

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

**FROM:** Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Determination in  
the Countervailing Duty Investigation of Drill Pipe from the  
People’s Republic of China

## I. Summary

On June 7, 2010, the Department of Commerce (the Department) signed the Preliminary Determination in the above-mentioned countervailing duty (CVD) investigation. See Drill Pipe From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, 75 FR 33245 (June 11, 2010) (Preliminary Determination). On August 9, 2010, the Department made a preliminary affirmative determination of critical circumstances. See Drill Pipe From the People’s Republic of China: Notice of Preliminary Affirmative Determination of Critical Circumstances, 75 FR 49891 (August 16, 2010) (Preliminary Critical Circumstances Determination).

We conducted verification of the questionnaire responses submitted by the Government of the People’s Republic of China (GOC) on September 10, 2010, and by the DP Master Group<sup>1</sup> from September 13 through 15, 2010, in Jiangyin City, Jiangsu Province. On October 18 and 21, 2010, we released the verification reports for the meetings held with the GOC and the DP Master Group, respectively. See Memorandum to Melissa Skinner, Director, AD/CVD Operations, Office 3, from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3 and Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “Verification of Information Submitted by the Government of the People’s Republic of China,” (October 18, 2010) (GOC Verification Report) and Memorandum to Melissa Skinner, Director, AD/CVD Operations, Office 3, from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3 and Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “Verification of Information Submitted by the DP Master Group,” (October 21, 2010) (DP Master Group Verification Report).<sup>2</sup>

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<sup>1</sup> The DP Master Group is DP Master Manufacturing Co., Ltd. (DP Master), Jiangyin Sanliang Petroleum Machinery Co., Ltd. (SPM), Jiangyin Liangda Drill Pipe Co., Ltd. (Liangda), Jiangyin Sanliang Steel Pipe Trading Co., Ltd. (SSP), and Jiangyin Chuangxin Oil Pipe Fittings Co., Ltd. (Chuangxin).

<sup>2</sup> The public version of the verification reports, and copies of all public versions and public documents submitted on

Subsequently, on October 26, 2010, the Department issued a post-preliminary determination memorandum, which addressed the countervailability of the following programs: (1) Technology to Improve Trade Research and Development (R&D) Fund, (2) Outstanding Growth Private Enterprise and Small and Medium-sized Enterprises in Jiangyin Fund,<sup>3</sup> and (3) Provision of Land-Use Rights within Designated Geographical Areas for Less Than Adequate Remuneration (LTAR). See Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding “Post-Preliminary Determination Memorandum,” (October 26, 2010).

The “Analysis of Programs” and “Subsidies Valuation Information” sections below describe the subsidy programs and the methodologies used to calculate benefits for the programs under examination. Additionally, we have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s response to the issues raised in the briefs. Based on the comments received and our verification findings, we have made certain modifications to the Preliminary Determination. We recommend that you approve the positions described in this memorandum.

Below is a complete list of the issues in this investigation for which we received case brief and rebuttal comments from interested parties:

- Comment 1: Application of CVD Law to the People’s Republic of China (the PRC)
- Comment 2: Whether Application of the CVD Law to Chinese Imports Violates the Administrative Procedure Act (APA)
- Comment 3: Double Counting/Double Remedy
- Comment 4: Cutoff Date for Identifying Subsidies
- Comment 5: Critical Circumstances
- Comment 6: Attribute Benefits From Tied Subsidies Only to the Products That Benefit
- Comment 7: Apply 2009 Short-Term Interest Rate Benchmark and Adjust Benefit Calculation Based on China’s Inflation Rate
- Comment 8: Preferential Loans to the Drill Pipe Industry
- Comment 9: Construction of the Green Tube Benchmark
- Comment 10: Ministerial Error In the Green Tube Benefit Calculation
- Comment 11: The Department Should Account For the Premium Quality of Steel Rounds
- Comment 12: Timing of Receipt of the Benefit Under the Two Free, Three Half Tax Exemption for Foreign Invested Enterprises (FIEs)
- Comment 13: Tying and Attribution Issues Regarding the Grant Received Under the Outstanding Growth Private Enterprise and Small and Medium-sized Enterprises Development in Jiangyin Fund

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the record of this investigation by the Department and interested parties, are available on the public file in the Department’s Central Records Unit.

<sup>3</sup> At the Preliminary Determination, this program was titled “Grant Received by Chuangxin.” See Preliminary Determination, 75 FR at 33261. In its July 9, 2010, second supplemental questionnaire response (at Exhibit 2), the GOC provided the circular that announced the fund under which Chuangxin received its grant and, therefore, we renamed the program the “Outstanding Growth Private Enterprise and Small and Medium-sized Enterprises in Jiangyin Fund.”

## II. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2009, through December 31, 2009, which corresponds to the PRC's and respondents' most recently completed fiscal year at the time we initiated this investigation. See 19 CFR 351.204(b)(2).

## III. Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii) - (v) provides that the Department will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) a firm that produces an input that is primarily dedicated to the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. See Fabrique de Fer de Charleroi v. United States, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

### DP Master Group

The DP Master Group companies are: DP Master, SPM, Liangda, SSP, and Chuangxin. DP Master, SPM, and Liangda are involved in the production of drill pipe.<sup>4</sup> Neither DP Master nor its affiliates are integrated producers; they purchase green tubes and steel rounds for their various pipe production facilities.<sup>5</sup>

Specifically, DP Master produces and exports drill pipe, drill collar, and heavy weight drill pipe.<sup>6</sup> SPM provides machining and threading services for the drill pipes produced by DP Master.<sup>7</sup> Liangda manufactures drill collars for DP Master and provides heat treatment services for the drill pipe produced by DP Master.<sup>8</sup> SSP purchases and supplies green tubes to DP Master and Liangda for the production of drill pipe.<sup>9</sup> Chuangxin, a holding company, is the parent

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<sup>4</sup> See DP Master Group Initial Questionnaire Response (IQR) (April 16, 2010) at 8.

<sup>5</sup> Id. at 12.

<sup>6</sup> Id. at 12. Also, DP Master is the only company within the DP Master Group that exports subject merchandise. Id. at 8.

<sup>7</sup> Id. at 13.

<sup>8</sup> Id.

<sup>9</sup> Id. at 12.

company of the other four companies; it is not involved in the production and/or sale of drill pipe.<sup>10</sup>

DP Master, SPM, Liangda, SSP, and Chuangxin are managed and/or controlled by the same individuals.<sup>11</sup> In accordance with 19 CFR 351.525(b)(6)(vi), we determine that DP Master, SPM, Liangda, SSP, and Chuangxin are cross-owned companies. For subsidies received by DP Master, SPM, and Liangda, the companies involved in the production of subject merchandise, we have attributed those subsidies to the consolidated sales of DP Master, SPM, and Liangda, exclusive of intra-company sales. For subsidies received by SSP, the trading company, we have attributed those subsidies to the consolidated sales of SSP, DP Master, SPM, and Liangda, exclusive of intra-company sales. For subsidies received by DP Master, SPM, Liangda, SSP, and Chuangxin, we have attributed those subsidies to the consolidated sales of DP Master, SPM, Liangda, SSP, and Chuangxin, exclusive of intra-company sales.

#### **IV. Allocation Period**

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 15 years. No interested party has claimed that the AUL of 15 years is unreasonable.

Further, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

#### **V. Use of Facts Otherwise Available and Adverse Inferences**

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (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.

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<sup>10</sup> *Id.* at 8.

<sup>11</sup> *Id.* at 12.

## GOC—Steel Rounds

The Department is investigating the alleged provision of steel rounds for LTAR by the GOC. We requested information from the GOC about the PRC's steel rounds industry in general and the specific companies that produced the steel rounds purchased by the respondents. In both respects, the GOC failed to provide the requested information within the established deadlines.

Regarding the PRC's steel rounds industry in general, the GOC responded at page 49 of its April 20, 2010, initial questionnaire response, that, for purposes of this investigation, it understands the term "steel rounds" to refer to billets in a round shape that may be an input used in the production of seamless pipe, including drill pipe. At page 50 of the initial questionnaire response, the GOC stated that, "there is no official statistics readily available regarding the production and consumption of steel rounds in China." The GOC added that there is no association in China that has responsibility for the production, exportation, or consumption of steel rounds.<sup>12</sup> The GOC provided no further explanation on the following requested information:

- the number of producers of steel rounds;
- the total volume and value of domestic production of steel rounds that is accounted for by companies in which the GOC maintains an ownership or management interest either directly or through other government entities;<sup>13</sup>
- the total volume and value of domestic consumption of steel rounds and the total volume and value of domestic production of steel rounds;
- the percentage of domestic consumption accounted for by domestic production;
- the names and addresses of the top ten steel rounds companies--in terms of sales and quantity produced--in which the GOC maintains an ownership or management interest, and identification of whether any of these companies have affiliated trading companies that sell imported or domestically produced steel rounds; and
- trade publications that specify the prices of the good/service within your country and on the world market. Provide a list of these publications, along with sample pages from these publications listing the prices of the good/service within your country and in world markets during the POI.

On May 12, 2010, we issued a supplemental questionnaire noting that the GOC had failed to provide the information requested in the original questionnaire regarding the steel rounds industry in the PRC.<sup>14</sup> At page 11 of its May 27, 2010, supplemental questionnaire response, the

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<sup>12</sup> See GOC IQR (April 20, 2010) at 50.

<sup>13</sup> Includes governments at all levels, including townships and villages, ministries, or agencies of those governments including state asset management bureaus, state-owned enterprises, and labor unions.

<sup>14</sup> See Department's First Supplemental Questionnaire Issued to the GOC (May 12, 2010) at 3.

GOC reiterated that “there are no official statistical data regarding these questions and would add that it is also unable to check, confirm the correctness of, let alone submit data concerning this market due to the nature of the products.”

With respect to the specific companies that produced the steel rounds purchased by the respondents, we asked the GOC to provide particular ownership information for these producers so that we could determine whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.<sup>15</sup> Specifically, we stated in our questionnaire that the Department normally treats producers that are majority-owned by the government or a government entity as “authorities.”<sup>16</sup> Thus, for any steel rounds producers that were majority government-owned, the GOC needed to provide the following ownership information if it wished to argue that those producers were not authorities:

- Translations of the most recent capital verification report pre-dating the POI and, if applicable, any capital verification reports completed during the POI. Translation of the most recent articles of association, including amendments thereto.
- The names of the ten largest shareholders and the total number of shareholders, a statement of whether any of these shareholders have any government ownership (including the percentage of ownership), and an explanation of any other affiliation between these shareholders and the government.
- The total level (percentage) of state ownership, either direct or indirect, of the company’s shares; the names of all government entities that own shares in the company; and the amount of shares held by each.
- Any relevant evidence to demonstrate that the company is not controlled by the government, e.g., that the private, minority shareholder(s) control the company.<sup>17</sup>

On page 54 of the April 20, 2010, initial questionnaire response, the GOC reported that all, but one, of the producers that supplied steel rounds to the DP Master Group were state-owned enterprises (SOEs). The GOC did not provide a response to the above questions, thereby conceding that those steel round producers are government authorities. The DP Master Group also identified the firms that produced the steel rounds that it acquired during the POI and, with the exception of a single producer, stated that all of the steel rounds acquired during the POI were produced by SOEs.<sup>18</sup>

With regard to the remaining producer of steel rounds, the GOC stated that it “does not have sufficient time to obtain the information requested at Appendix 5 for this response but will provide it in due course.”<sup>19</sup> Based on the name of the steel round producer that the GOC reported, the Department requested that the GOC provide specific documents regarding that

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<sup>15</sup> See Department’s Initial Questionnaire Issued to the GOC (February 23, 2010) at Appendix 5.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> See DP Master Group IQR at Exhibit 13.

<sup>19</sup> See GOC IQR at 54.

supplier, which were submitted to the Department in the PC Strand from the PRC investigation.<sup>20</sup> See Pre-Stressed Concrete Steel Wire Strand From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010) (PC Strand from the PRC), and accompanying Issues and Decision Memorandum (PC Strand Decision Memorandum). At page 11 of its May 27, 2010, supplemental questionnaire response, the GOC stated that the steel round producer is related to but different than the producer in PC Strand from the PRC. As such, the GOC stated that the documents requested by the Department are not applicable. The GOC, however, did not provide the information requested at Appendix 5 for this steel rounds producer.

Based on the above, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on “facts available” in making this determination. See sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available. See section 776(b) of the Act.

With respect to the GOC's failure to provide requested information about the production and consumption of steel rounds, we are assuming adversely that the GOC's dominance of the market in the PRC for this input results in significant distortion of the prices and, hence, the use of an external benchmark is warranted. With respect to the GOC's failure to provide ownership information about a certain producer of the steel rounds, we are assuming adversely that this producer is a government authority.

The Department's practice when selecting adverse information from among the possible sources of information is to ensure that the result is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.” See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998) (Semiconductors from Taiwan). 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.” See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 at 870 (1994).

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.” See, e.g., SAA at 870. The Department considers information to be corroborated if it has probative value. *Id.* 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. *Id.* at 869.

