compounded by the fact that Ningbo Jiulong never informed the Department that it created its own mill certificates for its customers despite clear requests by the Department to explain what documentation it provided to its customers. Ningbo Jiulong stated at verification that when it provided mill certificates to a U.S. customer, it gave the customer a mill certificate from one of its suppliers. The Department discovered, only after verification and after obtaining entry documentation from CBP that Ningbo Jiulong itself had created its own mill certificates and provided them to its customer.

In failing to provide reliable information in response to the Department's questionnaires concerning mill test certificates, including the Department's questions at verification, and in withholding information expressly requested by the Department we determine that Ningbo Jiulong has significantly impeded this proceeding within the meaning of sections 776(a)(2)(A) (C) and (D) of the Act. Because Ningbo Jiulong provided inaccurate information in response to the Department's requests for information, and because the requested information is essential to the Department's analysis, the Department cannot rely on this information for purposes of determining whether the GOC provided countervailable subsidies to Ningbo Jiulong in the form of the provision of hot-rolled steel and wire rod for LTAR. The Department is not basing its decision on Ningbo Jiulong's inability to provide all of the mill test certificates from the entire POI, or on Ningbo Jiulong's claim that it does not use or record the mill certificates in its financial or production record-keeping, but rather upon Ningbo Jiulong's submission of erroneous and unreliable mill test certificates and Ningbo Jiulong's failure to inform the Department that it generates its own mill test certificates for its United States customers and to provide copies thereof to the Department.

If the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as the facts otherwise available.¹⁸⁰ Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."¹⁸¹ Under the statutory scheme, such adverse inferences may include reliance on: information derived from (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record.¹⁸² The Department also considers the extent to which a party may benefit from its own lack of cooperation in selecting a rate.¹⁸³

¹⁸⁰ See section 776(b) of the Act.

¹⁸¹ See SAA, at 870.

¹⁸² See section 776(b) of the Act.

¹⁸³ See SAA, at 870.

Consistent with Department practice in cases where important information related to a particular program under investigation is unverifiable, we have disregarded Ningbo Jiulong's responses with respect to its purchases of these two inputs, and we have relied on AFA to select a rate for these two programs.¹⁸⁴ When selecting a rate for a particular program based on AFA, in previous CVD investigations of products from the PRC, we adopted the practice to use the highest rate calculated for the same program in other PRC CVD investigations.¹⁸⁵ For this final determination, consistent with the Department's recent practice, we are selecting, as AFA rates the program-specific rates calculated for cooperating respondents in a prior PRC CVD case for the provision of hot-rolled steel for LTAR and the provision of wire rod for LTAR.

In making our AFA determination with respect to the two LTAR programs at issue, we considered the parties' arguments with respect to whether the use of total AFA is warranted, with respect to all the programs under investigation. Two essential elements of our LTAR analyses are determining (i) the identity of the producers of the input product and (ii) the type of input product being purchased. In the Preliminary Determination, we relied upon Ningbo Jiulong's responses with respect to the identities of the producers and the amounts and types of input products purchased. Subsequent to the Preliminary Determination, the Department requested that Ningbo Jiulong submit mill test certificates for its steel input purchases. The Department has relied on mill test certificates, issued by the producers of steel inputs to confirm whether information submitted by a respondent regarding this matter is accurate.¹⁸⁶ Thus, the need for accurate information about the actual input products at issue, as well as the producer of the product is essential to the Department's analyses of LTAR programs involving steel inputs. Mill test certificates are a key tool in establishing the accuracy of the reported information. This is especially true in this case in which Ningbo Jiulong submitted information that purchases of wire rod were made through a trading company. The only document which would travel with the steel input in question is the mill test certificate.

The sequence of events and the development of the record support a final determination based on the application of AFA to these two input programs. Although Ningbo Jiulong stated at verification that the suppliers' mill certificates must have been fabricated by the suppliers themselves, Ningbo Jiulong has consistently maintained that it did not rely on its suppliers' mill certificates in its normal course of business. That said, while the Department has difficulty accepting Ningbo Jiulong's explanation that two different suppliers of two different input products fabricated mill certificates in essentially the same way, there is no question that Ningbo Jiulong generated its own mill certificates which it sent to a U.S. customer. As these Ningbo Jiulong-generated mill certificates are part of Ningbo Jiulong's books and records, the Department is particularly troubled that Ningbo Jiulong did not reveal the existence of these mill certificates for production of gratings at verification. The record of this investigation shows that, at verification, the Department asked extensive questions regarding mill certificates including when and what type of certificates Ningbo Jiulong provides to its customers. At no time prior to or during verification did Ningbo Jiulong inform the Department that it generated its own mill certificates or submit copies of these documents to the Department. Indeed, its failure to timely

¹⁸⁴ See, e.g., PC Strand from the PRC.

¹⁸⁵ See, e.g., Lawn Groomers the PRC (Preliminary Determination), at 70975 (unchanged in Lawn Groomers the PRC (Final Determination) at "Application of Facts Available, Including the Application of Adverse Inferences").

¹⁸⁶ See, e.g., Lawn Groomers the PRC (Final Determination).

submit these Ningbo Jiulong-generated mill certificates on the record delayed the Department's analysis, which shows values that are technically and chemically inconsistent with the suppliers' certificates. Taken together, Ningbo Jiulong's incomplete and inaccurate statements regarding the mill certificates demonstrate that Ningbo Jiulong has not cooperated to the best of its ability in this investigation, thereby warranting the use of an adverse inference under section 776(b) of the Act.

We have not, however, accepted Petitioners' arguments that Ningbo Jiulong actions in this investigation merit the application of AFA to all programs under investigation. The Department acknowledges that in OCTG from the PRC – AD failures related to mill test certificates prompted the Department to determine “that the information to construct an accurate and otherwise reliable margin is not available on the record” and led to the use of total AFA. However, there were substantive differences in the problems with mill certificates in that case and the instant investigation. Similarly, there are differences in the impact of these discrepancies in this CVD investigation and the parallel AD gratings investigation. The issues related to mill certificates in these antidumping duty proceedings had a broader, if not deeper, potential impact on the overall AD rates than the issues with mill certificates have on calculating a subsidy rate for particular programs in the instant CVD investigation. In particular, problems with mill test certificates in those antidumping duty cases profoundly affected the calculation of normal value to which all U.S. sales were to be compared by undermining the credibility of the valuation of significant factors of production. Thus, problems with the mill certificates undermined significant other data critical to the AD calculation to such an extent that the Department has been unable to calculate an accurate and reliable dumping margin for any of the U.S. sales at issue.

Here, the implications of unreliable mill test certificates are limited to the two LTAR programs at issue. As noted above, the Department sought the mill test certificates in order to develop a complete record with regard to Ningbo Jiulong's purchases on these two inputs allegedly for LTAR. The record of this investigation shows that Ningbo Jiulong submitted unreliable and unverifiable information (i.e., mill test certificates) with regard to these two programs, such that the application of AFA is warranted with regard to these two programs. We do not agree with Petitioners that the provision of unverifiable information with regard to these two programs warrants the application of total AFA to all programs under investigation for purposes of the final determination.¹⁸⁷

We also disagree with Petitioners' argument the Department should apply AFA to all programs under investigation because Ningbo Jiulong's financial records are unreliable. Essentially, Petitioners contend that Ningbo Jiulong's financial records are unreliable because the company inaccurately recorded a significant line item on its financial statement for an extended period of time and did not timely correct its misstatement that its financial statements prior to 2006 were audited. We note that the Department has not relied on the line item at issue, or the financial statements at issue, for this final determination.

Finally, contrary to Ningbo Jiulong's arguments, our investigative techniques, our probe into the mill test certificates and our verification procedures and questions represented appropriate and

¹⁸⁷ See, e.g., Citric Acid from the PRC.

necessary efforts to investigate fully, as we are obligated under the Act to do, the subsidy programs under investigation, and the accuracy and reliability of the information submitted by Ningbo Jiulong.

Comment 5: Department Procedures

Ningbo Jiulong argues that Petitioners have raised numerous issues throughout the investigation in order to have the Department resort to adverse inferences. Ningbo Jiulong argues that all issues that have been timely raised by Petitioners during the course of this proceeding have been refuted. However, Ningbo Jiulong argues, the issue of mill certificates, raised by Petitioners, was untimely and without a proper foundation. Ningbo Jiulong argues that the Department did not provide a reasonable opportunity to evaluate and rebut Petitioners' claims. Ningbo Jiulong adds that the Department did not provide a reasonable opportunity to comment on the information placed by the Department on the record. As such, Ningbo Jiulong argues, the Department must not apply adverse inferences against them in the final determination with respect to mill certificates.

Ningbo Jiulong notes that while they were preparing for verification (which began March 10, 2010), the Department met with Petitioners' counsel on March 3, 2010. Ningbo Jiulong argues that the Department's verification outline was standard for a CVD case, and that company officials prepared for verification on that basis. Ningbo Jiulong also notes that on March 8, 2010, Petitioners placed a large submission on the record concerning the supplier mill certificates provided to Ningbo Jiulong by their suppliers. Ningbo Jiulong notes that the majority of the information was bracketed. Ningbo Jiulong argues that the timing and content of the submission left company officials unable to see the submission until the first day of verification. Additionally, Ningbo Jiulong states, since counsel could only share the public version of the submission, company officials were not able to view most of the information provided. Ningbo Jiulong argues that the timing of this submission was "extremely prejudicial" especially since the majority of the information was bracketed.

Ningbo Jiulong holds that when comments, such as those submitted by Petitioners, are made, respondent companies will normally: (1) respond to them in writing after consulting their clients; or (2) wait for a deficiency questionnaire from the Department, which is typically prepared to elicit direct answers to the questions of utmost importance to the Department. Ningbo Jiulong states that the statute requires the Department to notify the party of the deficiency and provide an opportunity to remedy or explain the deficiency.¹⁸⁸

Ningbo Jiulong argues the Department did not issue a deficiency questionnaire arising out of Petitioners' March 8, 2010 submission, contrary to its statutory mandate. Ningbo Jiulong contends that the Department spent the majority of verification interrogating two lower level employees concerning the company's mill certificates. Ningbo Jiulong argues that the mill certificate topic was not highlighted in the verification outline and thus the company officials were not able to prepare for it prior to verification.

Ningbo Jiulong argues that, at verification, the Department asked numerous questions, through a

¹⁸⁸ See section 782(d) of the Act.

translator, expecting instant answers concerning mill certificates. In total, according to Ningbo Jiulong, these procedures were unreasonable and led to many of the apparent discrepancies in the Department's verification report. Ningbo Jiulong states that the Agreement on Implementation of Article VI, Annex I, says that "{e}nquiries or questions put by the authorities or firms of the exporting countries and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made."

Ningbo Jiulong argues that the Department did not formulate questionnaires in advance of verification that would have made the verification more reasonable and the results more clear, in violation of Annex I. Ningbo Jiulong contends that the Department's actions were due, in part, to the fact that the Department accepted Petitioners' 190 page submission of new facts on March 8, 2010. This submission, Ningbo Jiulong holds, was submitted after March 3, 2010, seven days prior to the beginning of verification (March 10, 2010).¹⁸⁹ Ningbo Jiulong argues that, in light of the allegations in this submission, the Department's procedural conduct in not issuing questionnaires and in not giving adequate notice or time to prepare for verification was contrary to law.

In addition, Ningbo Jiulong maintains that the Department's placement of CBP information on the record at the very end of the case is prejudicial. According to Ningbo Jiulong, the Department did not issue a deficiency letter with questions arising from this submission, nor did the Department follow up with CBP to clarify how CBP obtained these documents provided to the Department. Ningbo Jiulong argues that the CBP memorandum implies that the documents were collected together because the Department made a broad request and CBP fulfilled it. Ningbo Jiulong argues that it asked the Department to clarify which of the documents were filed at entry and which documents were obtained later by CBP from the importer.

Ningbo Jiulong argues the fact that the Department did not issue a deficiency questionnaire was complicated because company officials were denied direct access to this information under the APO rules. Ningbo Jiulong argues that placing this information on the record is extremely prejudicial to them since Petitioners can "indulge in unbridled speculation as to aspects of the documents petitioners do not understand or as to which they feign misunderstanding."

Ningbo Jiulong also contends that the Department's verification report with respect to mill certificates is compromised by factual errors and inconsistencies. According to Ningbo Jiulong, the sections of the report that correspond to the verification outline are highly detailed and accurate with no internal discrepancies, while the middle section of the report, concerning mill certificates, is full of inconsistencies and unreasonable conclusions. Ningbo Jiulong notes that these concerns regarding the verification report were first discussed in a letter submitted following the Department's release of the verification reports.¹⁹⁰

In this letter, Ningbo Jiulong noted the following statements in the verification report that they believe to be problematic and/or inaccurate:

¹⁸⁹ See 19 CFR 351.301.

¹⁹⁰ See Ningbo Jiulong Verification Remarks and Rebuttal.

Company officials explained that this particular customer was a long-time customer who accepts grating made of {BPI} steel. They explained that {BPI} steel generally contained carbon levels of {BPI} percent.¹⁹¹

Ningbo Jiulong states that the Department misreported the carbon content in the Chinese grades of steel they purchase, and also misreported that the company employee did not state such carbon levels are associated with those grades. Rather, according to Ningbo Jiulong, the employee likely provided numbers with the decimal moved one place. The correct number (with the decimal moved one place), Ningbo Jiulong explains, is consistent with all its mill certificates and the handbook kept by the company that describes the Chinese grades of steel they purchase.¹⁹² Ningbo Jiulong argues that the carbon content discussed in the verification report is outside the range of all the mill certificates of record. As such, Ningbo Jiulong holds that the numbers provided by the Department do not make sense. Ningbo Jiulong speculates that this discrepancy appears to be a main reason why the Department later concluded that the employee's statements could not be reconciled.

Company officials also provided a Wikipedia webpage defining carbon steel and content of carbon used in steel products to demonstrate why NJMM uses steel with carbon content under 2 percent. See Verification Exhibit 22C - Wikipedia - Carbon.¹⁹³

Ningbo Jiulong states that the Wikipedia webpage article was initially offered by Petitioners in the antidumping case and was specifically offered by counsel to the Department to demonstrate that the carbon content in Ningbo Jiulong's steel inputs was not close to two percent maximum carbon levels for carbon steels. Ningbo Jiulong contends that this is significant because it makes the Department's earlier misunderstanding all the more unreasonable.

Department officials noted for NJMM officials that it was our understanding that one would expect higher levels of carbon and longer elongation absent any further processing being done by NJMM in the production of steel grating.¹⁹⁴

Ningbo Jiulong argues that the source of this information was a copy of the U.S. grade standard for a grade listed on the purchase order of one U.S. customer, and the Department took this as a verification exhibit.¹⁹⁵ However, Ningbo Jiulong contends, the U.S. grade at issue does not state a higher range for carbon content but rather merely sets a maximum carbon content. Therefore, Ningbo Jiulong explains, the Department observed that the range of carbon content in the company's supplier mill certificates was below the ceiling for the U.S. grade.¹⁹⁶ Ningbo Jiulong contends that all of its suppliers' mill certificates were all consistent with the U.S. grade statements and that the Chinese grade is consistent with the U.S. grade.

¹⁹¹ See Ningbo Jiulong Verification Report, at page 10.

¹⁹² See Ningbo Jiulong CBP Comments, Exhibit 3.

¹⁹³ See Ningbo Jiulong Verification Report, at page 10.

¹⁹⁴ See Ningbo Jiulong Verification Report, at page 19.

¹⁹⁵ See Ningbo Jiulong Verification Report, Exhibit 22A –ASTM Classification.

¹⁹⁶ See Ningbo Jiulong Verification Report, at page 19.

*The Department observed other mill certificates. Specifically, the Department officials found five mill certificates with fax headers on them.*¹⁹⁷

According to Ningbo Jiulong, this statement incorrectly implies that these certificates had not been submitted previously. In fact, Ningbo Jiulong contends these mill certificates were all provided with its January 25, 2010 submission.

*Company officials told Department officials that these mill certificates were unlikely to have been sent from the supplier. Rather, they opined that it was likely these mill certificates were actually faxed to NJMM and JEE as its local counsel prepared NJMM's January 26, 2010 supplemental questionnaire response. Local counsel stated that the mill certificates with fax headers were illegible and his firm likely faxed them to NJMM so that it could forward more legible copies.*¹⁹⁸

Ningbo Jiulong refutes the Department's statement regarding the explanation of the fax headers. According to Ningbo Jiulong, at verification, local counsel explained that they had faxed copies from Beijing to confirm that those were among mill certificates collected from Ningbo Jiulong relevant to the AD investigation. Ningbo Jiulong argues that the local counsel showed the Department copies of those same mill certificates without fax headers on them. Ningbo Jiulong contends that the Department's explanation that local counsel faxed them clearer copies is both factually wrong and impossible as originals are clearer than faxed copies. Ningbo Jiulong states that Department verified that the certificates without fax numbers are clearer than the ones with fax numbers.¹⁹⁹

*Department officials noted that no NJMM or JEE officials told the Department either in submissions or up until this point at verification that NJMM and JEE contacted their suppliers of steel inputs regarding the mill certificates.*²⁰⁰

Ningbo Jiulong argues that the verification report itself contradicts the above statement (and any suggestion that Ningbo Jiulong was withholding information). Ningbo Jiulong cites to two long discussions, which they hold contradict the above statement.²⁰¹ Ningbo Jiulong states, therefore,

¹⁹⁷ See Ningbo Jiulong Verification Report, at page 13.

¹⁹⁸ See Ningbo Jiulong Verification Report, at pages 13 and 14.

¹⁹⁹ See Ningbo Jiulong Verification Report, at pages 13 and 14.

²⁰⁰ See Ningbo Jiulong Verification Report, at page 14.

²⁰¹ "Department officials asked whether NJMM, while preparing its responses in this investigation, contacted its hot rolled strip suppliers to request mill certificates for those shipments which were not covered by any mill certificates in NJMM's possession for the calendar years 2008 and 2009. Company officials replied that they called NJMM's suppliers to request replacement mill certificates. With regard to {BPI}, the company officials explained that they called a person within {BPI} sales department and requested that it provide additional mill certificates. {BPI} refused to cooperate with the request. When Department officials asked whether {BPI} gave any indication why they would not cooperate with NJMM's request, the company officials explained that {BPI} sales person told them that NJMM was responsible for its record-keeping and it was NJMM's failing not to maintain its records. Company officials explained that {BPI} sales person told them that usually customers request mill certificates when there is a problem. Company officials speculated that {BPI} is concerned about litigation, and explained to Department officials that {BPI} would not provide mill certificates beyond those already in the company's possession." See Ningbo Jiulong Verification Report, at page 12; "Department officials asked whether JEE called its wire rod supplier to request more mill certificates for those shipments where the driver did not provide JEE with a mill

information on the record shows that it had contacted its suppliers of mill certificates at the Department's instruction.

We asked if the company officials review the mill certificates when they receive them and were told that they pay attention to the specification (i.e., {BPI}) and measure the coil.²⁰²

We asked whether any individual at the company inspects the mill certificates. Company officials explained that quality control will just look at the specification and will look at the carbon content when inspecting the hot rolled strip.²⁰³

Company officials explained that no one looks at the chemical composition when the steel arrives. Rather, quality control people just look at the steel. Officials stated that quality control people would be looking at the chemical composition in the future, but this has not happened yet.²⁰⁴

Company officials responded that they will look at the type of steel and the specifications. They explained that they are not steel experts and do not pay attention to chemical composition.²⁰⁵

Regarding these four statements, Ningbo Jiulong states that they have maintained throughout these proceedings that they do not have the equipment to test the chemistry of the steel supplied to them. Thus, they normally focus on the carbon level as reported in the supplier mill certificates they do review. However, Ningbo Jiulong argues, the verification report misstates that the company does not look at the chemistry reported on the mill certificates, when the Department was told that the company does look at the carbon levels on such certificates: Ningbo Jiulong states that if they did not review the information on these certificates, they would not bother to collect them at all.

Ningbo Jiulong adds that the two statements on page 19 of the verification report do not reflect what the company employees stated at verification. Rather, according to Ningbo Jiulong, at verification, company officials told the Department that they could not control the grade without referencing the carbon level, the most important chemical element of the quality of the steel for their use. Ningbo Jiulong states, if the Department understood the company officials to say the opposite in further discussions, then it was incumbent on the Department to alert the company or

certificate for calendar years 2008 and 2009. Company officials replied that they called the trading company JEE used to purchase its wire rod input, but that the trading company from which JEE purchased its wire rod refused to cooperate with JEE's request to provide mill certificates. Department officials asked whether the trading company gave any indication why they would not cooperate with JEE's request. According to company officials, the sales person JEE had always dealt with for its wire rod purchases had left the company. The company explained that JEE no longer purchases its wire rod from the trading company and only calls to inquire about pricing. Company officials further explained that the only way to receive a mill certificate from the trading company is to request that the driver give it to JEE." See [Ningbo Jiulong Verification Report](#), at page 13.

²⁰² See [Ningbo Jiulong Verification Report](#), at pages 14 and 15.

²⁰³ See [Ningbo Jiulong Verification Report](#), at page 16.

²⁰⁴ See [Ningbo Jiulong Verification Report](#), at page 19.

²⁰⁵ See [Ningbo Jiulong Verification Report](#), at page 19.

counsel to this discrepancy. Ningbo Jiulong explains that it obviously cared about the chemistry or it would not have requested mill certificates at all. Ningbo Jiulong argues, that since the company explained that it does not test the chemistry themselves, it relied on the certificates for the carbon level. Ningbo Jiulong adds that it also had outside testing done only on a limited basis because the supplied steel never failed the grade.

Ningbo Jiulong also notes an omission in the Department's verification report. Ningbo Jiulong explains that during verification, the Department inquired about a mill certificate with a 2010 date but with a 2008 date in the fax header.²⁰⁶ Ningbo Jiulong states the company explained that, as the recipient of the fax, it could not explain how this happened but theorized that the sender's fax machine's header was broken, which is common on old fax machines. Ningbo Jiulong argues that the Department did not include this explanation in the report.

According to Ningbo Jiulong, company officials, at verification, offered the Department the opportunity to verify certification from their suppliers that the mill certificates submitted on the record were authentic. However, the Department declined to verify these supplier certifications, on the basis that the certifications could later be supplied on the record. Ningbo Jiulong argues that because the issue of who is responsible for discrepancies in the mill certificates is central to the final outcome of this investigation, the Department's refusal to review these certifications at verification is a procedural flaw. By doing so, Ningbo Jiulong explains, the Department ignored proof that the company was not responsible for the discrepancies, and as a result, the Department must consider as verified Ningbo Jiulong's explanations regarding the mill certificates. Therefore, Ningbo Jiulong maintains, the Department cannot apply AFA with respect to the mill certificates, as the company could not have done more than submit what they received from the suppliers.

Finally, Ningbo Jiulong argues that the Department generally stresses that the verification reports draw no conclusions of fact or law. However, Ningbo Jiulong contends that this verification report contains conclusions that: the mill certificates could not be verified; and Ningbo Jiulong's statements concerning the certificates could not be verified. According to Ningbo Jiulong, it was highly inappropriate for the Department to include such a statement in the report; these statements are all the more inappropriate because the Department had seen the names of the suppliers and the dimensions of the raw material in the yard during a tour of the company's facilities. Ningbo Jiulong states that the Department delivered this conclusion to the company at the end of the verification. However, Ningbo Jiulong argues this finding was inserted in the **Mill Certificate** section of the report, disregarding the weight of the factual evidence and the weight of the verification. Ningbo Jiulong argues that, errors in this section of the verification report preclude the Department from using it to draw adverse inferences. Ningbo Jiulong states that the only possible conclusion from the **Mill Certificate** section of the verification report is that all the factual conclusions are unreliable.

In their rebuttal briefs, Petitioners argue that the record in this proceeding demonstrates that Ningbo Jiulong has impeded this investigation, and has failed to act to the best of its ability to comply with the Department's information requests. According to Petitioners, Ningbo Jiulong has misled the Department throughout this proceeding, and has rendered the record unreliable

²⁰⁶ See Ningbo Jiulong Verification Report, at page 14.

with respect to information that is key to this investigation, including the nature and source of the input steel used in the production of steel grating. Petitioners argue that Ningbo Jiulong continues to justify and explain away its submission of false and misleading information.

Regarding Ningbo Jiulong's statement that the Department's failure to highlight the issue of mill certificates in the verification outline was extremely prejudicial to the company since they were not given adequate time to prepare for this aspect of verification, Petitioners explain that on three different occasions, the Department's verification outline specifically requested that Ningbo Jiulong be prepared to provide mill test certificates at verification. Petitioners add that two pages of the verification outline are devoted to the provision of steel inputs for less than adequate remuneration and supporting documentation. Thus, Petitioners state the request for mill certificates at verification should have come as no surprise to Ningbo Jiulong.

Citing to the Department's January 15, 2010 and February 5, 2010 supplemental questionnaires, Petitioners note that the Department has requested information regarding mill certificates throughout the investigation, contrary to Ningbo Jiulong's contention that the Department did not formulate questionnaires in advance of verification.

Petitioners add that even without notice given to Ningbo Jiulong that mill test certificates would be an issue at verification, the Department was within its authority to raise these issues at verification. As the Department itself notes, the Department's verification outline is not all-inclusive, and it may be necessary to review additional information or materials during the course of verification.²⁰⁷ Petitioners argue that, at any verification, the Department is not bound by the verification outline and that respondents must be prepared to verify all information relevant to the case.

Countering Ningbo Jiulong's argument that the timing of the Department's placement of CBP documentation on the record is prejudicial, Petitioners argue that there were no procedural irregularities with respect to the placement of the CBP documentation on the record in this investigation. Additionally, Petitioners argue that Ningbo Jiulong was provided ample opportunity to analyze the CBP documentation and explain any discrepancies between the CBP documentation and the information submitted to the Department. Petitioners hold that the Department was not required to issue a deficiency letter with respect to the CBP documentation.

Petitioners also contend that the Department was forced to place the CBP documentation on the record in this investigation because Ningbo Jiulong failed to provide complete and accurate data. Petitioners argue that if Ningbo Jiulong had cooperated to the best of its ability with the Department's requests for information, the Department would not have had to request the CBP documentation.