To corroborate the Department's treatment of a certain company that produced the steel rounds purchased by the DP Master Group as an authority and our finding that the GOC dominates the domestic market for steel rounds, we are relying on the Department's finding on

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<sup>20</sup> See Department's First Supplemental Questionnaire Issued to the GOC at 3.

the steel rounds industry in Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 75 FR 57444 (September 21, 2010) (Seamless Pipe from the PRC), and accompanying Issues and Decision Memorandum (Seamless Pipe Decision Memorandum). In Seamless Pipe from the PRC, the Department determined that the GOC dominates the market in the PRC for steel rounds and, therefore, the market of steel rounds is significantly distorted. See Seamless Pipe Decision Memorandum at “Use of Facts Otherwise Available and Adverse Facts Available.” Additionally, for corroboration, we are relying on the Department’s finding in Circular Welded Carbon Quality Steel Line Pipe From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008) (Line Pipe from the PRC), and accompanying Issues and Decision Memorandum (Line Pipe Decision Memorandum). In that case, the Department determined that the GOC owned or controlled the entire hot-rolled steel industry in the PRC. See Line Pipe Decision Memorandum at Comment 1. Evidence on the record of this investigation shows that many steel producers in the PRC are integrated producers, manufacturing both long products (rounds and billets) and flat products (hot-rolled steel). See Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “Additional Information on Steel Rounds,” (June 7, 2010).

Consequently, government ownership in the hot-rolled steel industry is a reasonable proxy for government ownership in the steel rounds and billets industry. As a result, we find that the use of an external benchmark is warranted for calculating the benefit that the DP Master Group received from purchasing steel rounds from SOEs during the POI. For details on the calculation of the subsidy rate, see below at “Provision of Steel Rounds for LTAR.”

### GOC—Green Tubes

The Department is investigating the alleged provision of green tubes for LTAR by the GOC. We requested information from the GOC about the PRC’s green tubes industry in general and the specific companies that produced green tubes purchased by the respondents. Regarding producers of green tubes, both the GOC and the DP Master Group reported that the only supplier of green tubes to the companies during the POI is an SOE, thereby conceding that the green tube producer is a government authority.<sup>21</sup> With respect to the production and consumption of green tubes in the PRC, the GOC failed to provide the requested information within the established deadlines.

At page 58 of the April 20, 2010 initial questionnaire response, the GOC stated that, “there is no official statistics readily available regarding the production and consumption of green tubes in China.” The GOC added that there is no association in China that has responsibility for the production, exportation, or consumption of green tubes.<sup>22</sup> The GOC provided no further explanation on the following requested information:

- the number of producers of green tubes;

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<sup>21</sup> See GOC IQR at 59; and DP Master Group IQR at Exhibit 14.

<sup>22</sup> See GOC IQR at 59.

- the total volume and value of domestic production of green tubes that is accounted for by companies in which the GOC maintains an ownership or management interest either directly or through other government entities;<sup>23</sup>
- the total volume and value of domestic consumption of green tubes and the total volume and value of domestic production of green tubes;
- the percentage of domestic consumption accounted for by domestic production;
- the total volume and value of imports of green tubes;
- the names and addresses of the top ten green tube companies--in terms of sales and quantity produced--in which the GOC maintains an ownership or management interest, and identification of whether any of these companies have affiliated trading companies that sell imported or domestically produced green tubes;
- a discussion of what laws or policies govern the pricing of green tubes, the levels of production of green tubes, or the development of green tubes capacity;
- price controls on green tubes or any price floors or ceilings;
- the role of state-owned trading companies in the distribution of both domestic and imported green tubes and whether the state-owned trading companies are affiliated with the state-owned green tube producers;
- VAT and import tariff rates in effect for green tubes;
- an explanation of any export tariff on green tubes;
- an explanation of any export licensing requirements on green tubes;
- a list of the industries in the PRC that purchase green tubes directly, using a consistent level of industrial classification; and
- trade publications that specify the prices of the good/service within your country and on the world market. Provide a list of these publications, along with sample pages from these publications listing the prices of the good/service within your country and in world markets during the POI.

On May 12, 2010, we issued a supplemental questionnaire noting that the GOC had failed to provide the information requested in the original questionnaire regarding the green tubes

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<sup>23</sup> Includes governments at all levels, including townships and villages, ministries, or agencies of those governments including state asset management bureaus, state-owned enterprises, and labor unions.

industry in the PRC.<sup>24</sup> At page 13 of its May 27, 2010, supplemental questionnaire response, the GOC stated that “there is no well-established definition for green tubes” and reiterated that “there are no official statistical data regarding these questions and that it is also unable to check, confirm the correctness of, let alone submit data concerning this market due to the nature of the products.” The GOC explained that in past cases it consulted the National Statistics Bureau (SSB) to ascertain the number of producers of a particular input and related information.<sup>25</sup> Specifically, in past cases, the GOC explained that it examined SSB, Major Industrial Output Statistics as the data source for information regarding the annual production of an input or the total production of an input accounted for by SOEs.<sup>26</sup> However, for green tubes no such data are collected or reported.<sup>27</sup> Insomuch as this source does not keep such data, the GOC explained that it has been unable to obtain any data from any alternative source.<sup>28</sup> The GOC further added that an adverse inference is not appropriate for selecting the benchmark for purchases of green tubes because even the petitioners concede that “no price data are published for unfinished green tube for drill pipe production.”<sup>29</sup>

With respect to the GOC’s failure to provide the requested information about the production and consumption of green tubes in the PRC, we find that the GOC acted to the best of its ability in responding to the Department’s information request. Unlike its response with respect to steel rounds, the GOC provided details regarding the efforts it took to obtain information regarding green tubes. Therefore, the Department must rely on “facts available” in making the determination on the PRC green tubes industry. See section 776(a)(1) of the Act. Because the record is void of any information on the production and consumption of green tubes in the PRC, we find that the use of an external benchmark is warranted for calculating the benefit that the DP Master Group received from purchasing green tubes from an SOE during the POI.

For a discussion of the external benchmark used and details on the calculation of the subsidy rate, see below at “Provision of Green Tubes for LTAR.”

### GOC—Electricity

The Department is also investigating the alleged provision of electricity for LTAR by the GOC. The GOC, however, did not provide a complete response to the Department’s February 23, 2010 initial questionnaire regarding this program. Specifically, the Department requested that the GOC explain how electricity cost increases are reflected in retail price increases.<sup>30</sup> In its April 20, 2010 questionnaire response, the GOC responded that it was unable to provide provincial price proposals for 2006 and 2008.<sup>31</sup> The GOC’s response also explained theoretically how the national price increases should be formulated; however, the response did not explain the actual process that led to the price increases.<sup>32</sup> Therefore, on May 12, 2010, the Department issued a supplemental questionnaire reiterating its request for this information as well as information on the price adjustment in 2009, and the 2009 provincial price proposal for

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<sup>24</sup> See Department’s First Supplemental Questionnaire Issued to the GOC at 4.

<sup>25</sup> See GOC First Supplemental Questionnaire Response (SQR) (May 27, 2010) at 14.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id., with reference to the Petition at Volume III, page III-26.

<sup>30</sup> See Department’s Initial Questionnaire Issued to the GOC at Appendix 6.

<sup>31</sup> See GOC IQR at 62.

<sup>32</sup> Id. at 61-67.

Jiangsu Province.<sup>33</sup> The GOC, however, in its supplemental questionnaire response, did not provide the requested documents and did not provide sufficient answers to the Department's questions.<sup>34</sup> For example, we asked the GOC to explain how the National Development and Reform Commission (NDRC) developed the national price increase. In response, the GOC provided the Interim Rules on Sales Price of Electricity, but failed to provide an explanation on how the NDRC developed the national price increase.<sup>35</sup> Similarly, we asked the GOC to explain the methodology used to calculate each of the cost element increases; however, in response, the GOC stated "the methodology used to calculate each of these cost element increases are mainly common practices of costing."<sup>36</sup> We also asked the GOC to explain how all significant cost elements are accounted for within the province's price proposal. The GOC simply stated that "significant cost elements will normally be accounted for within the province's price proposal in a manner consistent with the relevant rules on costing and pricing of electricity."<sup>37</sup>

With regard to the 2009 provincial price proposal for Jiangsu Province, the Department, in its June 18, 2010, second supplemental questionnaire again requested the GOC to provide the proposal and additional information on the 2009 price adjustment.<sup>38</sup> The GOC, however, in its supplemental questionnaire response failed to provide the document or the requested explanations on the price adjustment.<sup>39</sup>

Consequently, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" in making our determination. See sections 776(a)(1), 776(a)(2)(A) and (B) of the Act. Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information as it did not explain why it was unable to provide the requested information. Therefore, an adverse inference is warranted in the application of facts available. See section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act.

We have also relied on an adverse inference by selecting the highest electricity rates that were in effect during the POI as our benchmarks for determining the existence and amount of any benefit under this program. See sections 776(b)(2) and (4) of the Act. The GOC reported that the 2008 provincial rate schedules were applicable during the POI until new provincial rate schedules went into effect in November 2009.<sup>40</sup> As such, we have used the 2008 provincial electricity tariff schedules as a benchmark rate source for the period January 2009 to mid-November 2009, and the 2009 provincial electricity tariff schedules as a source for the period mid-November 2009 through December 2009. For the 2008 electricity rates that were in effect during the first part of the POI (i.e., from January 2009 through mid-November 2009), at the Preliminary Determination, we placed on the record of this investigation, the July 1, 2008 electricity rate schedules, which were submitted to the Department by the GOC in the CVD investigation on PC Strand from the PRC, and which reflect the highest rates that the respondents would have paid in the PRC during the first part of the POI. See PC Strand Decision

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<sup>33</sup> See Department's First Supplemental Questionnaire Issued to the GOC at 5-9.

<sup>34</sup> See GOC First SQR at 17-24.

<sup>35</sup> Id. at 18.

<sup>36</sup> Id. at 22.

<sup>37</sup> Id.

<sup>38</sup> See Department's Second Supplemental Questionnaire Issued to the GOC (June 18, 2010) at 4.

<sup>39</sup> See GOC Second SQR (July 9, 2010) at 19-21.

<sup>40</sup> See GOC First SQR at 24.

Memorandum at “Federal Provision of Electricity for LTAR.” Specifically, we selected the highest rates for the “large industrial users” category for the peak, valley, and normal ranges and the highest rate for electricity consumed by office buildings.<sup>41</sup> See Memorandum to File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “Electricity Rate Data,” (June 7, 2010). For the 2009 electricity rates that were in effect during the second part of the POI (i.e., mid-November 2009 through December 2009), we relied on the 2009 provincial electricity rate schedules that the GOC provided to the Department in its May 27, 2010, supplemental questionnaire response (at Exhibit 17) and identified the highest rates for the “large industrial users” category for the peak, valley, and normal ranges and the highest rate for electricity consumed by office buildings. See Memorandum to File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “Electricity Rate Benchmark Data 2009,” (January 3, 2011).

For details on the calculation of the subsidy rate for the DP Master Group, see below at “Provision of Electricity for LTAR.”

## **VI. Subsidies Valuation Information**

### Benchmarks and Discount Rates

The Department is investigating loans received by the DP Master Group from Chinese policy banks and state-owned commercial banks (SOCBs), which were granted on a preferential, non-commercial basis. The Department is also investigating various grants received by the DP Master Group. The Department, therefore, has derived benchmark and discount rates for use in computing the benefits provided under countervailable programs.

Benchmark for Short-Term Renminbi (RMB) Denominated Loans: Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. See 19 CFR 351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department’s regulations provide that we “may use a national interest rate for comparable commercial loans.” See 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. However, for the reasons explained in CFS from the PRC, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. See Coated Free Sheet Paper From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) (CFS from the PRC), and accompanying Issues and Decision Memorandum (CFS Decision Memorandum) at Comment 10. Because of this, any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, because Chinese banks reflect significant government intervention in the banking sector, we cannot use a national interest rate

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<sup>41</sup> At the DP Master Group verification, we learned that the companies paid an additional electricity rate for the electricity consumed by the office buildings. For more information, see “Provision of Electricity for LTAR,” section below.

for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in Softwood Lumber from Canada, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002) (Softwood Lumber from Canada), and accompanying Issues and Decision Memorandum (Softwood Lumber Decision Memorandum) at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

We are calculating the external benchmark using the regression-based methodology first developed in CFS from the PRC and more recently updated in LWTP from the PRC. See CFS Decision Memorandum at Comment 10; see also Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008) (LWTP from the PRC), and accompanying Issues and Decision Memorandum (LWTP Decision Memorandum) at "Benchmarks and Discount Rates." This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to the PRC. The benchmark interest rate takes into account a key factor involved in interest rate formation (i.e., the quality of a country's institutions), which is not directly tied to the state-imposed distortions in the banking sector discussed above.