Petitioners add that, in several recent cases involving Chinese respondents, the Department has uncovered documentation and questionnaire responses containing false information and material omissions. Petitioners argue that mill test certificates filed with CBP are essential to determining whether the books and records of a company are complete and whether a company's questionnaire responses are credible. Petitioners contend that, in some cases, the Department has

²⁰⁷ See [Ningbo Jiulong Verification Outline](#).

been able to detect these systemic irregularities only because they are contradicted by official CBP entry information. In this case, Petitioners conclude, the CBP documentation demonstrates that the information provided by Ningbo Jiulong throughout this investigation is incomplete and inaccurate. Petitioners also disagree with Ningbo Jiulong's argument that the verification report is "compromised by significant and numerous factual errors and inconsistencies" and that the report's "factual conclusions" are unreliable.

According to Petitioners, after initially blaming the Department, Ningbo Jiulong admitted that its own employees stated the facts inaccurately. Additionally, Petitioners argue that, in previous filings, Ningbo Jiulong identified the carbon content in the same manner as the Department did in its verification report.²⁰⁸

Further, Petitioners argue that Ningbo Jiulong's arguments concerning carbon content are raised only to obscure the fact that there is no overlap in reported carbon levels between the mill test certificates it provided the Department and those certificates contained in the CBP documentation. In comparing the suppliers' mill test certificates to the mill test certificates contained in the CBP documentation, Petitioners argue that the carbon levels do not match. Petitioners argue the recorded carbon levels in the mill test certificates provided by Ningbo Jiulong and those contained in the CBP documentation are mutually exclusive, and cannot be for the same steel.

Petitioners disagree with Ningbo Jiulong's argument that the Department's statements concerning faxed mill test certificates are inaccurate. Petitioners argue that there is no discrepancy in the statement in the verification report²⁰⁹ and Ningbo Jiulong's explanation in its brief.²¹⁰ In Petitioners' view, Ningbo Jiulong's statement is similar to the Department's verification report. As such, Petitioners argue, Ningbo Jiulong's comments are simply an attempt to manufacture discrepancies in the verification report.

With regard to Ningbo Jiulong's argument that the Department omitted from its report an employee's speculation the sender's fax machine was broken, Petitioners note that this is similar to the reasoning Ningbo Jiulong proffered for why some of the supplier mill test certificates are duplicated (*i.e.*, broken machinery), which Petitioners find not to be credible.

Petitioners contend that Ningbo Jiulong's accusations of inconsistencies and errors in the verification report are fabrication in an effort to undermine the report. According to Petitioners, in their effort to manufacture discrepancies, Ningbo Jiulong quotes the statement: "Department officials noted that no NJMM or JEE officials told the Department either in submissions or up until this point at verification that NJMM and JEE contacted their suppliers of steel inputs

²⁰⁸ See Ningbo Jiulong's Rebuttal to Petitioners' March 8, 2010 Submission, at 11.

²⁰⁹ "Company officials told Department officials that these mill certificates were unlikely to have been sent from the supplier. Rather, they opined that it was likely these mill certificates were actually faxed to NJMM and JEE as its local counsel prepared NJMM's January 26, 2010 supplemental questionnaire response. Local counsel stated that the mill certificates with fax headers were illegible and his firm likely faxed them to NJMM so that it could forward more legible copies." See Ningbo Jiulong Verification Report, at pages 13 and 14.

²¹⁰ "Local counsel explained that they had faxed copies from Beijing to confirm that those were among mill certificates collected from the Jiulong Companies." See Ningbo Jiulong Verification Remarks and Rebuttal, at page 5.

regarding the mill certificates.” Petitioners contend that Ningbo Jiulong attempts to undermine this statement by indicating that the company received letters from the suppliers (which were submitted on the record before verification), thus indicating that the company had contacted its suppliers. Petitioners state that Ningbo Jiulong ignores the next sentence in the verification report, which states that the company officials indicated that the suppliers would not provide any additional mill certificates.²¹¹ Petitioners state that Ningbo Jiulong’s accusations of inconsistencies and errors in the verification report are simply fabrications in an effort to undermine the report.

According to Petitioners, although Ningbo Jiulong has taken issue with the Department’s reporting on the company’s explanation that they do not review the chemistry of the steel, Ningbo Jiulong has ignored the fact that the Department’s reporting on this issue is consistent with Ningbo Jiulong’s own statements.²¹² Petitioners state that for Ningbo Jiulong to suggest that these statements are inaccurate is an admission that information provided at verification and in past questionnaire responses is inaccurate.

Finally, Petitioners argue that all of the evidence on the record confirms the Department’s conclusion at verification that the problems with the mill certificates call into question the identity of the actual producers of the steel inputs, and in-turn call into question the reliability of other information submitted by Ningbo Jiulong on the record of this investigation. As such, Petitioners argue the application of total AFA against Ningbo Jiulong is appropriate.

Department Position:

The Department disagrees with Ningbo Jiulong that they were not afforded due process throughout this investigation. The CIT stated in Barnhart that “[p]arties must be afforded notice and an opportunity to be heard throughout the course of an administrative proceeding of this nature. The requirements of due process are not met when one party to the adversarial proceeding is precluded from participation by lack of notice.”²¹³ In accordance with the statute and the Department’s regulations, the Department permitted all interested parties to the investigation the opportunity to present information to the Department for consideration in making the final determination. Although the Department is constrained by statutory timelines, the Department permitted parties to file submissions regarding the mill test certificates until April 19, 2010 and allowed parties the opportunity to meet with Department officials.

Ningbo Jiulong was adequately aware throughout the investigation that the mill test certificates were significant to the Department to establish the identity of Ningbo Jiulong’s suppliers. Specifically, Petitioners’ March 8, 2010 submission was not the first time potential concerns about mill test certificates had been raised. Petitioners first submitted a request to the Department to request mill test certificates on December 23, 2009. After considering this request, on January 15, 2010, the Department asked Ningbo Jiulong to provide the mill test certificates it receives from its suppliers of its steel inputs. Ningbo Jiulong provided mill test

²¹¹ “The company officials reiterated that they provided their suppliers with the mill certificates already received by NJMM and JEE and that neither {BPI} nor the trading company provided any additional mill certificates.” See Ningbo Jiulong Verification Report, at page 14.

²¹² See, e.g., Ningbo Jiulong’s Rebuttal to Petitioners’ March 8, 2010 Submission, at 9.

²¹³ See Barnhart, at 303.

certificates on January 26, 2010. However, after reviewing this submission, the Department became aware that not all of Ningbo Jiulong's mill test certificates had been provided therein. On February 5, 2010, the Department requested that Ningbo Jiulong provide all the mill test certificates it received from its suppliers. Ningbo Jiulong provided additional mill test certificates in its February 23, 2010 submission. Finally, on March 2, 2010, the Department offered Ningbo Jiulong an opportunity to confirm that all of the mill test certificates had been submitted. Thus, Ningbo Jiulong's complaint that Petitioners' March 8, 2010 filing was untimely and prejudiced Ningbo Jiulong at verification is unfounded.

Prior to verification, Department officials met with Petitioners. At that meeting, Petitioners informed Department officials of inconsistencies with the mill test certificates provided by Ningbo Jiulong; however, no new information was discussed or placed on the record. Because this analysis correlated the mill test certificates already on the record in a manner that demonstrated Petitioners' concerns, the Department requested that Petitioners place this analysis on the record of this proceeding such that all parties may comment on the issues.²¹⁴ Ningbo Jiulong contends that this late filing and the business proprietary treatment afforded to the filing by the Department hampered its ability to review and respond to the information. However, the factual information at issue was factual information that Ningbo Jiulong had submitted to the Department and that Ningbo Jiulong company officials had possession of prior to and at verification. Thus, the Department does not consider the meeting and the filing to have prejudiced Ningbo Jiulong. Rather, because of this, Department verifiers were able to meet with company officials to request additional information regarding the inconsistencies in the documentation.

With regard to Ningbo Jiulong's claims that it was unable to adequately prepare for the Department's questions at verification regarding the mill test certificates, the Department finds this argument unpersuasive. Ningbo Jiulong was aware that the Department was interested in obtaining mill test certificates from Ningbo Jiulong and analyzing them during the course of this proceeding. Specifically, the Department asked Ningbo Jiulong to provide mill test certificates on this record three times.²¹⁵ In the Department's verification outline, the Department specifically included the following as items for Ningbo Jiulong to be prepared to address, among other things:

- Please provide the paperwork (purchase order, invoices, mill certificate, payment receipts, etc.) with regard to the largest purchase (by volume) of hot-rolled steel that NJMM made during the POI. Be prepared to tie that purchase to the raw materials and accounts payable ledger accounts in the general ledger.
- Please have available complete records showing the purchase of all hot-rolled steel strip during the month of May, 2008, including but not limited to, mill certificates, invoices, certificates of origin, export declaration forms, customs declaration forms, bills of lading, shipment forms, ocean freight and ocean insurance invoices, inland freight and inland insurance invoices, and inventory slips. The Department will choose several purchases from your ledgers and ask to

²¹⁴ See Ex-Parte Memorandum (March 3, 2010).

²¹⁵ See Ningbo Jiulong Supplemental Questionnaire3; see also Ningbo Jiulong Supplemental Questionnaire4; see also Ningbo Jiulong Supplemental Questionnaire5.

- see the complete documentation.
- Please have available complete records showing the purchase of all wire rod strip during the month of May, 2008, including but not limited to, mill certificates, invoices, certificates of origin, export declaration forms, customs declaration forms, bills of lading, shipment forms, ocean freight and ocean insurance invoices, inland freight and inland insurance invoices, and inventory slips. The Department will choose several purchases from your ledgers and ask to see the complete documentation.²¹⁶

Because the Department repeatedly requested Ningbo Jiulong to provide mill test certificates and because the verification outline contained references to mill test certificates, the Department finds that Ningbo Jiulong had substantial notice prior to verification that the Department expected to be able to review and discuss the mill test certificates on the record, and expected Ningbo Jiulong to be able to explain its purchasing process with respect to the inputs at issue and explain how it received and recorded mill test certificates.

With regard to Ningbo Jiulong's claim that the Department should have issued additional deficiency questionnaires to it in advance of verification to ensure that verification would be more reasonable and the results of the verification would be clearer, the Department does not agree with Ningbo Jiulong. First, the Department did issue a questionnaire which requested that Ningbo Jiulong submit all mill test certificates it had received from its producers of the subject steel inputs during the POI.²¹⁷ Second, the Department considers that its verification was reasonable. Specifically, at verification, Department verifiers sought to speak with the company officials who actually compiled the mill test certificates for the questionnaire responses and who could inform the Department verifiers about the mill test certificates Ningbo Jiulong received from its suppliers, including those that Ningbo Jiulong claimed it had not received during the POI. Contrary to Ningbo Jiulong's characterization of the verifiers' questions, the Department verifiers asked questions in several different ways seeking to remove all ambiguity and confusion from the questions the verifiers asked.

Ningbo Jiulong contends that the Department's verification violated Annex I of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. However, Annex I, in paragraph 7, explicitly states that "the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details." (emphasis added). That paragraph continues, "it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained." In this case, just prior to verification, Petitioners provided the Department with an in-depth analysis of inconsistencies in the mill test certificates using the information Ningbo Jiulong itself provided on the record. Thus, while Petitioners' analysis highlighted the magnitude of the problems present in the mill test certificates, none of the problems pointed out in Petitioners' filing would not be discernable to Ningbo Jiulong officials who were in actual possession of the underlying mill test certificates. The Department sought to verify all information Ningbo Jiulong submitted on the record and resolve any

²¹⁶ See [Ningbo Jiulong Verification Outline](#).

²¹⁷ See [Ningbo Jiulong Supplemental Questionnaire4](#).

ambiguity with respect to the mill test certificates. The Department does not agree that its procedures did not provide Ningbo Jiulong with adequate opportunities to address the Department's concerns.

With regard to Ningbo Jiulong's contentions that the verification report contains material discrepancies and errors, the Department believes that its verification report accurately reflects what transpired at verification. The Department agrees with Petitioners that Ningbo Jiulong seems to be attempting to give post-verification explanations in light of the inconsistencies found during the verification of mill test certificates. During this aspect of the verification, the Department sought clarification from Ningbo Jiulong on the chemical composition sections of the mill test certificates, how Ningbo Jiulong receives and records mill test certificates, and whether Ningbo Jiulong's United States customer receives mill test certificates from Ningbo Jiulong. These questions sought to verify the accuracy and completeness of the information on the record that was relevant to the provision of hot-rolled steel and wire rod for less than adequate remuneration.