This methodology relies on data published by the World Bank and International Monetary Fund (see further discussion below). At the time of the Preliminary Determination, the World Bank had not yet published all the necessary data relied on by the Department to compute a 2009 short-term benchmark interest rate for the PRC. Specifically, the following data were not available: World Governance Indicators and World Bank classifications of lower-middle income countries based on GNI per capita in U.S. dollars. Therefore, for the Preliminary Determination, where the use of a 2009 short-term benchmark rate was required, we applied the 2008 short-term benchmark rate for the PRC, as calculated by the Department. See 75 FR 33251-33252; see also Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "2008 Short-Term Interest Rate Benchmark," (June 7, 2010).

Since the Preliminary Determination, the World Bank has published the World Governance Indicators and World Bank classifications of lower-middle income countries based on GNI per capita in U.S. dollars. We, therefore, have used these data to compute a 2009 short-term benchmark interest rate for the PRC for use in this final determination, where the application of a 2009 short-term benchmark rate is required.

The 2009 short-term interest rate benchmark, like the 2008 benchmark rate, was computed following the methodology developed in CFS from the PRC. Specifically, we first determined which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as low income, lower-middle income, upper-middle income, and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries.<sup>42</sup> As explained in CFS from the PRC, this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund and are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the

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<sup>42</sup> See World Bank Country Classification at <http://econ.worldbank.org/>.

countries identified as “low middle income” by the World Bank. First, we did not include those economies that the Department considers to be non-market economies (NMEs) for antidumping (AD) purposes for any part of the years in question, for example: Armenia, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L’Este are dollar-denominated rates; therefore, the rates for these three countries were excluded. Finally, for the calculation of the inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.

For the resulting inflation-adjusted 2009 short-term benchmark lending rate, see Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “2009 Short-Term Interest Rate Benchmark for China,” (October 22, 2010) (2009 Short-Term Interest Benchmark Rate Memorandum). Because these are inflation-adjusted benchmarks, it is necessary to adjust the respondent’s interest payments for inflation. This was done using the PRC inflation rate as reported in the IFS. We received comments from interested parties regarding the PRC’s negative inflation rate for 2009. See Comment 7. Based on our analysis of those comments, we have incorporated the negative inflation rate reported for the PRC for 2009 into our standard benefit calculation methodology for short-term loans. See Comment 7 for further information.

Benchmark for Long-Term RMB Denominated Loans: The lending rates reported in the IFS represent short- and medium-term lending, and there are no sufficient publicly available long-term interest rate data upon which to base a robust long-term benchmark. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. See Light-Walled Rectangular Pipe and Tube From the People’s Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008) (LWRP from the PRC), and accompanying Issues and Decision Memorandum (LWRP Decision Memorandum) at “Discount Rates.” In Citric Acid from the PRC, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. See Citric Acid and Certain Citrate Salts From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 16836 (April 13, 2009) (Citric Acid from the PRC), and accompanying Issues and Decision Memorandum (Citric Acid Decision Memorandum) at Comment 14.

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

## ANALYSIS OF PROGRAMS

### **VII. Programs Determined To Be Countervailable**

#### A. Central and Provincial Policy Lending to Chinese Drill Pipe Producers<sup>43</sup>

The Department is examining whether drill pipe producers receive preferential lending through SOCBs or policy banks. The Department received a comment from the DP Master Group concerning this program (see Comment 8); however, our analysis of that comment has not led us to change our finding with regard to policy loans. Therefore, consistent with the Preliminary Determination, we continue to find that loans received by the drill pipe industry from SOCBs and policy banks were made pursuant to government directives, e.g., national and provincial five-year plans, industrial plans for the steel sector, catalogues of encouraged industries, and other government laws and regulations. See Preliminary Determination, 75 FR at 33252-33253.

Record evidence demonstrates that the GOC, through its directives, has highlighted and advocated the development of the drill pipe industry. At the national level, the GOC has placed an emphasis on the development of high-end, value-added steel products through foreign investment as well as through technological research, development, and innovation. In laying out this strategy, the GOC has identified specific steel products. For example, an “objective” of the 10<sup>th</sup> Five-Year Plan for the Metallurgical Industry (10<sup>th</sup> Five-Year Plan) was to develop key steel types that were mainly imported; high strength, anticrushing, corrosion resistant petroleum pipe, high pressure boiler pipe, and welded pipe used in oil and gas transmission pipelines were among the listed products.<sup>44</sup> Moreover, among the “Policy Measures” set out in the 10<sup>th</sup> Five-Year Plan for achieving its objectives was the encouragement of enterprises to cooperate with foreign enterprises, particularly in the production and development of high value-added products and high-tech products.<sup>45</sup>

Similarly, in the Development Policies for the Iron and Steel Industry (July 2005) (Steel Plan) at Article 16, the GOC states that it will “enhance the research and development as well as designing and manufacture levels of major technical equipment of our iron and steel industry.”<sup>46</sup> To accomplish this, the GOC states it will provide support to key steel projects relying on domestically produced and newly developed equipment and facilities, through tax and interest assistance, and scientific research expenditures.<sup>47</sup>

Later in 2005, the GOC implemented the Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation (No. 40 (2005)) (Decision 40) in order to achieve the objectives of the 11<sup>th</sup> Five-Year Plan.<sup>48</sup> Decision 40 references the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue), which outlines the projects which the GOC deems “encouraged,” “restricted,” and

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<sup>43</sup> In the Preliminary Determination, this program was titled “Policy Loans to Chinese Drill Pipe Producers.” See Preliminary Determination, 75 FR 33252.

<sup>44</sup> See GOC IQR at Exhibit 12 for the 10<sup>th</sup> Five-Year Plan at “(III) Implementation Main Points; 2. Production Structure Readjustment.”

<sup>45</sup> Id. at Exhibit 12 at “(V) Policy Measures.”

<sup>46</sup> Id. at Exhibit 10.

<sup>47</sup> Id. at Exhibit 10 at Article 16.

<sup>48</sup> Id. at Exhibit 13.

“eliminated,” and describes how these projects will be considered under government policies.<sup>49</sup> Steel tube for oil well pipe, high-pressure boiler pipe, and long-distance transportation pipe for oil and gas were named in the Industrial Catalogue as an “encouraged project.”<sup>50</sup> For the “encouraged” projects, Decision 40 outlines several support options available from the government, including financing.<sup>51</sup>

Turning to the provincial and municipal plans, the Department has described the inter-relatedness of national level plans and directives with those at the sub-national level. See LWTP Decision Memorandum at Comment 6. Based on our review of the sub-national plans, we find that they mirror the national government’s objective of supporting and promoting the production of innovative and high-value added products, including drill pipe.

Examples from the five-year plans of Jiangsu Province where the DP Master Group companies are located are as follows:

Outline of the 11th Five-Year Program for Industrial Structural Adjustment and Development in Jiangsu: “Emphasize on the development of high-quality steel products with high added value and high technological content such as motor plates, shipbuilding steel plates, \* \* \* pinion steel, oil well billet, special pipes and sticks, and highly qualified high-carbon hard wires.”<sup>52</sup>

The 10<sup>th</sup> Five-Year Program for Industrial and Commercial Restructuring of Jiangsu: “We should develop functional metallic materials, stainless steel cold-rolled sheet, high-speed railway steel, oil well and pipeline steel, \* \* \* hard alloy products and etc.”<sup>53</sup>

Special Program (Guihua) on Adjustment & Development of Iron and Steel Industries during the Eleventh Five-year Period in Jiangsu: “We shall strengthen the guidance of industrial policies, the support from credit policy and the regulation by fiscal and taxation policies to guide the direction of investments.”<sup>54</sup>

As noted in Citric Acid from the PRC:<sup>55</sup>

In general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support those objectives or goals. Where such plans or policy directives exist, then we will find a policy lending program that is specific to the named industry (or producers that fall under that industry).<sup>56</sup> Once that finding is made, the Department relies upon the analysis undertaken in CFS from the PRC<sup>57</sup> to further conclude that national and local

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<sup>49</sup> Id. at Exhibit 13 at “Chapter III Catalogue for the Guidance of Industrial Structural Adjustment.”

<sup>50</sup> Id. at Exhibit 14 for Industrial Catalogue at “VII Iron and Steel.”

<sup>51</sup> Id. at Exhibit 13 at Article 17.

<sup>52</sup> Id. at Exhibit 15 at “6. Development Priority.”

<sup>53</sup> Id. at Exhibit 17 at “Section 1. Optimizing the Industrial Structure; 1. Prioritizing the Development of High Technologies; New Materials Industry.”

<sup>54</sup> See Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “Additional Document for Jiangsu Province – Development of Iron and Steel Industries,” (June 7, 2010).

<sup>55</sup> See Citric Acid Decision Memorandum at Comment 5.

<sup>56</sup> See CFS Decision Memorandum at 49, and LWTP Decision Memorandum at 98.

<sup>57</sup> See CFS Decision Memorandum at Comment 8.

government control over the SOCBs results in the loans being a financial contribution by the GOC.<sup>58</sup>

Therefore, on the basis of the record information described above, we determine that the GOC has a policy in place to encourage the development of production of drill pipe through policy lending.

The DP Master Group reported that DP Master and SPM had outstanding loans during the POI.<sup>59</sup> In its April 20, 2010 questionnaire response, the GOC provided information on the banks that provided lending to the companies and reported that there is government ownership in each bank.<sup>60</sup> Consistent with our determination in prior proceedings, we find these banks to be SOCBs. See, e.g., Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination, 74 FR 64045 (December 7, 2009) (OCTG from the PRC), and accompanying Issues and Decision Memorandum (OCTG Decision Memorandum) at Comment 20.

The loans to drill pipe producers from SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (see section 771(5)(E)(ii) of the Act). Finally, we determine that the loans are de jure specific within the meaning of section 771 of the Act because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the drill pipe industry.

To calculate the benefit, we compared the amount of interest DP Master and SPM paid on their outstanding loans to the amount of interest they would have paid on comparable commercial loans. See 19 CFR 351.505(a). In conducting this comparison, we used the interest rates described in the "Benchmarks and Discount Rates" section above and the methodology discussed in the Department's position to Comment 7. We have attributed benefits under this program to the total consolidated sales of DP Master, SPM, and Liangda (exclusive of intra-company sales), as discussed in the "Attribution of Subsidies" section above. On this basis, we determine a countervailable subsidy of 0.65 percent ad valorem for the DP Master Group.<sup>61</sup>

## B. Two Free, Three Half Tax Exemption for FIEs

The Foreign Invested Enterprise and Foreign Enterprise Income Tax Law (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for FIEs in the PRC. The intent of this law is to attract foreign businesses to the PRC. According to Article 8 of the FIE Tax Law, FIEs which are "productive" and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed "productive" if they qualify under Article 72 of the Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of

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<sup>58</sup> See Certain New Pneumatic Off-The-Road Tires From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) (OTR Tires from the PRC), and the accompanying Issues and Decision Memorandum (OTR Tires Decision Memorandum) at 15; and LWTP Decision Memorandum at 11.

<sup>59</sup> See DP Master Group IQR at 21.

<sup>60</sup> See GOC IQR at 10-11.

<sup>61</sup> The final rate is different than the preliminary rate because of the application of a 2009 short-term interest rate benchmark, where appropriate, and the use of sales data, in the denominator, that were revised at verification.

Foreign Investment Enterprises and Foreign Enterprises. DP Master and Liangda are “productive” FIEs and received benefits under this program during the POI.<sup>62</sup> SPM, SSP, and Chuangxin are domestically-owned companies.<sup>63</sup>

We determine that the exemption or reduction in the income tax paid by “productive” FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. See sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We further determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, “productive” FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. Our approach in this regard is unchanged from the Preliminary Determination and is consistent with the Department’s practice. See Preliminary Determination, 75 FR at 33253-33254; see also CFS Decision Memorandum at “Two Free Three Half Program” and Citric Acid Decision Memorandum at “Two Free Three Half Program.”

For the 2008 tax year (for which tax returns were filed during the POI), DP Master was in its third year of profitability and was eligible for a 50 percent reduction in its income tax liability.<sup>64</sup> Liangda was in its first year of eligibility and received a 100 percent reduction in its income tax liability for tax year 2008.<sup>65</sup>

We received a comment from the DP Master Group regarding the timing of receipt of the benefit under this program. See Comment 12. After considering that comment, we have not modified our approach to this program for this final determination. As such, to calculate the benefit, we treated the income tax savings enjoyed by DP Master and Liangda with regard to their annual income tax returns filed during the POI as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings realized by DP Master and Liangda, we subtracted from the income tax that would have paid in absence of the program with the income tax actually paid by the companies. We then divided the companies’ combined tax savings realized in the POI by the total consolidated sales of DP Master, SPM, and Liangda (exclusive of intra-company sales), as discussed in the “Attribution of Subsidies” section above. On this basis, we determine a countervailable subsidy of 9.24 percent ad valorem for the DP Master Group.<sup>66</sup>

Further, the respondents reported that the GOC terminated the Two Free, Three Half Tax Exemption for FIEs on January 1, 2008, under the 2008 Enterprise Income Tax Law (EITL).<sup>67</sup> We find that respondents’ claim of termination does not meet the requirements specified under 19 CFR 351.526(d)(1), which provide that the Department will not find a program to be terminated and a program-wide change warranted if it finds that the administering authority continues to provide residual benefits under the program. As indicated in the EITL and the Notice of the State Council on the Implementation of the Transitional Preferential Policies in Respect of the Enterprise Income Tax (Transitional Period Notice),<sup>68</sup> from January 1, 2008, enterprises that previously enjoyed this program may continue to enjoy any preferential treatment previously enjoyed until the expiration of the transitional time period. For enterprises

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<sup>62</sup> See DP Master Group IQR at 29-30.

<sup>63</sup> Id. at 15-16.

<sup>64</sup> Id. at 29-30.

<sup>65</sup> Id.

<sup>66</sup> The final rate is different than the preliminary rate because of the use of sales data, in the denominator, that were revised at verification.

<sup>67</sup> See GOC IQR at 17 and Exhibit 25 for the EITL.

<sup>68</sup> Id. at Exhibit 26 for the Transitional Period Notice.

that previously had not enjoyed preferential treatment, the preferential time period shall be calculated from 2008. The GOC reported that this program will be terminated at the expiration of the transitional period in 2012. As such, this program continues to provide countervailable benefits to eligible companies.

C. Exemption from City Construction Tax and Education Tax for FIEs

Pursuant to the Circular Concerning Temporary Exemption from Urban Maintenance and Construction Tax and Additional Education Fees for Foreign-Funded and Foreign Enterprises (GUOSHUIFA {1994} No. 38), the local tax authorities exempt all FIEs and foreign enterprises from the construction tax and education fee surcharge.<sup>69</sup> The construction and education tax is based on the amount of product tax, value added tax, and/or business tax actually paid by the taxpayer.<sup>70</sup> For taxpayers located in urban areas, the city construction tax rate is seven percent; for taxpayers located in counties or townships, the rate is five percent; and for taxpayers located in areas other than urban areas, counties, and townships, the rate is one percent.<sup>71</sup> Regarding the education fee surcharge, the DP Master Group reported that FIEs pay only one percent of the actual amount of the product tax, value-added tax, and business tax paid, whereas other entities pay four percent of that amount.<sup>72</sup> DP Master and Liangda are FIEs and, therefore, received exemptions under this program.

At the verification of the DP Master Group, we verified the construction tax which DP Master and Liangda paid (i.e., zero percent) and the tax rate that should have been paid (i.e., 5.0 percent).<sup>73</sup> Similarly, we verified the education surcharge which DP Master and Liangda paid (i.e., 1.0 percent) and the tax rate that should have been paid (i.e., 4.0 percent).<sup>74</sup>

Consistent with our approach in the Preliminary Determination and the Department's practice, we determine that the exemptions from the city construction tax and education surcharge under this program confer a countervailable subsidy. See Preliminary Determination, 75 FR at 33254, see also Certain Kitchen Shelving and Racks From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009) (Racks from the PRC), and accompanying Issues and Decision Memorandum (Racks Decision Memorandum) at "Exemption from City Construction Tax and Education Tax for FIEs in Guangdong Province." The exemptions are financial contributions in the form of revenue forgone by the government and provide a benefit to the recipient in the amount of the savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemptions afforded by this program are limited as a matter of law to certain enterprises, i.e., FIEs, and, hence, specific under section 771(5A)(D)(i) of the Act. To calculate the benefit, we treated DP Master's and Liangda's tax savings and exemptions as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

To compute the amount of tax savings under this program, we compared the rates the companies would have paid for the city construction tax and education tax in the absence of the program with the rates they paid because they are FIEs. To calculate the total benefit under the

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<sup>69</sup> See GOC First SQR at Exhibit 3.

<sup>70</sup> Id. at 9; see also DP Master Group Verification Report at 12.

<sup>71</sup> See GOC First SQR at 9.

<sup>72</sup> See DP Master Group First SQR (May 18, 2010) at 33.

<sup>73</sup> See DP Master Group Verification Report at 12.

<sup>74</sup> Id.

program, we summed the construction tax savings and the education fee exemptions enjoyed by DP Master and Liangda. To calculate the net subsidy rate, we divided the companies' tax savings received during the POI by the total consolidated sales of DP Master, SPM, and Liangda (exclusive of intra-company sales), as discussed in the "Attribution of Subsidies" section above. On this basis, we determine the countervailable subsidy to be 0.58 percent ad valorem for the DP Master Group.<sup>75</sup>

D. Import Tariff and Value-Added Tax (VAT) Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. The NDRC and the General Administration of Customs are the government agencies responsible for administering this program. Qualified enterprises receive a certificate either from the NDRC or one of its provincial branches. To receive the exemptions, a qualified enterprise only has to present the certificate to the customs officials upon importation of the equipment. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology and technology upgrades. DP Master, an FIE, reported receiving VAT and tariff exemptions under this program for imported equipment.<sup>76</sup>

We determine that the VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and the exemptions provide a benefit to the recipients in the amount of the VAT and tariff savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further determine that the VAT and tariff exemptions under this program are specific under section 771(5A)(D)(i) of the Act because the program is limited to certain enterprises. As described above, only FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program. As noted above under the "Two Free/Three Half Tax Exemption for FIEs" program, the Department finds FIEs to be a specific group under section 771(5A)(D)(i) of the Act. The additional "certain domestic enterprises" requiring approval by the NDRC does not render the program non-specific. This analysis is consistent with the Preliminary Determination and the Department's approach in prior CVD proceedings. See 75 FR at 33254-33255, see also CFS Decision Memorandum at Comment 16, and Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) (OTR from the PRC), and accompanying Issues and Decision Memorandum (OTR Decision Memorandum) at "VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment on Encouraged Industries."

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year in which they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a

<sup>75</sup> The final rate is different than the preliminary rate because of the use of sales data, in the denominator, that were revised at verification.

<sup>76</sup> See DP Master Group IQR at 35.

firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2). Because that is the situation in this instance, we are examining the VAT and tariff exemptions that DP Master received under the program during the POI and prior years.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is consistent with the Department's approach in prior cases. See, e.g., Line Pipe Decision Memorandum at Comment 8 (“... we agree with petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties”). Next, we summed the amount of duty and VAT exemptions received in each year. For each year, we then divided the total grant amount by the corresponding total sales for the year in question. For certain years, DP Master's total amount of VAT and tariff exemptions was more than 0.5 percent of total sales for the respective year. Therefore, for these exemptions, we determined whether DP Master's VAT and tariff exemptions were tied to the capital structure or capital assets of the firm. We verified the items imported in those years and find that the exemptions were for capital equipment.<sup>77</sup> As such, for these exemptions, we have allocated the benefit over the 15-year AUL using discount rates described under the “Benchmarks and Discount Rates” section above.

For the other years, DP Master's total amount of the VAT and tariff exemptions was less than 0.5 percent of the total consolidated sales of DP Master, SPM, and Liangda (exclusive of intra-company sales). Therefore, for those exemptions, we expensed the benefit to the year in which the benefit was received, consistent with 19 CFR 351.524(a). On this basis, we determine the countervailable subsidy to be 0.14 percent ad valorem for the DP Master Group.

Further, the GOC reported that pursuant to the Announcement of Ministry of Finance, China Customs, and State Administration of Taxation, No. 43 (2008) (Notice 43), dated December 25, 2008, the VAT exemption linked to imported equipment under this program has been terminated but the import tariff exemption has not been terminated.<sup>78</sup> Article 1 of Notice 43 states that as of January 1, 2009, VAT on imported equipment for self-use in domestic and foreign investment projects as encouraged and stipulated in Circular 37 will be resumed and the custom duty exemption will remain in effect. Article 4 of Notice 43 provides for a transition period for the termination of the VAT exemption. Under Article 4, for a project which has a letter of confirmation prior to November 10, 2008, and the imported equipment has been declared with customs before June 30, 2009, VAT and tariff can be exempted. However, for imported equipment for which the import customs declaration is made on or after July 1, 2009, VAT will be collected. As such, the GOC stated the latest possible date for companies to claim or apply for a VAT exemption under this program was June 30, 2009. The GOC reported that there is no replacement VAT exemption program.

Under 19 CFR 351.526(a)(1) and (2), the Department may take a program-wide change to a subsidy program into account in establishing the cash deposit rate if it determines that subsequent to the POI, but before the preliminary determination, a program-wide change occurred and the Department is able to measure the change in the amount of countervailable subsidies provided under the program in question. With regard to this program, we determine

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<sup>77</sup> See DP Master Group Verification Report at 12-13.

<sup>78</sup> See GOC IQR at 28 and Exhibit 29.

that a program-wide change has not occurred and have not adjusted the cash deposit rate. Under 351.526(d)(1), the Department will only adjust the cash deposit rate of a terminated program if there are no residual benefits. However, this program still provides for residual benefits.

E. Provision of Green Tubes for LTAR

The Department is investigating whether producers, acting as Chinese government authorities, sold green tubes to the DP Master Group for LTAR. The DP Master Group (specifically, SSP) reported purchasing green tubes during the POI directly from a green tube producer. Both the DP Master Group and the GOC reported that the producer from which green tubes was purchased is an SOE.<sup>79</sup> As a result, we determine that the producer, which supplied the DP Master Group with green tubes during the POI, is a government authority and provided to the DP Master Group a financial contribution, in the form of a governmental provision of a good. See section 771(5)(D)(iv) of the Act.

Having addressed the issue of financial contribution, we must next analyze whether the sale of green tubes to the DP Master Group by a producer designated as a government authority conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act. The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports, or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in Softwood Lumber from Canada, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. See Softwood Lumber Decision Memorandum at "Market-Based Benchmark."

Beginning with tier one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the Preamble:

Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

See Preamble to Countervailing Duty Regulations, 63 FR 65348, 65377 (November 25, 1998) (Preamble). The Preamble further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

In our February 23, 2010 initial questionnaire and May 12, 2010, supplemental questionnaire, we instructed the GOC to provide the percentage of green tube production accounted for by SOEs during the POI. In its initial and supplemental questionnaire responses, the GOC indicated that there were no official statistics readily available regarding the production

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<sup>79</sup> See DP Master Group IQR at Exhibit 14, and GOC IQR at 59.

and consumption of green tubes in the PRC and, therefore, unable to provide the requested information.<sup>80</sup>

Section 776(a)(1) of the Act states that if the necessary information is not available on the record, then the Department shall use the facts otherwise available (FA) in reaching the applicable determination. In this investigation, the GOC has stated, for the various reasons noted above in “Use of Facts Otherwise Available and Adverse Inferences,” that the data requested by the Department do not exist and, therefore, it is unable to obtain the percentage of green tube production accounted for by SOEs during the POI. As a result, we lack the necessary information to determine whether the GOC has a predominant role in the domestic market for this input that results in significant distortion of the prices. The Department, however, finds no evidence that the GOC is not cooperating to the best of its ability and, thus, we determine that the application of FA is warranted.

We note that the Department has determined in several CVD investigations involving the PRC that various steel inputs cannot serve as viable tier-one benchmarks. See, e.g., Line Pipe Decision Memorandum at Comment 5, see also PC Strand Decision Memorandum at “Provision of Wire Rod for LTAR.” Therefore, as FA, we determine that the GOC has a predominant role in the green tube market. As such, pursuant to section 776(a)(1) of the Act, we determine that there are no suitable data on actual domestic prices for green tubes, which could serve as a viable tier-one benchmark as described under 19 CFR 351.511(a)(2)(i). Petitioners submitted pricing data for imports into China for the harmonized tariff schedule (HTS) category “drill pipe, o/t stainless steel, smls, for use in drilling for oil or gas.”<sup>81</sup> However, because we find that actual transaction prices in the domestic market are distorted as a result of the government’s involvement in the market, we, therefore, determine that it is reasonable to conclude that the prices of goods that are imported into the Chinese market are also significantly distorted as a result of the government’s involvement in the market. Consequently, as there are no other available tier-one benchmark prices, we have, consistent with the Preliminary Determination, turned to tier two, *i.e.*, world market prices available to purchasers in the PRC. See Preliminary Determination, 75 FR at 33256.

The Department received comments from interested parties with regard to the tier-two benchmark for green tubes used in the Preliminary Determination (see Comment 9). Based on our analysis of the arguments submitted, we have made changes to the construction of the green tube benchmark for this final determination. For the reasons stated below in the Department’s position to Comment 9, we have modified the construction of the green tube benchmark to include prices for only OCTG seamless casing. Specifically, we have used 2009 pricing data for the J/K55, N80Q, and L80 casing products, as sourced from the Metal Bulletin Research (MBR). Both petitioners<sup>82</sup> and the DP Master Group<sup>83</sup> submitted the seamless casing price data from the MBR on the record of the investigation. We note that the Department has relied on pricing data from industry publications in recent CVD proceedings involving the PRC. See, e.g., Circular Welded Carbon Quality Steel Pipe From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical

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<sup>80</sup> See GOC IQR at 58, and GOC First SQR at 13.

<sup>81</sup> See Petitioners’ CVD Benchmark Data Submission (May 24, 2010) at Exhibit 1.