The Department disagrees with Ningbo Jiulong that it made any conclusions of fact or law at the verification. As reflected in the verification report, the discussion at verification about Ningbo Jiulong's receipt of, filing of, and use of mill test certificates did not clarify the information on the record.²¹⁸ Rather, the Department verifiers were left with less understanding about the mill test certificates and the information submitted by Ningbo Jiulong. After meeting with company officials and seeing duplicate or additional mill test certificates which had not been disclosed to the Department prior to verification, and being told by company officials that some information in the mill test certificates had been fabricated by its suppliers, the Department verifiers informed Ningbo Jiulong that the verification report would reflect those concerns. By so informing company officials, Department verifiers gave Ningbo Jiulong adequate and reasonable notice of the Department's concerns about this portion of the verification. Including in the report that the verifiers informed company officials about these concerns is not drawing a conclusion about the events of verification and their impact on the decision-making for the final determination. Rather, it is setting down for the record the fact that the verifiers expressed their concerns to company officials at verification. Further, with respect to the mill test certificates which Ningbo Jiulong requested that its suppliers verify is an authentic copy of what Ningbo Jiulong received with the shipments of hot-rolled steel and wire rod, the Department notes that verification is the opportunity for the Department to review information already submitted on the record. At no point prior to verification when the Department verifiers reviewed mill test certificates signed by the suppliers, did Ningbo Jiulong inform the Department it had made that type of contact with its suppliers. Rather, Ningbo Jiulong repeatedly contended that the contacts it had with its suppliers regarding mill test certificates had been futile.²¹⁹ The Department also disagrees with Ningbo Jiulong's contentions that the Department improperly requested CBP entry documentation. At verification, Department verifiers reviewed the sales documentation kept in Ningbo Jiulong's books and records. Department verifiers reviewed a purchase order from a United States customer and noted that the purchase order stated that mill test certificates shall be provided. As detailed in the Ningbo Jiulong Verification Report:

²¹⁸ See Ningbo Jiulong Verification Report, at page 19.

²¹⁹ See Ningbo Jiulong Verification Report, at page 12 and 13.

Department officials asked whether mill certificates were sent to the U.S. customer because of that customer's explicit instruction in its purchase order that mill certificates would be required upon shipment. See Verification Exhibit 14 – U.S. Sales Trace, at page 14. NJMM officials explained that the purchase order at issue contained boilerplate language and that this U.S. customer was a long-time customer of NJMM. As such, company officials explained, this particular U.S. customer did not require mill certificates with every shipment. Rather, according to officials, if this particular U.S. customer required mill certificates, the customer would call NJMM and request the documents. Company officials explained that because this U.S. customer was a long-time customer of NJMM, it was regularly satisfied with [] steel used by NJMM and did not need mill certificates. Department officials asked whether NJMM's [] U.S. customers received mill certificates during the POI with shipments of steel grating. Company officials told Department officials that they could not recall if NJMM sent its U.S. customers mill certificates during the POI. Department officials asked whether either U.S. customer called to request that mill certificates be sent after shipment. They replied that NJMM sent mill certificates to the U.S. customers on occasion. The Department asked how NJMM knew which mill certificate to send the U.S. customer. In response, officials explained that NJMM chooses a mill certificate based on a date close to the production date of the steel grating. Department officials asked how NJMM knew which date was relevant to each production run. Company officials explained that NJMM would regularly select a mill certificate dated one month prior to the steel grating order date. According to company officials, the mill certificate sent to the U.S. customer was not tied to the specific steel used to produce that customer's steel grading. Since NJMM does not tie the steel input to a particular production order, company officials explained, the selected mill certificate provided to a customer was an estimate.²²⁰

Throughout this discussion, Ningbo Jiulong never informed Department verifiers that it created mill test certificates to send to its customer. Rather, the Department learned that Ningbo Jiulong had prepared its own mill test certificates by requesting entry documentation from CBP. In any event, the Department permitted Ningbo Jiulong, as well as Petitioners, to submit comments on the CBP entry documentation and to comment upon that documentation in their case and rebuttal briefs.

In conclusion, Ningbo Jiulong's argument that the Department's conduct of this investigation reflects procedural irregularities is without merit. Indeed, the Department provided Ningbo Jiulong with numerous opportunities to provide information and to participate in the investigation through several rounds of questionnaires, post-verification comments, case and rebuttal briefs, and an opportunity to meet with Department officials.

Comment 6: Provision of Hot-Rolled Steel and Wire Rod for Less than Adequate Remuneration – The Role of Mill Test Certificates

The GOC argues that the Department should not rely on mill test certificates as the sole indicator of the identities of a company's input suppliers. Based on the contents of mill test certificates in general and the limited use these documents have in some companies' businesses, the GOC

²²⁰ See Ningbo Jiulong Verification Report (Public Version), at pages 10 and 11

holds, there are likely few circumstances where issues concerning mill test certificates alone would warrant the application of total adverse facts available.

If the Department insists on examining mill test certificates as part of its investigation, the GOC argues, the Department should first determine whether mill test certificates are required to be maintained by a respondent, and whether the lack of these documents is fatal. The GOC states that the Department should not penalize a company for a mill test certificate it is not required to have in the first place. The GOC adds that the Department should determine whether and how a respondent is required to maintain mill test certificates from its suppliers, and only after addressing this issue should the Department make a determination that a respondent has failed to provide it with accurate information. Lastly, the GOC argues, the Department should determine what usable information is contained in the mill test certificates, which should only be used to corroborate information such as supplier names and input specifications; they are inappropriate for use in a secondary “accounting reconciliation” exercise.

Because mill test certificates are secondary documents that have very limited uses for the Department’s purposes, the GOC contends, the Department should not presume that faulty mill test certificates are an indication that a respondent is hiding information or misidentifying its suppliers.

Department’s Position:

As discussed in Comment 4: “Application of Adverse Facts Available” above, we agree with the GOC’s contention that issues and irregularities concerning mill test certificates should not by themselves warrant the application of total adverse facts available. However, where irregularities in the respondent’s mill certificates are compounded by the respondent failing to be forthcoming about those irregularities, the Department has reason to doubt the veracity of the documentation. Furthermore, when a company withholds requested information, as Ningbo Jiulong did here, we cannot consider that the program has been verified. For the purposes of this determination, we are limiting our application of AFA to programs involving the provision of hot-rolled steel and wire rod for LTAR. For the purpose of analyzing these two programs, the mill test certificates do serve the important purpose of identifying the actual producers of the steel inputs, the types of steel purchased, and the volumes of those purchases, important factors in examining the possible provision of an input for LTAR by government authorities. This is particularly true in this instance in which the respondent sourced an input from a trading company and the mill test certificates are the only document linking the steel input from the producer to the purchaser.

We did not reach our determination by limiting our analysis to the uses that these documents had in Ningbo Jiulong’s ordinary course of business, nor do we think it proper to confine ourselves to that analysis in future investigations. Contrary to the GOC’s concern, we do not consider the lack of mill test certificates to be fatal for a respondent where that respondent is not required to maintain or produce mill test certificates for the purpose of exporting steel products to the United States. Moreover, it is not the Department’s policy to penalize respondent companies for a failure to maintain and produce documents that they are not required to maintain in the ordinary course of their business. However, to the extent that mill test certificates can be made available to the Department, the information contained therein is illuminating for certain purposes. The

GOC has asked that we determine what usable information could possibly be contained in mill test certificates; while the relevance of such information may vary from case to case, we note that the purpose behind the Department's request for mill test certificates in this investigation has, since the very first questionnaire addressing the subject, focused on the possible use of mill test certificates in identifying the actual producers of the steel and the types of steel that were purchased.²²¹ This information goes to the question of ownership of the input supplier and identification of the input purchased. To the extent that those, or any documents, are provided to the Department, they must be verifiable. Our reliance on facts available with adverse inferences is not based on the circumstances under which Ningbo Jiulong provided incomplete and inaccurate mill test certificates, *i.e.*, that the company does not maintain them in its ordinary course of business. Rather, it is based on the fact that we were unable to verify important aspects of information that Ningbo Jiulong did provide regarding purchases of hot-rolled steel and wire rod at LTAR.

The GOC urges us not to treat mill test certificates as appropriate documents for conducting secondary accounting reconciliation exercises. Ningbo Jiulong has indicated to us, through numerous submissions, that it does not consider the mill test certificates it receives from its suppliers to be part of its accounting system or part of its production system;²²² we do not think that this point needs to be addressed here. We are not applying partial adverse facts available because the mill test certificates that Ningbo Jiulong provided to us are not tied to the company's books and records. As discussed above, we are applying partial adverse facts available to the provision of hot-rolled steel and wire rod programs because we were unable to verify the accuracy and completeness of the reported information and because Ningbo Jiulong withheld information requested by the Department concerning the mill test certificates it sent to its U.S. customers.

Comment 7: Provision of Hot-Rolled Steel and Wire Rod for Less than Adequate Remuneration – Whether These Programs Are Countervailable

The GOC points out that, in the Preliminary Determination, the Department relied on the application of AFA, in part, in determining that Ningbo Jiulong received hot-rolled steel and wire rod for LTAR. The GOC argues that the deficiencies identified by the Department in making that determination have been rectified, and that the Department should reverse its prior findings for the final determination.

The GOC argues that the provision of these two steel inputs is not specific to the steel grating industry, as required under section 771(5A)(D) of the Act. According to the GOC, the Department preliminarily determined that: (1) the provision of hot-rolled steel at LTAR was specific because the recipients were limited in numbers; and (2) the provision of wire rod at LTAR was specific because it was provided to a limited number of industries.

²²¹ “[P]lease provide mill test certificates that indicate the source and the type of input steel sold to” Ningbo Jiulong. “The mill test certificates should be copies of the documents produced by the original producer of the liquid steel (where the chemistry is fixed).” See Ningbo Jiulong Supplemental Questionnaire3.

²²² See, *e.g.*, Ningbo Jiulong Verification Report; see also Ningbo Jiulong Case Brief.

According to the GOC, the Department has found the provision of inputs for LTAR to be de facto specific because the “actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.”²²³ In making a determination that a particular industry or enterprise fits within the term “limited,” the GOC points to the CVD Preamble in arguing that it is not necessarily the number of enterprises involved but instead is “the makeup of the users.”²²⁴ In contrast, if the “users represented numerous and diverse industries” the program is not specific.²²⁵

The GOC states that hot-rolled steel is used by a broad and diverse group of industries and touches every aspect of the Chinese economy. The GOC adds that the same is true for wire rod. In other CVD investigations not involving China, the GOC argues, the Department found that inputs provided at LTAR were truly limited to a handful of industries.²²⁶ In its responses, the GOC claims, it has provided broad lists, detailing the end-users of the inputs at issue, which indicate that the recipients of the steel inputs are not limited to a group of enterprises, and that the provision of steel inputs at less than adequate remuneration is therefore not specific.

Moreover, the GOC argues, hot-rolled steel and wire rod produced by state-owned producers are available to all users of these products, whether foreign or domestic. To the extent that the provision of these products results in any benefit, the GOC holds, that benefit is widely distributed throughout the world economy and there can be no finding of specificity.

The GOC goes on to argue that Ningbo Jiulong’s suppliers are not government authorities, and, therefore, purchases from these companies are not countervailable. The GOC states that, in the Preliminary Determination, the Department found that all of Ningbo Jiulong’s hot-rolled steel and wire rod suppliers were authorities based on the application of AFA. With regard to the hot-rolled steel suppliers, the GOC claims that the ownership information it provided to the Department over the course of the investigation definitively precludes a finding of government control in these companies.

The GOC also argues that the Department should not, as a matter of law, consider input producers that are majority-owned by the government to be government authorities. The CVD Preamble establishes the practice of “treating most government-owned corporations as the government itself.”²²⁷ The GOC points out, that statement was made long before the Department decided to apply CVD law to China. The GOC points out that several types of enterprises that the Department has determined to be authorities, by means of majority state ownership, do not fit within the general paradigm of a state-operated enterprise. The GOC urges the Department to conduct an analysis to determine whether any of Ningbo Jiulong’s suppliers exhibit the characteristics of a government authority in the event that the Department might determine a supplier is government-owned.

²²³ See section 771(5A)(D)(iii)(I) of the Act.

²²⁴ See CVD Preamble, at 65357.

²²⁵ See CVD Preamble, at 65357.

²²⁶ See, e.g., CFS from Indonesia (only five out of twenty-three industries at the same level of industrial classification consumed the input in question); see also Softwood Lumber from Canada AR (Preliminary Results) (the input in question only used by a single group of industries).

²²⁷ See CVD Preamble, at 65402.

Petitioners argue that the Department should continue to find the provision of hot-rolled steel and wire rod to be countervailable subsidies. The Department's findings in the Preliminary Determination were consistent with its statutory authority as well as its prior practice. Regarding the GOC's specificity claim, Petitioners point to that in CWP from the PRC – CVD the Department determined that specificity because the industries using the input were limited in number: "section 771(5A)(D)(iii)(I) clearly directs the Department to conduct its analysis on an industry or enterprise basis." In Steel Products from Belgium, the Department concluded that eight industries that used the input at issue were not enough users to avoid finding de facto specificity. In OCTG from the PRC – CVD, the Department found the provision of steel rounds to be specific where the GOC identified seven industries that use the product. According to Petitioners, wire rod is sold to even fewer industries. The Department should find the provision of these steel inputs to be de facto specific because the recipients are limited in number, pursuant to section 771(5A)(D)(iii)(I) of the Act.

Petitioners point out that the Department's Preliminary Determination was partially based on its finding that the GOC failed to cooperate to the best of its ability in this investigation, by, among other things, failing to provide the requested information with respect to the provision of steel inputs at LTAR, in particular, documentation substantiating its claim that the industries that use hot-rolled steel are "too numerous to mention."²²⁸ This failure to cooperate and provide requested information justifies the continued application of adverse inferences and finding the provision of both hot-rolled steel and wire rod to be specific.