<sup>82</sup> For January 2009 through June 2009 pricing data, see Petition (December 31, 2009) at Volume I, Exhibit 15, and for July 2009 through December 2009 pricing data, see Petitioners’ Comments Regarding Preliminary Determination (May 28, 2010) at Exhibit 1.

<sup>83</sup> See DP Master Group Benchmark Rebuttal and Supplemental Factual Information Submission (May 28, 2010) at 15 and Exhibit 52.

Circumstances, 73 FR 31966 (June 5, 2008) (CWP from the PRC), and accompanying Issues and Decision Memorandum (CWP Decision Memorandum) at “Hot-Rolled Steel for LTAR,” and LWRP Decision Memorandum at “Hot-Rolled Steel for LTAR.” Additionally, concerning the comparability of seamless pipe and tube, we note that the Department has acknowledged the “overlap” between green tubes and other types of seamless pipe and tube (e.g., casing and tubing) “with respect to diameter, wall thickness, and length” as well as an overlap with regard to strength and alloy requirements. See Oil Country Tubular Goods From Austria: Initiation of Countervailing Duty Investigation, 67 FR 20739, 20740 (April 26, 2002), and accompanying Initiation Checklist at 15.

To determine whether the green tube supplier, acting as a government authority, sold green tubes to the DP Master Group for LTAR, we compared the prices that SSP paid to the supplier to the green tube benchmark price. We conducted our comparison on a monthly basis. To arrive at a single monthly benchmark green tube price, we simply averaged the J/K55, N80Q, and L80 casing prices for each month. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by SSP for its purchases of green tubes.

As explained in 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, we have added import duties and the VAT applicable to imports of green tubes into the PRC, as reported by the GOC. See 19 CFR 351.511(a)(2)(iv). In addition, in accordance with 19 CFR 351.511(a)(2)(iv), we have added ocean freight costs to our green tube benchmark price. Because our green tube benchmark consists of prices from North America, Europe, the Middle East, and Asia, we have added to the benchmark ocean freight costs from around the world. Specifically, for green tube benchmark prices from the United States, we used ocean freight rates for shipments from the United States to the PRC.<sup>84</sup> For green tubes benchmark prices from Europe, Japan, and the Middle East, we used the ocean freight utilized in OCTG from the PRC and submitted on the record of the investigation by the DP Master Group.<sup>85</sup> Specifically, we utilized an ocean freight rate corresponding to exports from Turkey, Black/Baltic Seas, Mediterranean, and London Metal Exchange (Far East) (LME). In addition, in accordance with 19 CFR 351.511(a)(2)(iv), we added inland freight costs to the green tube benchmark as well as to SSP’s domestic purchases of green tubes. Our inclusion of inland freight costs in LTAR benefit calculation is consistent with the Department’s practice. See, e.g., PC Strand Decision Memorandum at Comment 13.

Comparing the benchmark unit prices to the unit prices paid by SSP for green tubes, we determine that green tubes were provided for LTAR and that a benefit exists in the amount of the difference between the benchmark price and the prices paid by SSP for the green tubes. See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a). We calculated the total benefit by multiplying the unit benefit by the quantity of green tubes purchased.

With respect to specificity, we determine that the program is specific under section 771(5A)(D)(iii)(I) of the Act because the industries that utilize green tubes are limited. This

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<sup>84</sup> The publicly available ocean freight data were originally submitted on the record of PC Strand from the PRC and placed on the record of the instant investigation. See Memorandum to the File from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, regarding “Placement of Ocean Data on Record of Investigation,” (March 19, 2010).

<sup>85</sup> See DP Master Group IQR at Exhibit 13.

finding is in keeping with the Department’s determination in other China CVD investigations where we found the industries that used a particular steel input to be limited. See, e.g., OCTG Decision Memorandum at “Provision of Steel Rounds for LTAR.”

We further find that the GOC’s provision of green tubes for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). Therefore, to calculate the net subsidy rate, we divided the benefit by a denominator comprised of total consolidated sales of DP Master, SSP, SPM, and Liangda (exclusive of intra-company sales), as discussed in the “Attribution of Subsidies” section above. On this basis, we determine a countervailable subsidy of 7.27 percent ad valorem for the DP Master Group.<sup>86</sup>

We received a comment from the GOC concerning a ministerial error in the preliminary calculations for this program. See Comment 10. We agree that an error was made and have made the necessary correction for this final determination.

#### F. Provision of Electricity for LTAR

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the government’s provision of electricity in part on AFA, which is consistent with the Preliminary Determination. See Preliminary Determination, 75 FR at 33258.

In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. With regards to benefit, 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. The DP Master Group provided data on the electricity the companies consumed and the electricity rates paid during the POI; the Department verified that information.<sup>87</sup>

Consistent with the Department’s practice, we find that the GOC’s provision of electricity confers a financial contribution, under section 771(5)(D)(iii) of the Act, and is specific, under section 771(5A) of the Act. To determine the existence and amount of any benefit from this program, we used the verified information that the DP Master Group provided regarding the amounts of electricity that all group companies purchased and the rates they paid for that electricity during the POI. At verification, we confirmed the “large industrial users” rates that the DP Master Group paid for the electricity consumed by their production facilities. We also learned that the companies paid an additional rate for the electricity consumed by the office buildings.<sup>88</sup> Because the electricity consumed by the DP Master Group’s office buildings during the POI was not earlier reported to the Department, we gathered, at verification, the amount of electricity consumed by the office buildings for each month of the POI and the rates paid for that electricity usage.<sup>89</sup>

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<sup>86</sup> The final rate is different than the preliminary rate because of changes to the construction of the green tube benchmark, use of sales data in the denominator, which were revised at verification, corrections made to the company’s inland freight costs, and correction of a ministerial error.

<sup>87</sup> See DP Master Group IQR at Exhibit 15, and DP Master Group Verification Report at 17-19.

<sup>88</sup> See DP Master Verification Report at 17-18.

<sup>89</sup> Id. at 18.

For determining the existence and amount of any benefit under this program, we have relied on an adverse inference by selecting the highest electricity rates that were in effect during the POI as our benchmarks because of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation. See section 776(b)(4) of the Act. The GOC reported that the 2008 provincial rate schedules were applicable during the POI until new provincial rate schedules went into effect in November 2009.<sup>90</sup> As such, we have used the 2008 provincial electricity tariff schedules as a benchmark rate source for the period January 2009 to mid-November 2009, and the 2009 provincial electricity tariff schedules as a benchmark rate source for mid-November 2009 through December 2009. For the 2008 electricity rates that were in effect during the first part of the POI (i.e., from January 2009 through mid-November 2009), at the Preliminary Determination, we placed on the record of this investigation, the July 1, 2008 electricity rate schedules, which were submitted to the Department by the GOC in the CVD investigation on PC Strand from the PRC, and which reflect the highest rates that the respondents would have paid in the PRC during the first part of the POI. See Memorandum to File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "Electricity Rate Data." (June 7, 2010); see also PC Strand Decision Memorandum at "Federal Provision of Electricity for LTAR." From that information, we selected the highest rates for the "large industrial users" category for the peak, valley, and normal ranges, highest rate for electricity consumed by office buildings, and highest transmitter capacity rate. For the 2009 electricity rates that were in effect during the second part of the POI (i.e., mid-November 2009 through December 2009), we relied on the 2009 provincial electricity rate schedules that the GOC provided to the Department in its May 27, 2010, supplemental questionnaire response (at Exhibit 17) and identified the highest rates for the "large industrial users" category for the peak, valley, and normal ranges, highest rate for electricity consumed by office buildings, and highest transmitter capacity rate. See Memorandum to File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "Electricity Rate Benchmark Data 2009" (January 3, 2011).

Consistent with our approach in PC Strand from the PRC and the Preliminary Determination, to measure whether the DP Master Group received a benefit under this program, we first calculated the variable electricity cost the DP Master Group paid by multiplying the monthly kilowatt hours (KWH) consumed at each price category (e.g., peak, normal, and valley for large industrial users) by the corresponding electricity rates charged at each price category in Jiangsu Province. Next, we calculated the benchmark variable electricity cost by multiplying the monthly KWH consumed at each price category (e.g., peak, normal, and valley for large industrial users) by the highest electricity rate charged at each price category, as reflected in the electricity rate benchmark charts. To calculate the benefit for each month, we subtracted the variable electricity cost paid by DP Master Group during the POI from the monthly benchmark variable electricity cost.

For the electricity consumed by the DP Master Group's office buildings during the POI, we first calculated the electricity cost by multiplying the monthly KWH consumed by the corresponding electricity rate charged for that category of usage in Jiangsu Province. Next, we calculated the benchmark electricity cost by multiplying the monthly KWH consumed by the highest electricity rate charged for office building electricity consumption, as reflected in the electricity rate benchmark charts. To calculate the benefit for each month, we subtracted the

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<sup>90</sup> See GOC First SQR at 24.

electricity cost paid by DP Master Group during the POI from the monthly benchmark electricity cost.

To measure whether the DP Master Group received a benefit with regard to their transmitter capacity charge, we first multiplied the monthly transmitter capacity charged to the companies by the corresponding consumption quantity. Next, we calculated the benchmark transmitter capacity cost by multiplying companies' consumption quantities by the highest transmitter capacity rate reflected in the electricity rate benchmark charts. To calculate the benefit, we subtracted the transmitter costs paid by the DP Master Group during the POI from the benchmark transmitter costs.

We then calculated the total benefit received during the POI under this program by summing the benefits stemming from the DP Master Group's variable electricity payments, office building electricity payments, and transmitter capacity payments.

To calculate the net subsidy rate pertaining to electricity payments made by the DP Master Group, we divided the benefit amount by the total consolidated sales of DP Master, SPM, SSP, Liangda, and Chuangxin (exclusive of intra-company sales), as discussed in the "Attribution of Subsidies" section above. On this basis, we determine a countervailable subsidy of 0.16 percent ad valorem for the DP Master Group.<sup>91</sup>

#### G. Technology to Improve Trade R&D Fund

DP Master reported that it received a one-time award in 2009, from the Jiangsu Treasury Department under the Technology to Improve Trade R&D Fund, which benefitted the company's research and development efforts.<sup>92</sup> At the Preliminary Determination, we lacked complete information on this program to determine whether it provided a countervailable subsidy to DP Master. See Preliminary Determination, 75 FR at 33261. Subsequent to the Preliminary Determination, we issued supplemental questionnaires to both the GOC and the DP Master Group to gather more information on this program.

In its second supplemental questionnaire response, the GOC stated that this program, administered by the Financial Department of the Jiangsu Government and the Department of Commerce of Jiangsu Province, was established in 2008, for the purpose of inducing research and development activities related to export products.<sup>93</sup> The GOC reported that it was not able to obtain from the provincial authorities the regulations relating to this program.<sup>94</sup> The GOC, however, explained that an applicant's export performance or potential is considered when determining eligibility for assistance under this program and that a formal application is required each time assistance is requested.<sup>95</sup> The GOC submitted a copy of the application for receipt of assistance under this program, which requests the applicant to provide information on total exports for the prior fiscal year.<sup>96</sup>

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<sup>91</sup> The final rate is different than the preliminary rate because of the inclusion of an additional electricity rate category in the final calculations, use of 2009 electricity rate benchmarks for part of November 2009 and December 2009, and because of the use of sales data, in the denominator, that were revised at verification.

<sup>92</sup> See DP Master Group First SQR at 5-6, 8.

<sup>93</sup> See GOC Second SQR at 1.

<sup>94</sup> See GOC Third SQR (August 16, 2010) (GOC Third SQR) at 1.

<sup>95</sup> See GOC Second SQR at 3 and 7.

<sup>96</sup> Id. at Exhibit 1.

At verification, we reviewed DP Master’s application for assistance under the fund and noted that the company included export information on the form.<sup>97</sup> We also confirmed the amount of assistance that DP Master received under this program in 2009.<sup>98</sup>

On October 26, 2010, a post-preliminary determination memorandum was issued in which the Department preliminarily determined that the Technology to Improve Trade R&D Fund provides countervailable subsidies within the meaning of section 771(5) of the Act. See Post-Preliminary Determination Memorandum at 2-3. The Department did not receive any comments from interested parties to warrant a change in the countervailability finding for this program.

Therefore, for this final determination, we find that grants provided under this program constitute a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act. We further determine that the program confers a benefit under section 771(5)(E) of the Act and 19 CFR 351.504(a). We also determine that assistance under this program is contingent upon export performance and, therefore, is an export subsidy under the definition of section 771(5A)(B) of the Act. As such, this program is deemed specific under section 771(5A)(A) of the Act.

As reported by the GOC, and confirmed by DP Master at verification, the Technology to Improve Trade R&D Fund provides one-time assistance.<sup>99</sup> Therefore, consistent with 19 CFR 351.524(c)(1), we are treating the grant received under this program as “non-recurring.” To measure the benefit of the grant received in 2009 by DP Master, we first conducted the “0.5 percent test.” See 19 CFR 351.524(b)(2). We divided the total grant amount approved by the total consolidated export sales for 2009. As a result, we find that the grant is less than 0.5 percent and expensed in the year of receipt, *i.e.*, 2009. Therefore, we determine a countervailable subsidy of 0.08 percent ad valorem for the DP Master Group.

#### H. Outstanding Growth Private Enterprise and Small and Medium-sized Enterprises Development in Jiangyin Fund<sup>100</sup>

Chuangxin reported that it received a one-time award in 2009, to further the development of its products.<sup>101</sup> At the Preliminary Determination, we lacked complete information on this program to determine whether it provided a countervailable subsidy. See 75 FR at 33261. Subsequent to the Preliminary Determination, we issued supplemental questionnaires to both the GOC and the DP Master Group to gather more information on this program.

In its second supplemental questionnaire response, the GOC reported that this program, which was established in 2005, is administered by the Jiangyin Bureau of Economy and Trade

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<sup>97</sup> A copy of the completed application form was submitted at Exhibit 20 of the DP Master Group’s May 18, 2010 SQR.

<sup>98</sup> See DP Master Group Verification Report at 19.

<sup>99</sup> Id.

<sup>100</sup> At the Preliminary Determination, this program was titled “Grant Received by Chuangxin.” See Preliminary Determination, 75 FR at 33261. In its July 9, 2010, second supplemental questionnaire response (at Exhibit 2), the GOC provided the circular that announced the fund under which Chuangxin received its grant and, therefore, we renamed the program the “Outstanding Growth Private Enterprise and Small and Medium-sized Enterprises in Jiangyin Fund.”

<sup>101</sup> See DP Master Group First SQR at 17, and DP Master Group Third SQR (July 21, 2010) at 1-3. Also, at verification, we learned that the grant was actually for the expansion of DP Master’s production line, but the administering government authority instructed the company officials to list Chuangxin’s name, and not DP Master’s name, on the application. See DP Master Group Verification Report at 19-20.

and Jiangyin Bureau of Finance and is focused on enhancing the development of local private businesses and small and medium-sized enterprises.<sup>102</sup> The GOC provided the circular (i.e., “Circular for Issuing Specially Oriented Funds 2008 to the Outstanding Growth Private Enterprise and Small and Medium-Sized Enterprises in Jiangyin,” No. {2009}2), which announced the program for grants during the POI.<sup>103</sup> The GOC also submitted a blank copy of the program’s application form, which is a public document.<sup>104</sup>

The GOC stated that the export performance or export potential of an applicant or recipient is not taken into consideration when determining an applicant’s eligibility for assistance under the program.<sup>105</sup> However, the application form requests the applicant to report its export commercial value for the prior three years.<sup>106</sup> Chuangxin reported, and the Department verified, that the company did not retain a copy of the application that it submitted to the Jiangyin Bureau of Economy and Trade.<sup>107</sup> At verification, we asked the company officials to review the blank copy of the application form that was submitted on the record by the GOC and state whether they completed that application form for receipt of the grant. The company officials stated that they completed and submitted that application form for receipt of the grant.<sup>108</sup> At verification, we also confirmed the amount of the grant received by Chuangxin in 2009.<sup>109</sup>

On October 26, 2010, a post-preliminary determination memorandum was issued in which the Department preliminarily determined that the grant which Chuangxin received from the Jiangyin government authorities constitutes a countervailable subsidy. See Post-Preliminary Determination Memorandum at 3-4. The Department received a comment from the DP Master Group concerning this program. See Comment 13. After considering the comment, we have not changed our analysis of this program.

Therefore, for this final determination, we find that the grant which Chuangxin received from the Jiangyin government authorities constitutes a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act. We also determine that the grant confers a benefit under section 771(5)(E) of the Act and 19 CFR 351.504(a). Regarding specificity, section 771(5A)(B) of the Act states, “an export subsidy is a subsidy that is in law or in fact, contingent upon export performance, alone or as 1 of 2 or more conditions.” We find that the program’s application form, which solicits information on export activity, constitutes evidence that the assistance under this program is contingent upon export performance. We, therefore, determine that the grant received by Chuangxin is a de jure specific export subsidy within the meaning of section 771(5A)(B) of the Act. This finding is consistent with Department practice. See, e.g., Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination, 72 FR 60639 (October 25, 2007) (CFS from Korea), and accompanying Issues and Decision Memorandum (CFS from Korea Decision Memorandum) at “Loans Under the Industrial Base Fund.”

As reported by the GOC, this program provides one-time assistance.<sup>110</sup> Therefore, consistent with 19 CFR 351.524(c)(1), we are treating the grant received under this program as

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<sup>102</sup> See GOC Second SQR at 8.

<sup>103</sup> Id. at Exhibit 2.

<sup>104</sup> Id. at Exhibit 3.

<sup>105</sup> Id. at 10.

<sup>106</sup> Id. at Exhibit 3.

<sup>107</sup> See DP Master Group Third SQR at 2, and DP Master Group Verification Report at 20.

<sup>108</sup> See DP Master Group Verification Report at 20.

<sup>109</sup> Id.

<sup>110</sup> See GOC Second SQR at 14.

“non-recurring.” To measure the benefit of the grant received in 2009, we first conducted the “0.5 percent test.” See 19 CFR 351.524(b)(2). We divided the total grant amount approved by the total export sales for 2009. As a result, we find that the grant is less than 0.5 percent and expensed in the year of receipt, *i.e.*, 2009. Therefore, we determine a countervailable of 0.06 percent ad valorem for the DP Master Group.

## **VIII. Programs Determined Not To Provide Countervailable Benefits During the POI**

### **A. Provision of Steel Rounds for LTAR**

The Department is investigating whether producers and suppliers, acting as Chinese government authorities, sold steel rounds to the DP Master Group for LTAR. The DP Master Group (specifically, DP Master and Liangda) reported purchasing steel rounds during the POI from trading companies as well as directly from steel round producers. In all instances, the DP Master Group was able to identify the firm that produced the steel rounds that the companies acquired during the POI. In their questionnaire responses,<sup>111</sup> both the DP Master Group and the GOC indicated that, with the exception of a single producer (hereinafter referred to as Producer A), all of the steel rounds acquired by the respondents during the POI were produced by SOEs.<sup>112</sup> As a result, for those producers that the DP Master Group identified as SOEs, we determine that the producers are government authorities that provided to the DP Master Group a financial contribution, in the form of a governmental provision of a good. See section 771(5)(D)(iv) of the Act.

Regarding Producer A, in the initial questionnaire, the Department instructed the GOC to provide ownership information for all input suppliers/producers that the GOC claimed were not GOC authorities.<sup>113</sup> In its questionnaire response, the GOC stated that, with regard to Producer A, the GOC did “. . . not have sufficient time to obtain the information requested in Appendix 5 for this response but will provide it in due course.”<sup>114</sup> In the May 12, 2010, supplemental questionnaire, we stated, “to the extent that the GOC has provided information on Producer A in another investigation before the Department, please submit that information for Producer A on the record of this investigation.”<sup>115</sup> We referenced several exhibits from PC Strand from the PRC in which the GOC had supplied ownership information for an input producer with the same name as Producer A.<sup>116</sup> In its supplemental questionnaire response, the GOC claimed that, though the firms were related and had similar names, Producer A was not the same input producer as the one examined in the context of the PC Strand from the PRC.<sup>117</sup> The GOC further stated that, to the best of its knowledge, one shareholder of Producer A is a company based in Hong Kong and publicly listed on the Hong Kong and Clearing Limited stock exchanges.<sup>118</sup> The GOC did not, however, provide ownership information for Producer A as originally requested by the Department in the initial questionnaire.

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<sup>111</sup> See DP Master Group First SQR at Exhibit 41, and GOC IQR at 53-54.

<sup>112</sup> The identity of Producer A is business proprietary.

<sup>113</sup> See Department’s Initial Questionnaire Issued to the GOC at II-12, II-13, and Appendix 5.

<sup>114</sup> See GOC IQR at page 54.

<sup>115</sup> See Department’s First Supplemental Questionnaire Issued to the GOC at 3.

<sup>116</sup> Id.

<sup>117</sup> See GOC First SQR at 11.

<sup>118</sup> Id.

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.

We determine that the GOC did not provide the information requested by the Department as it pertains to Producer A. First, the GOC failed to respond to the ownership questions contained in the Department’s initial questionnaire. Second, when given a second opportunity to supply ownership information regarding Producer A, as requested in the supplemental questionnaire, the GOC, instead merely stated that the input producer examined in PC Strand from the PRC was not the same as Producer A. We find that in failing to provide the requested information the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to Producer A and determine that Producer A is a GOC authority whose sales of steel rounds to the DP Master Group during the POI constitute a financial contribution, in the form of the provision of a good, within the meaning of section 771(5)(D)(iv) of the Act.

With regard to specificity, the GOC stated that steel rounds are used by producers of various types of seamless pipe (including the drill pipe industry).<sup>119</sup> Therefore, we determine that this subsidy is specific because the recipients are limited in number. See section 771(5A)(D)(iii)(I) of the Act; see also OCTG Decision Memorandum at Comment 12. We further find the GOC’s provision of steel rounds for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3).

Having addressed the issue of financial contribution and specificity, we must next analyze whether the sale of steel rounds to the DP Master Group by producers designated as government authorities conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act. The Department’s regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in Softwood Lumber from Canada, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. See Softwood Lumber Decision Memorandum at “Market-Based Benchmark.”

Beginning with tier one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the Preamble:

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<sup>119</sup> See GOC IQR at 52.

Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

See Preamble, 63 FR 65377. The Preamble further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

In our February 23, 2010, initial questionnaire and May 12, 2010, supplemental questionnaire, we instructed the GOC to provide the percentage of steel rounds production accounted for by SOEs during the POI. In its initial and supplemental questionnaire responses, the GOC indicated that there were no official statistics readily available regarding the production and consumption of steel rounds in the PRC and, therefore, did not provide the requested information.<sup>120</sup>

Consistent with the Preliminary Determination, we determine that the GOC did not provide the information requested by the Department as it pertains to the share of steel rounds accounted for by SOEs during the POI despite having been given more than one opportunity to do so. See 75 FR at 33258-33260. We determine that, in failing to provide the requested information, the GOC did not act to the best of its ability. Therefore, in accordance with section 776(b) of the Act, we are drawing an adverse inference with respect to the percentage of steel rounds produced by SOEs during the POI. Specifically, we determine that SOEs accounted for a dominant share of the steel rounds market in the PRC during the POI and that domestic prices for steel rounds cannot serve as a viable tier-one benchmark, as described under 19 CFR 351.511(a)(2)(i). Consequently, as there are no other available tier-one benchmark prices, we have turned to tier two, i.e., world market prices available to purchasers in the PRC.

At the Preliminary Determination, we examined the record for data that could be used as a tier-two steel rounds benchmark under 19 CFR 351.511(a)(2)(ii). The DP Master Group submitted on the record prices for steel rounds, as sourced from Steel Business Briefing (SBB).<sup>121</sup> No other interested party submitted tier-two steel rounds prices. Therefore, we preliminarily used the data from the SBB to derive a tier-two, world market price for steel rounds that would be available to purchasers of steel rounds in the PRC. The Department has relied on pricing data from SBB in recent CVD proceedings involving the provision of steel rounds for LTAR. See OCTG Decision Memorandum at "Provision of Steel Rounds for LTAR." We received comments from interested parties regarding the steel rounds benchmark. Specifically, petitioners argue that the Department should adjust the benchmark price. See Comment 11. After analyzing those comments, we have decided to continue to apply the steel rounds benchmark used in the Preliminary Determination, making no adjustments.

To determine whether steel rounds suppliers, acting as government authorities, sold steel rounds to the DP Master Group for LTAR, we compared the prices that DP Master and Liangda paid to the suppliers to the steel rounds benchmark price. We conducted our comparison on a monthly basis. SBB provides multiple prices for each month of the POI. Specifically, the SBB data contain steel rounds export prices for Latin America, Turkey, the Black Sea/Baltic regions, and East Asia as well as steel rounds price data from the London Metal Exchange (LME) cash bid settlement prices series. Our regulations, at 19 CFR 351.511(a)(2)(ii), state that where there is more than one commercially available world market price, the Department will average the

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<sup>120</sup> See GOC IQR at 58, and GOC First SQR at 11-12.

<sup>121</sup> See DP Master Group IQR at Exhibit 13, and DP Master Group First SQR at Exhibit 44.

prices to the extent practicable. Therefore, consistent with 351.511(a)(2)(ii), we averaged the price series noted above. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by DP Master and Liangda for their purchases of steel rounds.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, we added import duties and the VAT applicable to imports of steel rounds into the PRC, as reported by the GOC. In addition, in accordance with 19 CFR 351.511(a)(2)(iv), we added ocean freight costs to our steel rounds benchmark price. Specifically, we added to the steel rounds benchmark the same ocean freight rates added to the steel rounds benchmark calculated in OCTG from the PRC. In addition, in accordance with 19 CFR 351.511(a)(2)(iv), we added inland freight costs to the steel rounds benchmark as well as to DP Master's and Liangda's domestic purchases of steel rounds. Our inclusion of inland freight costs in the LTAR benefit calculation is consistent with the Department's practice. See, e.g., PC Strand Decision Memorandum at Comment 13.