With regard to the GOC's argument that Ningbo Jiulong's steel input suppliers are not government authorities within the meaning of the Act, Petitioners argue that in Kitchen Shelves and Racks from the PRC – CVD (Final Determination), the Department established a new rebuttable presumption that an entity that is majority government-owned is a government authority. Further, when examining control over an entity in the absence of majority ownership, Petitioners hold, the Department may consider all relevant information, thus enabling the Department to make a finding that an entity is a government authority even without any government ownership.

Petitioners contend that because the GOC has not provided requested information, the Department should apply AFA and find respondent's input suppliers to be government authorities. Contrary to the GOC's claims, Petitioners argue that the GOC failed to provide all necessary information to determine whether Ningbo Jiulong's suppliers were government authorities during the POI. This information included shareholder lists, financial statements, business registration forms, etc. In fact, Petitioners argue that they provided adverse information that fills in gaps left by the GOC. As such, the Department should continue to apply adverse facts available to find specificity and that the steel wire rod suppliers are government authorities.

Department's Position:

Regarding the specificity arguments submitted by the GOC, we continue to find the provision of hot-rolled steel and of wire to be specific within the meaning of section 771(5A)(D) of the Act. Although the GOC has argued that hot-rolled steel is used by a broad and diverse group of industries and touches every aspect of the Chinese economy, it did not provide any information

²²⁸ See Preliminary Determination, at 56799.

during the course of this investigation to support this statement. Prior to the Preliminary Determination, the GOC stated that the number of industries that purchase hot-rolled steel is too numerous to mention, however, the GOC did not provide supporting documentation to substantiate this claim. Since the GOC did not provide the requested information necessary for analyzing specificity, we preliminarily determined that the provision of hot-rolled steel was specific because the recipients are limited in number. The fact that the GOC chose not to submit supporting information despite being requested to do so twice leaves the Department no choice but to continue to find the provision of hot-rolled steel to be specific pursuant to section 771(5A) of the Act. This determination of specificity is consistent with our previous findings for this program. Specifically, in CWP from the PRC – CVD, the Department found that the provision of hot-rolled steel is de facto specific under section 771(5A)(D)(iii)(I).

Regarding specificity for wire rod, the GOC has provided information regarding end uses for wire rod.²²⁹ In the Preliminary Determination, the Department determined that the industries named by the GOC are limited in number and, hence, the subsidy is specific, as stipulated in section 771(5A)(D)(iii)(I) of the Act. The arguments put forth by the GOC do not undermine this finding of specificity because the number of end users using wire rod is limited. This determination of specificity is consistent with our finding in PC Strand from the PRC. The Department also found this program specific in Kitchen Shelves and Racks from the PRC – CVD (Final Determination), in which the Department determined that while numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis.²³⁰ Therefore, the Department concluded that the industries named by the GOC were limited in number and, hence, the subsidy was specific.²³¹ Based on our analysis and the results reached in these two cases, we find that the provision of wire rod for LTAR program is specific under section 771(5A)(D)(iii)(I) of the Act.

As explained in the “Application of Facts Available, Including the Application of Adverse Inferences” and “Analysis of Programs” sections, because the Department is applying partial AFA to these two programs and is not calculating a rate, an analysis of the ownership of certain individual suppliers to Ningbo Jiulong is not relevant for purposes of this final determination. As such, we do not need to reach the arguments made by the GOC concerning what constitutes a government authority.

Comment 8: Provision of Hot-Rolled Steel and Wire Rod for Less than Adequate Remuneration – Appropriate Benchmark

The GOC argues that the Department should apply a tier one benchmark for measuring the benefit from the provision of both hot-rolled steel and wire rod. For hot-rolled steel, the Department preliminarily determined that the GOC’s “dominance in the market” was reason to refuse to apply a tier one benchmark.²³² For wire rod, “the substantial market share held by SOEs shows that the government plays a predominant role” in the market, precluding the use of

²²⁹ See, e.g., GOC QR, at page 26 and Exhibit-O-II-D.2.

²³⁰ See Kitchen Shelves and Racks from the PRC – CVD (Final Determination).

²³¹ See Kitchen Shelves and Racks from the PRC – CVD (Final Determination).

²³² See Preliminary Determination, at page 56799.

a tier one benchmark for that input.²³³ The GOC argues that the Department has unreasonably analyzed whether SOEs “dominate” a particular industry when it relied solely on the number of SOEs in a market to determine government influence. The regulations direct the Department to apply a tier one benchmark when a government’s market presence significantly distorts actual transaction prices.²³⁴ Based on the Department’s regulations, the GOC argues, even when government providers are present in the market, a finding of significant distortion is the exception.²³⁵

The GOC argues that, with regard to the provision of hot-rolled steel, the proper industry to analyze for benchmark purposes is the hot-rolled steel strip industry. The GOC claims that its steel classification system distinguishes between two types of hot-rolled steel – strip and plate. The Department should limit its analysis to the hot-rolled strip industry, rather than the broader hot-rolled steel industry, since that is the only hot-rolled steel input used by the respondent in the production of the subject merchandise. Including hot-rolled steel plate in the Department’s analysis would be distortive.

The GOC further argues that SOEs do not dominate the hot-rolled steel strip or the wire rod industries and that their presence in the market does not significantly distort prices. First, the GOC points out that based on the annual production figures for 2008 that it submitted on the record, SOEs accounted for less than 50 percent of the total production of hot-rolled steel strip and wire rod. Second, the record is devoid of any additional circumstances that could be said to demonstrate that the private prices for hot-rolled steel strip are significantly distorted. Rather, the hot-rolled steel strip industry in China is a large and diverse industry of almost 200 separate entities that operate independently and are in competition with the others. Similarly, there is no record evidence that wire rod producers act in concert or represent a single entity, or act in any way to keep their prices low for the purposes of effectuating some government policy.

The GOC points out that in its Georgetown Steel Memorandum, the Department itself recognized that “the GOC has eliminated price controls on most products; market forces now determine the prices of more than 90 percent of products traded in China,” including hot-rolled steel strip.²³⁶ The GOC argues that the only way in which SOEs could significantly distort the market would be if all SOE producers received the same direction and followed it. However, the GOC points out, the Georgetown Steel Memorandum states the Department’s finding that “SOEs have the legal right and obligation to act as independent economic entities under the 1994 Company Law (as amended in 2006), including independent import and export decisions on both amounts and price.” The GOC also claims that there are no other measures in place in the hot-rolled steel strip for wire rod industries that could lead to further distortion; there are no export restrictions in place that discourage exports and artificially increase domestic supply, thereby lowering prices. Based on the lack of record evidence that SOEs distort market prices in China, the GOC urges the Department to use a tier one benchmark to value both hot-rolled steel strip and wire rod.

²³³ See Preliminary Determination, at page 56800.

²³⁴ See CVD Preamble, at 65377; see also 19 CFR 351.511.

²³⁵ See CVD Preamble, at 65377.

²³⁶ See Georgetown Steel Memorandum.

Petitioners claim there is extensive involvement of the GOC in the domestic steel market. According to Petitioners, (1) the OECD estimates that the GOC owns 60 percent of Chinese steel producers²³⁷; and (2) even the GOC has submitted ownership figures ranging between 60 and 70 percent.²³⁸ Taking into account GOC ownership that is diverted offshore or through holding companies, Petitioners claim that the GOC accounts for approximately 90 percent of basic steel production.²³⁹ Petitioners argue the Department has limited reliable information upon which to determine “government authority” status of Ningbo Jiulong’s producers. Petitioners state that the GOC failed to demonstrate that Ningbo Jiulong’s largest input producers were not owned by the GOC during the POI, and that in the Preliminary Determination, the Department indicated that it would provide the GOC with one final opportunity to demonstrate that the producers were not SOEs during the POI. Petitioners argue the GOC did not to meet this burden. Therefore, for purposes of the final determination, Petitioners argue that the Department should apply total AFA and find the producers of Ningbo Jiulong’s input steel to be SOEs.

Petitioners argue that the Department’s benchmark analysis in this investigation is reasonable and lawful. Because the GOC repeatedly failed to provide requested information concerning the steel inputs used by Ningbo Jiulong, the Department acted correctly when it preliminarily determined to use an external, tier two benchmark for hot-rolled steel and wire rod. Petitioners also refute the GOC’s claim that the Department’s analyses of the steel industry in China lack thoroughness, stating that there is no effective means for the Department to perform a proper benchmark analysis when the GOC fails to provide requested information.

Petitioners state that the Department properly determined that SOEs dominate the hot-rolled steel and wire rod industries and that they significantly distort prices, and that it should continue to do so for the final determination.

Department’s Position:

As discussed above in the “Application of Facts Available, Including the Application of Adverse Inferences” section, the Department is applying AFA for the hot-rolled steel and wire rod LTAR programs, and is in-turn, applying the highest rates calculated in other cases for these two programs. Given that the Department is not calculating rates for these programs in this particular investigation, we need not address the parties’ arguments regarding the selection of benchmarks.

Comment 9: Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment

In its Preliminary Determination, the Department found that Ningbo Jiulong received countervailable benefits pursuant to the program providing income tax credits for domestically-owned companies purchasing domestically produced equipment. The GOC argues that pursuant to the “Circular on Relevant Issues with Respect to Ceasing Implementation of Income Tax Credit to Purchase of Domestically Produced Equipment by Enterprises,” this program was terminated effective January 1, 2008, and as such the Department should treat this as a program-wide change and remove any subsidy received under the program from the final countervailing

²³⁷ See Petition, Exhibit III-b.

²³⁸ See CWLP from the PRC (Preliminary Determination), at 52306.

²³⁹ See Petition, Exhibit III-b.

duty rate. According to the GOC, pursuant to this termination, Ningbo Jiulong was not permitted to claim benefits under this program on its 2008 tax return filed in 2009 and there are no residual benefits from this program. The termination of this program, according to the GOC, represents a program-wide change in accordance with 19 CFR 351.526, and therefore the Department should remove any countervailing duty deposit arising as a result of this program.

Petitioners argue that the Department should not reconsider whether the program is countervailable based solely on the program's supposed termination. Petitioners state that, regardless of whether the program was indeed terminated, neither Ningbo Jiulong nor the GOC contest that a countervailable subsidy was received under this program during the POI. Moreover, Petitioners claim, if a company receives a tax exemption for a significant piece of equipment, it is likely that the subsidy would be allocated over several years after the POI. As such, there is no way to ensure that Ningbo Jiulong will not continue to receive benefits under this program or one like it.

Petitioners point out that in Citric Acid from the PRC (Preliminary Determination), the Department declined to find a program-wide change had occurred because it was "not able to confirm the GOC's claim" that the program had been terminated. Furthermore, Petitioners claim that Ningbo Jiulong and the GOC failed to provide information regarding residual benefits or successor programs, as they are required to do in these circumstances.²⁴⁰ Petitioners argue that even if a program-wide change were made, the relevant provision affects the cash deposit rate only, and cannot affect whether the program is deemed countervailable.

Department's Position:

In accordance with our finding in the Preliminary Determination, we continue to find that this program provided countervailable subsidies to Ningbo Jiulong during the POI. We reject the GOC's argument that a program-wide change occurred here, in accordance with 19 CFR 351.526. The issue of terminated programs is discussed at 19 CFR 351.526(d). Specifically, that regulation states that a program-wide change consists of, not only the termination of the program, but also a determination that: 1) no residual benefits continue to be received under the program; or 2) no substitute program has been introduced. In the initial questionnaire issued to the GOC, we asked if there were any anticipated changes regarding the program or whether it had been terminated; and if so, to identify and discuss any similar replacement program.²⁴¹ In support of its claim that this program was terminated, the GOC provided, a copy of the Circular On Relevant Issues With Respect to Ceasing Implementation Of Income Tax Credit to Purchase of Domestically Produced Equipment By Enterprises (GOUSHUIFA {2008} No. 52).²⁴² However, the GOC did not address our inquiry regarding the establishment of a replacement program. In the Department's view, the GOC has not demonstrated that the program was terminated without residual benefits or that no replacement program has been introduced.

The GOC points out in its brief that Ningbo Jiulong was not permitted to claim benefits under this program on its 2008 tax return filed in 2009, and that this is evidence that there are no

²⁴⁰ See, e.g., Hot-Rolled Steel from India 04 AR – Preliminary, at 1591.

²⁴¹ See Initial Questionnaire, at Section II, Appendix 1.

²⁴² See GOC QR, Exhibit-O-II-L.2.

residual benefits from this program.²⁴³ However, the fact that Ningbo Jiulong may not have claimed benefits under this program in its 2008 tax filing is not dispositive of the termination of the program. Moreover, the termination of a program cannot be determined based on a company-specific examination. Thus, we cannot determine that this program was terminated in accordance 19 CFR 351.526.

Comment 10: Provision of Electricity for Less than Adequate Remuneration

The GOC argues that the Department should not countervail the provision of electricity as it constitutes general infrastructure and therefore cannot be a financial contribution. According to the GOC, under section 771(5)(A) of the Act, a financial contribution is defined as “providing goods or services, other than general infrastructure.”²⁴⁴ The GOC also states that the provision of electricity is not specific to the steel grating industry, and thus is not countervailable. Furthermore, the GOC states, because the provision of electricity is not countervailable the Department cannot apply AFA for this program as it did in the Post-Preliminary Determination.²⁴⁵

The GOC points out that the Department recently examined the GOC’s electricity infrastructure and determined that outside a few clearly defined industries, “record information shows that the established process, as laid out in the applicable regulations and as applied, is based on neutral and objective criteria.”²⁴⁶ Furthermore, the GOC argues, in Carbon Steel Wire Rod from Saudi Arabia, the Department determined that the provision of basic infrastructure cannot confer a countervailable subsidy if: 1) {t}he government does not limit who can move into the area where the infrastructure has been built; 2) the infrastructure is in fact used by more than a specific enterprise or industry; and 3) those that locate there have equal access or receive the benefits of the infrastructure on the basis of neutral criteria. In this case, the GOC states, that there are no restrictions on who may use the power grid; the power grid was not constructed solely for the use of the steel grating industry; rather the grid was constructed for used by all companies as well as by the general population. The GOC claims that it has not provided preferential rates or greater access to the power grids to steel grating companies. In fact, the GOC concludes, in 2007, the NRDC specifically took actions to eliminate all preferential policies regarding the provision of electricity.²⁴⁷

Petitioners contend that the GOC fails to draw the proper distinction between the provision of electricity, and the power grid that delivers it. Petitioners concede that a power grid may be considered general infrastructure, but the potential provision of electricity from the grid at preferential rates constitutes a financial contribution within the meaning of the statute. Petitioners stated that whether infrastructure such as a power grid actually constitutes general infrastructure is a matter of analyzing factual information.

²⁴³ See GOC Case Brief, at page 63.

²⁴⁴ See also SCM Agreement, Art. 1.1(a)(1)(iii) and 19 CFR 351.511(d).

²⁴⁵ See Post-Preliminary Determination, at pages 5 and 6.

²⁴⁶ See Kitchen Shelves and Racks from PRC – CVD (Preliminary Determination).

²⁴⁷ See GOC NSA QR, at Exhibit N-A.3.

Petitioners, citing to the Post-Preliminary Determination, reiterate that the GOC repeatedly failed to provide requested information, explanations, and documentation, thus significantly impeding the investigation. As a result, Petitioners argue, the Department should continue to apply AFA and find the provision of electricity for less than adequate remuneration to be a countervailable subsidy.

Department’s Position:

Sections 776(a)(1) and (2) of the Act provide that the Department shall 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. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

As discussed in the Post-Preliminary Determination, throughout the course of its investigation of the electricity program, there were numerous instances in the Department’s requests for information that were met with the response: “[t]he GOC is gathering this information and will provide the requested information when it becomes available.” As a result, the Department did not receive the original Provincial Price Proposals for 2006 and 2008 with English translation for each province in which a mandatory respondent is located; a request for each relevant province to explain how increases in the cost elements in the Price Proposals led to retail price increases for electricity, including how these increases in the cost elements were derived and the sources for each of these listed cost elements, the methodology used to calculate the cost element increases, and how all significant cost elements are accounted for within the province’s Price Proposal; and a request for each relevant province to explain how the cost element increases in the Price Proposals and the final price increases were allocated across the province and across tariff end-user categories.²⁴⁸

In response to the Department’s requests for additional information and explanation, on December 7, 2009, the GOC again stated, with respect to the request for the Provincial Price Proposals for 2006 and 2008, that “it was in the process of attempting to obtain this information and will provide it when it is available.”²⁴⁹ The same answer was given in response to the Department’s request for a copy of the coal price index and the public information sources which formed the basis of the price adjustment as well as the request for information about “how Zhejiang Province factors in increases in labor costs, capital expenses, transmission and distribution costs, coal prices, and coal transportation prices into its Price Proposals regarding increases in electricity rates.”²⁵⁰

In response to the Department’s request for the electricity rate schedules in effect during the POI for all provinces and municipalities within the PRC, the GOC provided seven “Circulars” issued

²⁴⁸ See GOC NSA Questionnaire, at page 1; see also GOC NSA QR, at pages 1 to 3.

²⁴⁹ See GOC SQR2, at page 1.

²⁵⁰ See GOC SQR2, at page 1.

by the NRDC, explaining that these “Circulars” “address the electricity prices for all seven power grids within China and generally cover the electricity rates for all provinces and municipalities in China for the period June 30, 2006 to June 30, 2008. Beginning July 1, 2008, the NRDC increased the electricity prices for all provincial grids.”

On January 4, 2010, the Department issued its third supplemental questionnaire addressing the electricity program. In that second set of supplemental questions, the Department again asked the GOC to provide “a copy of the coal price index and any other information that documents the public sources that formed the basis of the price adjustment.”²⁵¹ In addition to that request, the Department made its third request for the GOC to provide the electricity rate schedules in effect during the POI.²⁵² On January 19, 2010, the GOC submitted its response and provided the electricity rate schedules in effect for all provinces and municipalities during the POI.²⁵³ However, with respect to the coal price index, the GOC stated that it was “still in the process of attempting to gather this information and will provide it when it becomes available.”²⁵⁴

The information requested of the GOC is essential to the Department’s evaluation of whether the GOC’s provision of electricity is countervailable. In light of our repeated requests to the GOC, detailed above, for information necessary to our analysis of electricity prices in China and whether these prices are consistent with market principles, and the GOC’s repeated failures to provide the requested information, explanation, and documentation, we must conclude that necessary information is not on the record and that the GOC failed to provide requested information within the deadlines established. Further, the Department considers the GOC’s failure to have significantly impeded the proceeding by hindering the Department’s analysis of electricity prices. Therefore, in accordance with section 776(a)(1) and (2) of the Act, we find that it is appropriate to apply facts otherwise available. In addition, pursuant to section 776(b) of the Act, we determine that by refusing to answer key questions the GOC failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information; on this basis, we also conclude that the use of adverse inferences is warranted.

In a CVD investigation, the Department requires information from both the government of the country whose merchandise is under the order and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific.²⁵⁵ However, where possible, the Department will normally rely on the responsive producer’s or exporter’s records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable.

Consistent with this practice, because the GOC failed to provide information essential to our analysis of the Provision of Electricity for Less than Adequate Remuneration program, as

²⁵¹ See GOC Supplemental Questionnaire3, at question 11.

²⁵² See GOC Supplemental Questionnaire3, at question 12.

²⁵³ See GOC SQR3, at page 9.

²⁵⁴ See GOC SQR3, at page 9.

²⁵⁵ See, e.g., CTL Plate from Korea AR (Preliminary Results) (unchanged in the CTL Plate from Korea AR, in which the Department relied on adverse inferences in determining that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of sections 771(5)(D)(i) and 771(5A)(D)(iii) of the Act, respectively).

detailed above, we relied on facts otherwise available, and in selecting from among the facts available, we drew an adverse inference with regard to the issues of financial contribution and specificity. The GOC's arguments do not persuade us that the use of facts available and adverse inferences is not warranted where the GOC failed to provide the Department with the basic information for which to determine whether a countervailable subsidy was conferred. Therefore, there is no basis to reconsider our Post Preliminary Determination with respect to the electricity program.

Finally, the Department has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure.²⁵⁶ Furthermore, even the regulations categorize electricity within the provision of goods and services.²⁵⁷ Finally, the GOC's reliance on Kitchen Shelves and Racks from PRC – CVD (Preliminary Determination) is inappropriate. Preliminary determinations do not establish precedent and, in fact, in Kitchen Shelves and Racks from the PRC – CVD (Final Determination), we found the provision of electricity for LTAR to be countervailable.

Comment 11: Grant Programs

Petitioners state that the Department discovered and rendered a determination on fifteen grant programs in the Preliminary Determination. According to Petitioners, these grants should be included for purposes of the final determination. In addition, since Ningbo Jiulong's information is not reliable, Petitioners argue that the Department should apply adverse inferences when calculating subsidy rates for these grant programs.

Petitioners argue that since there are no other respondent companies in this investigation, the Department should look to previous investigations to select an adverse rate on a program-by-program basis. Petitioners argue that the Department's first option is to use the highest rate calculated for the same or similar program in another Chinese CVD investigation. Petitioners continue that if there is no rate calculated for the same or a similar program, the Department should apply the highest calculated subsidy rate for any program otherwise listed that could be used by the company.

Petitioners note that in the Preliminary Determination, the Department found eight of the grants countervailable, one not countervailable, and six expensed prior to the POI. Petitioners argue that the information required to calculate an accurate subsidy rate for these programs, or to determine whether some of the grants are properly expensed prior to the POI is unreliable. However, Petitioners continue, it is undisputed that Ningbo Jiulong used these grant programs, as the use of these grant programs was confirmed by the GOC.

²⁵⁶ See, e.g., Hot-Rolled Steel from Thailand, at Comment 10. ("Furthermore, the electricity at issue here is not general infrastructure, but a good that is bought and sold in the marketplace. In the Department's view, the term infrastructure refers to the types of goods and services described in the Preamble to the regulations, including schools, interstate highways, health care facilities and police protection. According to our regulations, if we find that these types of infrastructure were provided for the broad societal welfare, they would be considered general infrastructure.")

²⁵⁷ See CVD Preamble, at 65377. ("We also received several comments in response to our stated intention of continuing to employ a preferentiality type analysis where the government is the sole provider of goods or services such as electricity, water, or natural gas.")

Petitioners argue the Department should apply an AFA rate to each of the grant programs Ningbo Jiulong used. Since the Department has never calculated a subsidy rate for grants in any Chinese CVD investigation, Petitioners contend that the Department should apply the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the company. Petitioners argue that of the programs under investigation, the provision of hot-rolled steel has the highest calculated subsidy rate in another CVD proceeding. Petitioners state, since it is likely that Ningbo Jiulong used this program, the Department would be justified in applying the highest calculated subsidy rate to each of the fifteen grant programs.

Department's Position:

As discussed in Comment 4: "Application of Adverse Facts Available," the Department disagrees with Petitioners' contention that total AFA should be applied to Ningbo Jiulong. In this final determination, the application of AFA is limited to the three programs involving the provision of hot-rolled steel and wire rod inputs for LTAR, and the provision of electricity for LTAR. It follows then that no such determination is necessary with regard to the fifteen small grant programs discovered during the course of the investigation. Accordingly, we reaffirm our decision in the Preliminary Determination and continue to find that eight of these programs provide countervailable subsidies to Ningbo Jiulong during the POI,²⁵⁸ and to calculate rates using information provided by Ningbo Jiulong.

Comment 12: Separate CVD Rate for Xinke

Xinke argues that the Department's decision to investigate only a single mandatory respondent is unreasonable. Xinke contends that the Department should have investigated more than one mandatory respondent so that the results of investigating a single respondent cannot cause harm to other interested parties in the proceeding. On this basis, Xinke argues that they should not be injured because of an unreasonable act by the Department.

If the Department determines the data submitted by Ningbo Jiulong is not usable, Xinke argues that the Department must calculate a separate CVD rate for Xinke based on a reasonable method. Xinke claims that it is entitled to its own individual rate as an interested party to the proceeding. This rate, Xinke contends, must be calculated in a reasonable manner and reflect the rate that it would have received had the company been individually investigated.

Xinke submits that it has a specific status as an "interested party"²⁵⁹ and as a "party to the proceeding"²⁶⁰ in this investigation, which goes beyond that of a mere "all-others" entity. Xinke states that it is a foreign manufacturer and producer of the subject merchandise. Thus it qualifies as an "interested party." Xinke adds that through its submission of this case brief, it has actively participated in this investigation. Thus, Xinke argues that since it is (1) an interested party and

²⁵⁸ See Preliminary Determination, at 56801-56803.

²⁵⁹ Interested Party – "A foreign manufacturer, producer, or exporter, or the United States importer, of subject merchandise or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise." See section 771(9) of the Act.

²⁶⁰ Party to the Proceeding – "'Party to the proceeding' means any interested party that actively participates, through written submissions of factual information or written argument, in a segment of a proceeding. Participation in a prior segment of a proceeding will not confer on any interested party." See 19 C.F.R 351.102 (b)(36).

(2) an active participant throughout the proceeding, the company is a “party to the proceeding.” On this basis, Xinke contends that the company is differently situated than other non-mandatory respondents and therefore should not be treated as an “all other” entity. Instead, Xinke argues, the company is an interested party to the proceeding and therefore should receive its own individual rate.

Xinke states that, based on the current facts, the data submitted by Ningbo Jiulong may not be usable for purposes of calculating the “all others” rate. Xinke argues that the questions about the validity of Ningbo Jiulong’s data appear to be specious. Xinke adds that if there are any discrepancies or problems with the responses, such discrepancies are wholly immaterial for purposes of this CVD investigation. Xinke contends that the Department appears to have acted in a procedurally unfair fashion by not providing the Ningbo Jiulong with an opportunity to examine and comment on the documents creating the alleged discrepancies.

According to Xinke, when the Department finds a mandatory respondent’s data to be unusable, the Department must use a reasonable method to calculate an “all-others” rate. Xinke states that, based on Department precedent, this rate is typically high and frequently is based on, if not equal to, the AFA rate. Xinke explains that these rates assume that each entity is located in all geographic locations in the country and benefits from all possible programs. Xinke argues that this method would not be reasonable for the Department to apply to Xinke. Xinke states that this would result in the application of AFA to an interested party that had participated and cooperated in the investigation, contrary to both the Department’s regulations (which only allow adverse inferences to be taken with respect to that party²⁶¹) and with the CIT’s findings.²⁶²

Xinke submits that if the Department is to use a reasonable method to calculate these rates, it should calculate a separate rate for the company. Specifically, Xinke argues, the Department should take into account the company’s geographic location (as evidenced by its name) and not include a rate for any programs in other geographic regions and for which Xinke is not otherwise eligible.