Comparing the benchmark unit price to the unit prices paid by the DP Master Group for steel rounds, we determine that steel rounds were not provided for LTAR and that a benefit does not exist. See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a). This finding of no benefit under this program is consistent with the Preliminary Determination. See 75 FR at 33258-33260.

#### B. Export Incentive Payments Characterized as "VAT Rebates"

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted "exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption." See 19 CFR 351.517(a); see also 19 CFR 351.102(a)(28) (for a definition of "indirect tax"). To determine whether the GOC provided a benefit under this program, we compared the VAT exemption upon export to the VAT levied with respect to the production and distribution of like products when sold for domestic consumption. The GOC reported that the VAT levied on drill pipe sales in the domestic market is 17 percent and that the VAT exemption upon the export of drill pipe is 13 percent. At the DP Master Group verification, we verified the VAT levied on domestic sales and the VAT exemption for export sales.<sup>122</sup> No comments concerning this program were presented by interested parties in their case briefs. Therefore, consistent with the Preliminary Determination, we find that the VAT exempted upon the export of drill pipe did not confer a countervailable benefit because the amount of the VAT rebated on export is lower than the amount paid in the domestic market. See 75 FR at 33260.

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<sup>122</sup> See DP Master Group Verification Report at 20.

C. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands

DP Master reported that it received a one-time award in 2008, for being a Jiangsu Province Famous Brand.<sup>123</sup> We verified the grant amount that DP Master received in 2008.<sup>124</sup> No comments concerning this program were presented by interested parties in their case briefs. Therefore, consistent with the Preliminary Determination, we continue to find that the award represents less than 0.5 percent of total consolidated sales, as well as total consolidated export sales, for DP Master, SPM, and Liangda for 2008. See 75 FR at 33260. As such, this grant is expensed in 2008, the year of receipt, under 19 CFR 351.524(b)(2), and not allocable to the POI. We therefore have not included this program in our net CVD final rate calculations. This approach is consistent with the Department's practice. See, e.g., CFS Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE," and Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France, 70 FR 39998 (July 12, 2005) (Uranium from France), and accompanying Issues and Decision Memorandum (Uranium Decision Memorandum) at "Purchases at Prices that Constitute More than Adequate Remuneration," (citing Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products From Canada, 69 FR 75917 (December 20, 2004), and accompanying Issues and Decision Memorandum at "Other Programs Determined to Confer Subsidies").

D. Scientific Innovation Award

In its May 18, 2010, submission, in response to a financial statement item, DP Master reported that it received a one-time scientific innovation award in 2008.<sup>125</sup> We verified the grant amount that DP Master received in 2008.<sup>126</sup> No comments concerning this program were presented by interested parties in their case briefs. Therefore, consistent with the Preliminary Determination, we continue to find that the award represents less than 0.5 percent of total consolidated sales, as well as total consolidated export sales, for DP Master, SPM, and Liangda for 2008. See 75 FR at 33260-33261. As such, this grant is expensed in 2008, the year of receipt, under 19 CFR 351.524(b)(2), and not allocable to the POI. We therefore have not included this program in our net CVD final rate calculations. This approach is consistent with the Department's practice. See, e.g., CFS Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE," and Uranium Decision Memorandum at "Purchases at Prices that Constitute More than Adequate Remuneration."

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<sup>123</sup> See DP Master Group IQR at 53.

<sup>124</sup> See DP Master Group Verification Report at 20-21.

<sup>125</sup> See DP Master Group First SQR at 9-10.

<sup>126</sup> See DP Master Group Verification Report at 21.

E. Development Fund Grant

In the May 18, 2010, submission, SPM reported that it received a development fund grant in 2008.<sup>127</sup> We verified the grant amount that SPM received in 2008.<sup>128</sup> No comments concerning this program were presented by interested parties in their case briefs. Therefore, consistent with the Preliminary Determination, we continue to find that the award represents less than 0.5 percent of total consolidated sales, as well as total consolidated export sales, for DP Master, SPM, and Liangda for 2008. See 75 FR at 33261. As such, this grant is expensed in 2008, the year of receipt, under 19 CFR 351.524(b)(2), and not allocable to the POI. We therefore have not included this program in our net CVD final rate calculations. This approach is consistent with the Department's practice. See, e.g., CFS Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE," and Uranium Decision Memorandum at "Purchases at Prices that Constitute More than Adequate Remuneration."

F. VAT Rebates to Welfare Enterprises

In its May 18, 2010, submission, in response to a financial statement item, SPM reported that it received VAT rebates in 2007 and 2008.<sup>129</sup> SPM explained that the rebates date back to when it was "Yinhui Plastic Steel Factory," which was a "welfare" enterprise and, thus, entitled to a refund of output VAT paid to the tax bureau in the prior year. SPM stated that a "welfare" enterprise is an enterprise which hires a certain number of handicapped persons up to 50 percent or more of total production personnel of the enterprise.<sup>130</sup> At the DP Master Group's verification, we verified the nature and purpose of the program under which SPM received the rebates.<sup>131</sup> We confirmed that the rebates were related to Yinhui Plastic Steel Factory's status as a welfare enterprise.<sup>132</sup>

No comments concerning this program were presented by interested parties in their case briefs. Therefore, consistent with the Preliminary Determination, we continue to find that, to the extent any recurring tax benefit was received in the form of a tax rebate, which may have been excessive, it would be expensed in the year of receipt, i.e., 2007 and 2008, under 19 CFR 351.524(a) and (c), and not allocable to the POI. See 75 FR at 33261. We therefore have not included this program in our net countervailing duty rate calculations. This approach is consistent with the Department's practice. See, e.g., CFS Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE," and Uranium Decision Memorandum at "Purchases at Prices that Constitute More than Adequate Remuneration."

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<sup>127</sup> See DP Master Group First SQR at 19-20.

<sup>128</sup> See DP Master Group Verification Report at 21.

<sup>129</sup> See DP Master Group First SQR at 19.

<sup>130</sup> See "Circular of the State Administration of Taxation on the Question Concerning Tax Exemption and Reduction for Social Welfare Production Units Run by Civil Affairs Departments," (Guo Shui Fa (1990) No. 127), provided at Exhibit 31 of DP Master Group's May 18, 2010 First SQR.

<sup>131</sup> See DP Master Group Verification Report at 4-5.

<sup>132</sup> Id.

## IX. Programs Determined To Be Not Used

We determine that the DP Master Group companies did not apply for or receive benefits during the POI under the programs listed below:

### A. Provision of Land-Use Rights within Designated Geographical Areas for LTAR

In the Preliminary Determination, we noted that the DP Master Group certified that none of the companies are located in a special, economic, development, or trade zone, in Jiangyin City and that none of the companies acquired land-use rights based upon being located within a special, economic, development, or trade zone during the period December 11, 2001, through December 31, 2009. See Preliminary Determination, 75 FR at 33261. We, however, recognized that there was conflicting information on the record as to whether the DP Master Group companies are or are not located in a special economic, development, or trade zone. Specifically, we noted that the business licenses for DP Master, Liangda, and Chuangxin state that these companies are located in the Shengang Industrial Zone, Jiangyin City.<sup>133</sup>

Subsequent to the Preliminary Determination, on June 18, 2010, we issued a second supplemental questionnaire to the DP Master Group and the GOC inquiring whether any company is located in any of the following zones: Tianjin Binhai New Area (TBNA), Jiangyin Economic and Development Zone (EDZ), Tianjin Economic and Technological Development Area (TEDA), High-Tech Industrial Development Zone (HTDZ), and Shengang Industrial Zone. The DP Master Group responded that “no company in the DP Master Group is located in Tianjin, thus none is located within the TBNA or the TEDA,” and “no DP Master Group company is located in a High-Tech Industrial Zone.”<sup>134</sup> The DP Master Group also stated that “according to official government maps and geographical descriptions, no DP Master Group company is located within either the Jiangyin EDZ or the Shengang Industrial Zone.”<sup>135</sup> The DP Master Group submitted maps to support their statements, a certification of the company’s street address as issued by the Jiangyin Police Department, and land-use rights certificates, which contain address information.<sup>136</sup> The DP Master Group reported that all group companies, i.e., DP Master, Liangda, SPM, SSP, and Chuangxin, operate from the same location within Chuangxin Village, Shengang Town, as indicated in the maps submitted to the Department.<sup>137</sup> Similarly, in its July 9, 2010, supplemental questionnaire response, the GOC stated that none of the DP Master Group companies are located in any of the zones about which the Department inquired.<sup>138</sup> The GOC provided a map of the administrative area of Jiangyin City, which shows the location of the Jiangyin EDZ and Shengang Industrial Zone in relation to the location of the DP Master Group.<sup>139</sup> The GOC reported that the TBNA and TEDA are located in Tianjin Province and all DP Master Group companies are located in Jiangyin City, Jiangsu Province.<sup>140</sup> The GOC also reported that there is no HTDZ in Jiangyin City.<sup>141</sup>

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<sup>133</sup> See DP Master Group IQR at Exhibit 9, page 632, 638, and 640.

<sup>134</sup> See DP Master Group Second SQR at 14.

<sup>135</sup> Id.

<sup>136</sup> Id. at Exhibit 63 and 64, and DP Master IQR at Exhibit 12 (page 677) and Exhibit 40.

<sup>137</sup> See DP Master Group Third SQR at 4.

<sup>138</sup> See GOC Second SQR at 18.

<sup>139</sup> Id. at 17 and Exhibit 7.

<sup>140</sup> Id.

<sup>141</sup> Id.

On August 17, 2010, petitioners submitted pre-verification comments, which included information that DP Master's webpage states that the company is located in the Yangtze Riverside Economic Development Zone in Jiangyin City.<sup>142</sup> On August 20, 2010, we issued to the GOC and DP Master Group a fourth supplemental questionnaire regarding the companies' location in the Yangtze Riverside Economic Development Zone. On September 2, 2010, both the GOC and DP Master Group submitted their questionnaire responses. The GOC responded that there is no legally defined, designated area named the Yangtze Riverside Economic Development Zone in Jiangsu Province, in which Jiangyin City is located.<sup>143</sup> The DP Master Group stated that the companies are not located in the Yangtze Riverside Economic Development Zone.<sup>144</sup>

As discussed in the Post-Preliminary Determination Memorandum, issued on October 26, 2010, at verification, we met with government officials to discuss the existence and location of provincial and sub-provincial economic/development zones/areas within Jiangyin City, Jiangsu Province. We verified that, in Jiangyin, there are two provincial level development zones and one sub-provincial level zone.<sup>145</sup> The provincial level zones are Jiangyin EDZ and Lingang EDZ. The sub-provincial level zone is the Shengang Industrial Park, which is administered by Shengang Town.<sup>146</sup> We collected as exhibits Jiangyin City maps on which the location of each zone is marked and official government documentation which states the boundaries of the zones.<sup>147</sup> We also verified that there is another provincial level zone in the area, the Jiangyin Jiangjiang EDZ; however, this zone, which is on the other side of the Yangtze River, is under the administration of Taizho City and not Jiangyin City. The GOC officials explained that while the Jiangyin Jiangjiang EDZ is not within Jiangyin City, they wanted to identify it because this zone may be considered by some individuals to be a Yangtze Riverside EDZ.<sup>148</sup>

At our verification meeting with the GOC, we also verified the location of the DP Master Group companies in Jiangyin City. Through queries of the database maintained by the Land Use Bureau of Jiangyin City, we confirmed that the DP Master Group companies are located in Chuangxin Village of Shengang Town, Jiangyin City.<sup>149</sup> We also examined "door plate certificates" issued by the Shengang police station which report the address of each company of the DP Master Group as Chuangxin Village, Shengang Street, Jiangyin City, with the exception of SSP which has no land-use rights and is registered at a different location, but operates at the DP Master Group location in Chuangxin Village.<sup>150</sup>

We also met with an official of the local State Administration for Industry and Commerce (SAIC) about the discrepancies in the address of the DP Master Group companies across official documents, such as business licenses, door plate certificates, and land-use rights certification. We learned that each company is responsible for the accuracy of the information submitted to the SAIC and that no follow-up examination is done by the SAIC.<sup>151</sup> The SAIC official stated that with regard to DP Master, the local SAIC simply combined all address information submitted by

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<sup>142</sup> See Petitioners' Comments for Verification (August 17, 2010) at 2.

<sup>143</sup> See GOC Fourth SQR (September 2, 2010) (GOC Fourth SQR) at 1.

<sup>144</sup> See DP Master Group Fourth SQR (September 2, 2010) (DP Master Group Fourth SQR) at 1.

<sup>145</sup> See GOC Verification Report at 2.

<sup>146</sup> *Id.* at 1-2.

<sup>147</sup> *Id.* at Exhibit 1 and Exhibits 7-11.

<sup>148</sup> *Id.* at 2.