Petitioners disagree with Xinke’s argument that the Department should calculate a separate CVD rate for Xinke. Petitioners argue that the statute does not address the issue of whether a separate CVD rate is required in such circumstances. Instead, according to Petitioners, the statute directs the Department to assign the “all-others” rate to Xinke.²⁶³ As such, Petitioners argue that Xinke is not entitled to its own individual rate as an interested party in the proceeding.

²⁶¹ See section 736 of the Act.

²⁶² “Allowing an interested party’s failure to cooperate to affect adversely the dumping margin of another interested party who is a party to the proceeding, about whom Commerce did not make a finding of non-cooperation, violates the Department’s obligation to treat fairly every participant in an administrative proceeding. As is any government agency, Commerce is under a duty to accord fairness to the parties that appear before it. Although 19 U.S.C. § 1677e(b) does not expressly state that Commerce may not adversely affect a party to a proceeding based upon another interested party’s failure to cooperate, a construction permitting such an absurd result makes a mockery of any notion of fairness. * * * The court cannot accept a construction of 19 U.S.C. § 1677e(b) under which the party who suffers the effect of the adverse inference is not the party who failed to cooperate.” See *SKF USA*, at pages 18 and 19.

²⁶³ See section 777A(3) of the Act.

Furthermore, Petitioners disagree with Xinke's argument that the Department should calculate a separate CVD rate for Xinke, base on what Xinke would have received had it participated in the investigation. Petitioners argue that the "all-others" rate is an estimate of the subsidies the Department would have found that "all-others" received, had they been investigated. Petitioners mention that Ningbo Jiulong accounted for a substantial portion to all imports of subject merchandise during the POI, thus they adequately represent the steel grating industry in China. Petitioners add that, had Xinke wanted its own rate, the company should have filed voluntary responses at the beginning of this investigation. Petitioners contend that Xinke is making these arguments at this time based on the likelihood of being assigned an unfavorable rate. Petitioners note that Xinke has not submitted any company-related information that would allow the Department to calculate an individual subsidy rate. Therefore, Petitioners argue that Xinke should be assigned the "all others" rate.

Department's Position:

We disagree with Xinke's argument that it is entitled to its own individual rate as an interested party to the proceeding. As further explained in the Position to Comment 3, the Department properly exercised its authority to limit its individual examination of respondents in this investigation under section 777A(e)(2)(A)(ii) of the Act. In accordance with this provision, the Department selected Ningbo Jiulong. Under section 782(a) of the Act, and the Department's regulations, at section 351.204(d), a company not selected as a mandatory respondent may submit voluntary responses under certain conditions.²⁶⁴ However, Xinke did not submit a voluntary response to this investigation nor contact the Department regarding filing a voluntary response. Accordingly, Xinke is not entitled to an individual subsidy rate. Additionally, since Xinke did not submit any responses, there is no company information on the record of this investigation that would allow the Department to calculate an individual subsidy rate. Therefore, for purposes of this final determination, Xinke will be assigned the "all others" rate, calculated in accordance with section 705(c)(5)(A)(i) of the Act.

²⁶⁴ "the Secretary will examine voluntary respondents (exporters or producers, other than those initially selected for individual examination) in accordance with section 782(a) of the Act." See 19 CFR 351.204(d).

VII. Recommendation

Based on the results of verification and our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish this final determination in the Federal Register.

Agree _____

Disagree _____

Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

(Date)

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Full Name or Term
The Act	Tariff Act of 1930, as amended
AD	Antidumping Duty
AFA	Adverse Facts Available
AUL	Average useful life
BPI	Business proprietary information
CAFC	Court of Appeals for the Federal Circuit
CBP	U.S. Customs and Border Protection
CFR	Code of Federal Regulations
CIT	Court of International Trade
COE	Collectively Owned Enterprise
CVD	Countervailing Duty
Department	Department of Commerce
GAAP	Generally Accepted Accounting Principles
GOC	Government of The People's Republic of China
JEE	Ningbo Zhenhai Jiulong Electronic Equipment Factory
KWH	Kilo Watt Hours
LTAR	Less Than Adequate Remuneration
NDRC	National Development and Reform Commission
NME	Non-market economy
ME	Market economy
Ningbo Jiulong	Ningbo Jiulong Machinery Manufacturing Co. Ltd.
Petitioners	Alabama Metal Industries Corp. and Fisher and Ludlow
PNTR	Permanent Normal Trade Relations
POI	Period of Investigation
PRC	People's Republic of China
SOE	State-Owned Enterprise
VAT	Value Added Tax
WTO	World Trade Organization
Xinke	Yantai Xinke Steel Structure Co, Ltd.

II. LITIGATION TABLE

Short Cite	Cases
<u>Alaska Hunters</u>	<u>Alaska Professional Hunters Ass'n v. FAA</u> , 177 F.3d 1030 (D.C. Cir. 1999)
<u>Budd Co.</u>	<u>Budd Co., Wheel & Brake Div. v. United States</u> , 746 F. Supp. 1093 (CIT 1990)
<u>Carpenter Tech</u>	<u>Carpenter Tech Corp v. United States</u> , 662 F. Supp 2d 1337 (CIT 2009)
<u>Ceramica Regiomontana</u>	<u>Ceramica Regiomontana, S.A. v. United States</u> , 10 CIT 399, <u>aff'd</u> , 810 F.2d 1137 (Fed. Cir. 1987)
<u>Chenery Corp.</u>	<u>SEC v. Chenery Corp.</u> , 332 U.S. 194 (1947)
<u>Chevron</u>	<u>Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.</u> , 467 U.S. 837 (1984)
<u>Georgetown Steel</u>	<u>Georgetown Steel Corp. v. United States</u> , 801 F.2d 1308 (Fed. Cir. 1986)
<u>GOC v. U.S.</u>	<u>Gov't of the People's Republic of China v. United States</u> , 483 F. Supp. 2d 1274 (CIT 2007)
<u>GPX</u>	<u>GPX International Tire Corp.</u> , 645 F 2d 1231 (CIT 2009)
<u>GSA</u>	<u>GSA, S.r.l. v. United States</u> , 77 F. Supp.2d 1349 (CIT 1999)
<u>Nippon Steel</u>	<u>Nippon Steel Corporation v. United States</u> , 337 F.3d 1373 (Fed. Cir. 2003)
<u>Rhone Poulenc</u>	<u>Rhone Poulenc, Inc. v. United States</u> , 899 F. 2d 1185, 1190 (Fed. Cir. 1990).
<u>SKF USA</u>	<u>SKF USA Inc. et al v. United States</u> , 33 CIT_, Slip Op. 09-148 (Dec. 21, 2009)
<u>Sonco Steel</u>	<u>Sonco Steel Tube Div. v. United States</u> , 694 F. Supp. 959 (CIT 1988)
<u>U.S. v. Turkette</u>	<u>U.S. v. Turkette</u> , 452 U.S. 576 (1981)
<u>Zhejiang</u>	<u>Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp v. United States</u> , 637 F. Supp. 2d 1260 (CIT 2009)
<u>Barnhart</u>	<u>Barnhart v. United States Treasury Department</u> , 7 CIT 295 (CIT 1984)

III. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

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

Short Cite	Administrative Case Determinations
	<i>Carbon Steel Wire Rod – Czechoslovakia</i>
<u>Carbon Steel Wire Rod from Czechoslovakia</u>	<u>Carbon Steel Wire Rod from Czechoslovakia: Final Negative Countervailing Duty Determination</u> , 49 FR 19370 (May 7, 1984)
	<i>Carbon Steel Wire Rod – Poland</i>
<u>Carbon Steel Wire Rod from Poland</u>	<u>Carbon Steel Wire Rod from Poland: Final Negative Countervailing Duty Determination</u> , 49 FR 19374 (May 7, 1984)
	<i>Carbon Steel Wire Rod – Saudi Arabia</i>
<u>Carbon Steel Wire Rod from Saudi Arabia</u>	<u>Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod from Saudi Arabia</u> , 51 FR 4206 (February 3, 1986)
	<i>Chrome-Plated Lug Nuts – Taiwan</i>
<u>Chrome Plated Lug Nuts from Taiwan</u>	<u>Chrome-Plated Lug Nuts from Taiwan: Final Results of Antidumping Duty Administrative Review</u> , 64 FR 17314 (April 9, 1999)
	<i>Chrome-Plated Lug Nuts and Wheel Locks – PRC</i>
<u>Lug Nuts from the PRC Initiation</u>	<u>Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks from the People’s Republic of China</u> , 57 FR 877 (January 9, 1992)
<u>Lug Nuts from the PRC Rescission</u>	<u>Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition: Chrome-Plated Lug Nuts and Wheel Locks From the People’s Republic of China</u> , 57 FR 10459 (March 26, 1992)
	<i>Circular Welded Carbon Quality Steel Pipe – PRC</i>
<u>CWP from the PRC – CVD</u>	<u>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</u> , 73 FR 31966 (June 5, 2008) and accompanying <u>Issues and Decision Memorandum</u>
<u>CWP from the PRC – CVD Order</u>	<u>Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order</u> , 73 FR 42545 (July 22, 2008)
	<i>Circular Welded Carbon Quality Steel Line Pipe</i>
<u>CWLP from the PRC (Preliminary Determination)</u>	<u>Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination</u> , 73 FR 52297 (September 9, 2008)
	<i>Citric Acid and Citrate Salts – PRC</i>
<u>Citric Acid from the PRC</u>	<u>Citric Acid and Citrate Salts from the People’s Republic of China: Final Affirmative Countervailing Duty Determination</u> , 74 FR 16836 (April 13, 2009)

<u>Citric Acid from the PRC (Preliminary Determination)</u>	<u>Citric Acid and Citrate Salts From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination</u> , 73 FR 54367 (2008)
	<i>Coated Free Sheet Paper – Indonesia</i>
<u>CFS from Indonesia</u>	<u>Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination</u> , 72 FR 60642 (October 25, 2007) and accompanying <u>Issues and Decision Memorandum</u>
	<i>Coated Free Sheet Paper – PRC</i>
<u>CFS from the PRC – CVD</u>	<u>Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination</u> , 72 FR 60645 (October 25, 2007) and accompanying <u>Issues and Decision Memorandum</u> .
	<i>Concrete Steel Wire Strand – PRC</i>
<u>PC Strand from the PRC.</u>	<u>Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination</u> , 75 FR 28557 (May 21, 2010).
	<i>Cut-to-Length Carbon-Quality Steel Plate – Korea</i>
<u>CTL Plate from Korea AR- Preliminary Results</u>	<u>Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from Korea AR</u> , 71 FR 11397 (March 7, 2009)
<u>CTL Plate from Korea AR</u>	<u>Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from Korea</u> , 71 FR 38861 (July 10, 2006)
	<i>Fresh Cut Flowers – Mexico</i>
<u>Flowers from Mexico</u>	<u>Fresh Cut Flowers From Mexico: Final Results of Antidumping Duty Administrative Review</u> , 61 FR 6812 (February 22, 1996)
	<i>Hot-Rolled Carbon Steel Flat Products – India</i>
<u>Hot-Rolled Steel from India 04 AR – Preliminary</u>	<u>Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Hot Rolled Carbon Steel Flat Products from India</u> , 73 FR 1578 (January 9, 2008)
	<i>Hot-Rolled Carbon Steel Flat Products – Thailand</i>
<u>Hot-Rolled Steel from Thailand</u>	<u>Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand</u> , 66 FR 50410 (October 3, 2001)
	<i>Kitchen Shelving and Racks – PRC</i>
<u>Appliance Shelves and Racks from the PRC - AD</u>	<u>Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value</u> , 74 FR 36656 (July 27, 2009)
<u>Kitchen Shelves and Racks from the PRC – CVD (Preliminary Determination)</u>	<u>Preliminary Findings Regarding Electricity Pricing in China: Kitchen Appliance Shelving Racks from the People's Republic of China (Case No. C-570-942)</u> (Memorandum to Ron Lorentzen dated May 8, 2009)

<u>Kitchen Shelves and Racks from the PRC – CVD (Final Determination)</u>	<u>Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination</u> , 74 FR 37012 (July 24, 2009) and accompanying <u>Issues and Decision Memorandum</u>
	<i>Laminated Woven Sacks – PRC</i>
<u>LWS from the PRC</u>	<u>Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances</u> , 73 FR 35639 (June 24, 2008)
	<i>Lawn Groomers – PRC</i>
<u>Lawn Groomers the PRC (Preliminary Determination)</u>	<u>Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination</u> , 73 FR 70971 (Nov 24, 2008)
<u>Lawn Groomers the PRC (Final Determination)</u>	<u>Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination</u> , 74 FR 29180 (June 19, 2009), and accompanying <u>Issues and Decision Memorandum</u>
	<i>Light-walled Rectangular Pipe and Tube – PRC</i>
<u>LWRP from the PRC</u>	<u>Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination</u> , 73 FR 35642 (June 24, 2008)
<u>LWRP Decision Memorandum</u>	<u>Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination</u> , 73 FR 35642 (June 24, 2008), and accompanying <u>Issues and Decision Memorandum</u>
	<i>Lined Paper – PRC</i>
<u>Lined Paper Memorandum</u>	<u>Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China, “Status as a Non-Market Economy”</u> (August 30, 2006)
	<i>New Pneumatic Off-the-Road Tires – PRC</i>
<u>OTR Tires from the PRC</u>	<u>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</u> , 73 FR 40480 (July 15, 2008) and accompanying <u>Issues and Decision Memorandum</u>

	<i>Oil Country Tubular Goods– PRC</i>
<u>OCTG from the PRC – CVD</u>	<u>Oil Country Tubular Goods From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination</u> , 74 FR 64045 (December 7, 2009) and accompanying <u>Issues and Decision Memorandum</u>
<u>OCTG from the PRC – AD</u>	<u>Oil Country Tubular Goods From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping</u> , 75 FR 20355 (April 19, 2010)
	<i>Potassium Chloride – Soviet Union</i>
<u>Potassium Chloride from the Soviet Union – Rescission</u>	<u>Potassium Chloride from the Soviet Union: Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition</u> , 49 FR 23438 (June 6, 1984)
	<i>Pure Magnesium – Israel</i>
<u>Pure Magnesium from Israel</u>	<u>Final Affirmative Countervailing Duty Determination: Pure Magnesium from Israel</u> , 66 FR 49351 (Sept. 27, 2001)
	<i>Softwood Lumber Products – Canada</i>
<u>Softwood Lumber from Canada AR (Preliminary Results)</u>	<u>Notice of Preliminary Results and Extension of Final Result of Countervailing Duty Administrative Review: Certain Softwood Lumber from Canada</u> , 71 FR 33932 (June 12, 2006)
	<i>Static Random Access Memory Semiconductors- Taiwan</i>
<u>Semiconductors from Taiwan</u>	<u>Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan</u> , 63 FR 8909 (February 23, 1998)
	<i>Steel Grating– China</i>
<u>Preliminary Determination</u>	<u>Steel Grating from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination</u> , 74 FR 56796 (November 3, 2009) and accompanying <u>Issues and Decision Memorandum</u>
	<i>Steel Products – Austria</i>
<u>Steel Products from Austria</u>	<u>Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria</u> , 58 FR 37217 (July 9, 1993)
	<i>Steel Products – Belgium</i>
<u>Steel Products from Belgium</u>	<u>Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium</u> , 58 FR 37273 (July 9, 1993)
	<i>Sulfanilic Acid – Hungary</i>
<u>Sulfanilic Acid from Hungary – CVD</u>	<u>Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary</u> , 67 FR 60223 (September 25, 2002) and accompanying <u>Issues and Decision Memorandum</u>

IV. NON-IDM MEMORANDA AND OTHER SHORT-CITED EXHIBITS/DOCUMENTS

Short Cite	Full Name
<u>Petition</u>	<u>Petitions for the Imposition of Antidumping and Countervailing Duties, Certain Steel Grating from People’s Republic of China</u> (May 29, 2009)
<u>Georgetown Steel Memorandum</u>	<u>Countervailing Duty Investigation of Coated Free Sheet Paper from the People’s Republic of China – Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China’s Present-Day Economy</u> (March 29, 2007)
<u>Respondent Selection Memorandum</u>	<u>Countervailing Duty Investigation: Certain Steel Grating (CSG) from the People’s Republic of China, Respondent Selection</u> (July 17, 2009)
<u>USSL Memorandum</u>	<u>Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China: Whether USSL Should be Maintained as a Mandatory Respondent</u> (October 23, 2009)
<u>New Subsidy Allegations</u>	<u>Petitioners New Subsidy Allegations</u> , (July 13, 2009)
<u>NSA Initiation</u>	<u>Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China: Initiation Analysis of New Subsidy Allegations</u> (September 21, 2009)
<u>Initial Questionnaire</u>	<u>Certain Steel Grating from the People’s Republic of China Initial Questionnaire</u> (July 20, 2009)
<u>GOC NSA Questionnaire</u>	<u>Questionnaire for the Government of the People’s Republic of China (GOC) on the New Subsidy Allegations</u> (September 21, 2009)
<u>GOC NSA QR</u>	<u>Government of China’s New Subsidy Allegation Questionnaire Response – Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China</u> (October 15, 2009)
<u>GOC Supplemental Questionnaire1</u>	<u>Supplemental Questionnaire Concerning the Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China</u> (September 29, 2009)
<u>GOC Supplemental Questionnaire2</u>	<u>Supplemental Questionnaire Concerning the Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China</u> (November 12, 2009)
<u>GOC Supplemental Questionnaire3</u>	<u>Supplemental Questionnaire Concerning the Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China</u> (January 4, 2010)
<u>GOC Supplemental Questionnaire4</u>	<u>Supplemental Questionnaire Concerning the Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China</u> (January 29, 2010)
<u>GOC Initial CVD QR</u>	<u>Government of China’s CVD Questionnaire Response – Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China</u> (September 14, 2009)
<u>GOC SQR 1</u>	<u>Government of China’s Supplemental CVD Questionnaire Response – Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China</u> (October 15 2009)

<u>GOC SQR 2</u>	<u>Government of China’s Second Supplemental CVD Questionnaire Response – Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China (December 7, 2009)</u>
<u>GOC SQR 3</u>	<u>Government of China’s Third Supplemental CVD Questionnaire Response – Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China (January 19, 2010)</u>
<u>GOC SQR 4</u>	<u>Government of China’s Fourth Supplemental CVD Questionnaire Response – Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China (February 23, 2010)</u>
<u>Post-Preliminary Determination</u>	<u>Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China (PRC): Post-Preliminary Determination Regarding the Provision of Electricity for Less than Adequate Remuneration (April 15, 2010)</u>
<u>Ningbo Jiulong Supplemental Questionnaire1</u>	<u>Supplemental Questionnaire Concerning the Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China (September 30, 2009)</u>
<u>Ningbo Jiulong Supplemental Questionnaire2</u>	<u>Supplemental Questionnaire Concerning the Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China (December 7, 2009)</u>
<u>Ningbo Jiulong Supplemental Questionnaire3</u>	<u>Supplemental Questionnaire Concerning the Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China (January 15, 2010)</u>
<u>Ningbo Jiulong Supplemental Questionnaire4</u>	<u>Supplemental Questionnaire Concerning the Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China (February 5, 2010)</u>
<u>Ningbo Jiulong Supplemental Questionnaire5</u>	<u>Supplemental Questionnaire Concerning the Countervailing Duty Investigation of Certain Steel Grating from the People’s Republic of China (March 2, 2010)</u>
<u>Ningbo Jiulong QR</u>	<u>Steel Grating from China – Ningbo Jiulong Machinery Manufacturing Co. Ltd. and Ningbo Zhenhai Jiulong Electronic Equipment Factory – Questionnaire Response (September 9, 2009)</u>
<u>Ningbo Jiulong SQR1</u>	<u>Steel Grating from China – Ningbo Jiulong Machinery Manufacturing Co. Ltd. and Ningbo Zhenhai Jiulong Electronic Equipment Factory – Supplemental Questionnaire Response (October 15, 2009)</u>
<u>Ningbo Jiulong SQR2</u>	<u>Grating from China – Ningbo Jiulong Machinery Manufacturing Co. Ltd. and Ningbo Zhenhai Jiulong Electronic Equipment Factory – Supplemental Questionnaire Response (December 17, 2009)</u>
<u>Ningbo Jiulong SQR3</u>	<u>Steel Grating from China – Ningbo Jiulong Machinery Manufacturing Co. Ltd. and Ningbo Zhenhai Jiulong Electronic Equipment Factory – Supplemental Questionnaire Response (January 25, 2010)</u>
<u>Ningbo Jiulong SQR4</u>	<u>Steel Grating from China – Ningbo Jiulong Machinery Manufacturing Co. Ltd. and Ningbo Zhenhai Jiulong Electronic Equipment Factory – Supplemental Questionnaire Response (February 23, 2010)</u>
<u>Ningbo Jiulong’s Rebuttal to Petitioners’ March 8, 2010 Submission</u>	<u>Steel Grating from China – Ningbo Jiulong Machinery Manufacturing Co. Ltd. and Ningbo Zhenhai Jiulong Electronic Equipment Factory – Rebuttal to Petitioners’ March 8, 2010 Submission (March 23, 2010)</u>

<u>CBP Entry Documents Request</u>	<u>Countervailing Duty Investigation of Steel Grating from the People's Republic of China: Request for Customs Documents (March 23, 2010)</u>
<u>CBP Entry Documents</u>	<u>Countervailing Duty Investigation of Steel Grating from the People's Republic of China: CBP Entry Documents (April 6, 2010)</u>
<u>CBP Entry Documents – Opportunity to Comment</u>	<u>Letter to All Interested Parties: Countervailing Duty Investigation of Certain Steel Grating from the People's Republic of China (April 7, 2010)</u>
<u>GOC Verification Report</u>	<u>Verification of the Questionnaire Responses Submitted by Government of China (April 14, 2010)</u>
<u>Ningbo Jiulong Verification Report</u>	<u>Verification of the Questionnaire Responses Submitted by Ningbo Jiulong Machinery Manufacturing Co. Ltd. And Ningbo Zhenhai Jiulong Electronic Equipment Factory (April 14, 2010)</u>
<u>Ningbo Jiulong Verification Report (Public Version)</u>	<u>Verification of the Questionnaire Responses Submitted by Ningbo Jiulong Machinery Manufacturing Co. Ltd. And Ningbo Zhenhai Jiulong Electronic Equipment Factory (Public Version) (April 14, 2010)</u>
<u>Ningbo Jiulong Verification Remarks and Rebuttal</u>	<u>Steel Grating from China – Ningbo Jiulong Machinery Manufacturing Co. Ltd. and Ningbo Zhenhai Jiulong Electronic Equipment Factory – Remarks and Rebuttal Concerning Verification Report (April 22, 2010)</u>
<u>Petitioners' CBP Comments</u>	<u>Steel Grating from China – Comments on CBP Entry Summary Documentation (April 19, 2010)</u>
<u>Ningbo Jiulong CBP Comments</u>	<u>Steel Grating from China – Ningbo Jiulong Machinery Manufacturing Co. Ltd. and Ningbo Zhenhai Jiulong Electronic Equipment Factory – Comments on CBP Data (April 20, 2010)</u>
<u>Ningbo Jiulong Verification Outline</u>	<u>Verification of Ningbo Jiulong Machinery Manufacturing Co. Ltd. And Ningbo Zhenhai Jiulong Electronic Equipment Factory in the Countervailing Duty Investigation of Certain Steel Grating from the People's Republic of China (March 3, 2010)</u>
<u>Hearing Request Withdrawal</u>	<u>Steel Grating from China- Withdraw Request for Hearing (May 4, 2010)</u>
<u>Petitioner Case Brief</u>	<u>Certain Steel Grating from the People's Republic of China – Petitioner Case Brief (April 26, 2010)</u>
<u>Ningbo Jiulong Case Brief</u>	<u>Certain Steel Grating from the People's Republic of China – Ningbo Jiulong Case Brief (April 26, 2010)</u>
<u>GOC Case Brief</u>	<u>Government of China's Case Brief – Countervailing Duty Investigation of Steel Grating from the People's Republic of China (April 27, 2010)</u>
<u>Xinke Case Brief</u>	<u>Steel Gratings from the People's Republic of China, C-570-948; Case Brief of Yantai Xinke Steel Structure Co. Ltd. (April 26, 2010)</u>
<u>Ex-Parte Memorandum – Ningbo Jiulong</u>	<u>Ex-Parte Meeting with Representatives of Ningbo Jiulong Machinery Manufacturing Co. Ltd (May 10, 2010)</u>
<u>Ex-Parte Memorandum – Petitioners</u>	<u>Ex-Parte Meeting with Representatives of Alabama Metal Industries, Fisher and Ludlow (May 19, 2010)</u>
<u>Petitioner Comments on Mill Test Certificates</u>	<u>Steel Grating from China – Comments on Mill Test Certificates (December 23, 2009)</u>
<u>Ex-Parte Memorandum (March 3, 2010)</u>	<u>Memorandum to the File, From Robert Bolling and Thomas Gilgunn: Antidumping Duty and Countervailing Duty Investigations of Carbon Steel Gratings from China (March 3, 2010)</u>

<u>Petitioners' Deficiency Comments</u>	<u>Petitioners' Deficiency Comments on Jiulong's Questionnaire Responses (September 18, 2009)</u>
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MISCELLANEOUS TABLE (REGULATORY, STATUTORY, ARTICLES, ETC.)

Short Cite	Full Name
<u>CVD Preamble</u>	<u>Countervailing Duties; Final Rule</u> , 63 FR 65348 (November 25, 1998)
<u>WTO Working Party Report – 10/1/2001</u>	Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001), available at http://www.wto.org
<u>Accession Protocol</u>	Protocol on the Accession of the People's Republic of China to the World Trade Organization, WT/L/432, art. 15(b) (November 23, 2001)
<u>SCM Agreement</u>	Agreement on Subsidies and Countervailing Measures, April, 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts 264 (1994)
<u>SAA</u>	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994)
<u>APA</u>	<u>Administrative Procedures Act</u> , 5 USC section 500 et seq.