<sup>149</sup> *Id.* at 4.

<sup>150</sup> *Id.* at 3 and Exhibit 2.

<sup>151</sup> *Id.* at 3-4.

the DP Master Group when generating the business license and reported the company's address as "Shengang Industrial Zone, Jiangyin City, Chuangxin Village."<sup>152</sup>

At verification, we confirmed that Chuangxin Village is not sited within the boundaries of the Jiangyin EDZ, Lingang EDZ, Shengang Industrial Park, Jiangyin Jiangjiang EDZ, or any other economic/development zone or area. We collected maps which show the location of the companies in Chuangxin Village in relation to the Jiangyin EDZ, Lingang EDZ, Shengang Industrial Park, and Jiangyin Jiangjiang EDZ.<sup>153</sup> We also confirmed, through examination of official documentation, that there is neither a HTDZ nor Yangtze Riverside Economic Development Zone located in Jiangyin City.<sup>154</sup> Further, we confirmed that the TBNA and TEDA are located in Tianjin and not Jiangyin City or Jiangsu Province.<sup>155</sup>

As stated in the Post-Preliminary Determination Memorandum, we preliminarily found that reliable information regarding the existence and location of economic/development areas/zones and the location of the DP Master Group in Jiangyin City was verified, and collected as exhibits, at our meetings with the government authorities. As a result of our analysis of that information, we preliminarily determined that the DP Master Group is located in Chuangxin Village of Shengang Town and is not located in any economic/development zone or area in Jiangyin City. We, therefore, preliminary determined that none of the companies acquired land-use rights for LTAR based on being located within a special, economic, or development zone or area during the period December 11, 2001, through December 31, 2009. See Post-Preliminary Determination Memorandum at 5-7.

The Department has not received any comments from interested parties to warrant a change in the Department's post-preliminary analysis that the DP Master Group did not acquire land-use rights for LTAR based on being located within a special, economic, or development zone or area during the period December 11, 2001, through December 31, 2009. Therefore, for this final determination, we determine that the DP Master Group did not use the program "Provision of Land-Use Rights within Designated Geographical Areas for LTAR."

- B. Export Loans from Policy Banks and SOCBs
- C. Treasury Bond Loans
- D. Preferential Loans for SOEs
- E. Preferential Loans for Key Projects and Technologies
- F. Preferential Lending to Drill Pipe Producers and Exporters Classified as Honorable Enterprises
- G. Debt-to-Equity (D/E) Swaps
- H. Loans and Interest Forgiveness for SOEs
- I. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment
- J. Reduction In or Exemption from Fixed Assets Investment Orientation Regulatory Tax
- K. Local Income Tax Exemption and Reduction Programs for Productive FIEs
- L. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises

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<sup>152</sup> Id.

<sup>153</sup> Id. at Exhibit 1 and Exhibit 5.

<sup>154</sup> Id. at 5.

<sup>155</sup> Id.

- M. Income Tax Reductions for Export-Oriented FIEs
- N. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
- O. Provision of Land to SOEs for LTAR
- P. Provision of Hot-Rolled Steel for LTAR
- Q. Provision of Coking Coal for LTAR
- R. Provision of Electricity at LTAR to Drill Pipe Producers Located in Jiangsu Province
- S. Provision of Water at LTAR to Drill Pipe Producers Located in Jiangsu Province
- T. State Key Technology Project Fund
- U. Export Assistance Grants
- V. Programs to Rebate Antidumping Legal Fees
- W. Grants and Tax Benefits to Loss-Making SOEs at National and Local Level
- X. Subsidies Provided to Drill Pipe Producers Located in Economic and Technological Development Zones (ETDZs) in Tianjin Binhai New Area
- Y. Subsidies Provided to Drill Pipe Producers Located in ETDZs in Tianjin Economic and Technological Development Areas
- Z. Subsidies Provided to Drill Pipe Producers Located in High-Tech Industrial Development Zones.

## **X. Analysis of Comments**

### **Comment 1: Application of CVD Law to the PRC**

The DP Master Group argues that by initiating both an AD and CVD investigation on imports of drill pipe from the PRC, while continuing to treat China as an NME for purposes of the AD law, the Department violated the statutory intent of the Act and disregarded the Court of Appeals for the Federal Circuit’s (CAFC’s) decision in Georgetown Steel<sup>156</sup> and the CIT’s decision in GPX II and GPX III.<sup>157</sup> The company asserts that the statute precludes the Department from concurrently applying the CVD law and AD NME methodology. Specifically, they claim that the exclusion of the term “non-market economy” from sections 701 and 771(5) and (5A) of the Act, combined with the use of that term in other sections, demonstrates that Congress intended to preclude the Department from applying the CVD law concurrently with the AD NME methodology.<sup>158</sup> The DP Master Group states that the absence of the NME term in section 701 of the Act is insufficient to endow the Department with discretion and, because section 771 of the Act sets forth rules and definitions that are applicable to the conduct of both CVD and AD proceedings, it too must be considered.

The company discusses that the most significant CVD-specific subsections, 771(5) and (5A) of the Act, contain no reference to NMEs. They state that NMEs are referenced in section 773 of the Act, where there is instruction on the calculation of normal value for AD investigations; however, NMEs are not referenced anywhere in the instructions on the calculation of subsidies for CVD investigations.

<sup>156</sup> See Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986) (Georgetown Steel).

<sup>157</sup> See GPX International Tire Corp. v. United States, 645 F. Supp. 2d 1231 (CIT 2009) (GPX II), and GPX International Tire Corp. v. United States, No. 10-84, slip op. (CIT August 4, 2010) (GPX III).

<sup>158</sup> See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843 (1984) (Chevron), and Bell Atlantic Telephone v. FCC, 131 F.3d 1044, 1047 (D.C. Cir. 1997) (Bell Atlantic).

The DP Master Group further discusses that prior to the recent shift in practice, of applying the CVD law and AD NME methodology concurrently, for two decades following Georgetown Steel, the Department dismissed CVD petitions involving NMEs based on the Federal Circuit's statutory analysis.<sup>159</sup> During this period, they state the Department reasoned that Congress could not have intended for it to apply the CVD law to NMEs. The DP Master Group claims that the Department's express declaration that it was unable to apply the CVD law to NMEs should have evoked some contrary response from Congress if Congress had intended the CVD law to be applicable concurrently with the AD NME methodology. However, they state that Congress adopted the Department's long-standing interpretation of Congressional intent. They note that Congress enacted the Omnibus Trade and Competitiveness Act of 1988, which was Congress' first opportunity to alter the finding in Georgetown Steel, but refused to do so by rejecting a specific amendment to the law.<sup>160</sup> They add that Congress also chose not to change the law in 1994, when it enacted the URAA. The DP Master Group asserts, that by rejecting a change in law, Congress clarified its intent that the Department does not have discretion to apply the CVD law and AD NME methodology concurrently.

Further, the company claims that the Department's previous interpretation of the current CVD law in Sulfanilic Acid from Hungary confirms this interpretation, because the determination was issued after enactment of the new CVD law. See Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary, 67 FR 60223 (September 25, 2002) (Sulfanilic Acid from Hungary), and accompanying Issues and Decision Memorandum (Sulfanilic Acid Decision Memorandum). In Sulfanilic Acid from Hungary, the Department stated that it could not apply CVD law to an NME country. See Sulfanilic Acid Decision Memorandum at Comment 1. Additionally, they assert that the Department's current application of the CVD law to the PRC is also contradicted by the Department's continued failure to accord a PRC industry involved in an AD investigation market-oriented industry status, or to accord a PRC respondent market economy status.

The DP Master Group additionally argues that case law does not support the Department's use of the CVD law to NMEs. They state that the CAFC's statutory interpretation in Georgetown Steel confirms that the CVD law cannot be applied concurrently with the AD NME Methodology. In Georgetown Steel, the company asserts the CAFC concluded that under the statutory scheme Congress intended that the AD NME methodology would remedy all unfair trade (CVD and AD) from NME countries, where the court stated:

Congress, however, has decided that the proper method for protecting the American market against selling by nonmarket economies at unreasonably low prices is through the antidumping law.<sup>161</sup>

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<sup>159</sup> See Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition: Chrome-Plated Lug Nuts and Wheel Locks From the People's Republic of China, 57 FR 10459 (March 26, 1992); Oscillating and Ceiling Fans From the People's Republic of China: Final Negative Countervailing Duty Determination, 57 FR 24018 (June 5, 1992); Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria, 58 FR 37217 (July 9, 1993); General Issues Appendix in Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria, 58 FR 37217 (July 9, 1993); SAA accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong. 2d Session, pt. 1 (1994); and Countervailing Duty Final Regulations, 63 FR 65377 (November 25, 1998).

<sup>160</sup> See section 157 of H.R. 3; and H.R. Rep. No. 100-40, pt. 1 at 138 (1987).

<sup>161</sup> See Georgetown Steel at 1318.

Congress intended that any selling by nonmarket economies at unreasonably low prices should be dealt with under the antidumping law. There is no indication in any of those statutes, or their legislative history, that Congress intended or understood that the countervailing duty law also would apply.<sup>162</sup>

The DP Master Group further asserts that, contrary to the Department’s claim of discretion under Georgetown Steel, the only discretion the CAFC acknowledged was the “broad discretion to determine the existence of a ‘bounty’ or ‘grant’ under the {CVD} law.”<sup>163</sup> The company adds that, in GPX II, the CIT found that, while the Department may have the authority to apply CVD law to products from NME countries, the Department cannot concurrently apply the AD NME methodology.<sup>164</sup>

As such, the DP Master Group argues that absent new legislation, the Department does not have the discretion to initiate this or any other CVD investigation against the PRC. Therefore, the Department must terminate this CVD investigation or calculate the AD duties according to market economy methodologies.

Petitioners respond that recently the WTO has found the Department’s application of the CVD law consistent with the United States’ WTO obligations to apply CVD law to China.<sup>165</sup>

### **Department’s Position:**

We disagree with the DP Master Group regarding the Department’s authority to apply the CVD law to the PRC. The Department’s positions on the issues raised are fully explained in multiple cases.<sup>166</sup>

Congress granted the Department the general authority to conduct CVD investigations.<sup>167</sup> In none of these provisions is the granting of this authority limited only to market economies. For example, the Department was given the authority to determine whether a “government of a country or any public entity within the territory of a country is providing . . . a countervailable subsidy . . . .”<sup>168</sup> 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.<sup>169</sup>

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<sup>162</sup> Id. at 1316.

<sup>163</sup> Id. at 1318.

<sup>164</sup> See GPX II.

<sup>165</sup> Reference to United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/R (October 22, 2010) (US-CVD), see Petitioners’ Submission of Response Brief (November 12, 2010) at 2-3.

<sup>166</sup> See, most recently, Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 59212 (September 27, 2010) (Paper for High-Quality Print from the PRC), and accompanying Issues and Decision Memorandum (Paper for High-Quality Print Decision Memorandum) at Comment 1; see also Seamless Pipe Decision Memorandum at Comment 1; OCTG Decision Memorandum at Comment 1; CFS Decision Memorandum at Comment 1; CWP Decision Memorandum at Comment 1; LWRP Decision Memorandum at Comment 1; OTR Decision Memorandum at Comment A.1; LWTP Decision Memorandum at Comment 1; and Line Pipe Decision Memorandum at Comment 16.

<sup>167</sup> See, e.g., sections 701, 771(5), and 771(5A) of the Act.

<sup>168</sup> See section 701(a) of the Act.

<sup>169</sup> See section 701(b) of the Act (providing the definition of “Subsidies Agreement country”).

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.”<sup>170</sup> 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.”<sup>171</sup> Thus, the Department based its decision upon the economic realities of Soviet-bloc economies. In contrast, the Department has previously explained that, “although price controls and guidance remain on certain ‘essential’ goods and services in the PRC, the PRC Government has eliminated price controls on most products . . . .”<sup>172</sup> Therefore, the primary concern about the application of the CVD law to NMEs originally articulated in the Wire Rod from Poland and Wire Rod from Czechoslovakia cases is not a significant factor with respect to the PRC’s present-day economy. Thus, the Department has concluded that it is able to determine whether subsidies benefit imports from the PRC.

The Georgetown Steel Memorandum details the Department’s reasons for applying the CVD law to the PRC and the legal authority to do so. As explained in the Georgetown Steel Memorandum, Georgetown Steel does not rest on the absence of market-determined prices, and the decision to apply the CVD law to the PRC does not rest on a finding of market-determined prices in the PRC.<sup>173</sup> 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.<sup>174</sup> As the Georgetown Steel Memorandum also makes clear, it is the absence of central planning, not market-determined prices, that makes subsidies identifiable and the CVD law applicable to the PRC.<sup>175</sup>

As the Department further 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.<sup>176</sup> The problem is such that there is no basis for either outright rejection or acceptance of all the PRC’s prices or costs as CVD benchmarks because the nature, scope, and extent of government controls and interventions in relevant markets can vary tremendously from market-to-market. Some of the PRC prices or costs will be useful for benchmarking purposes, *i.e.*, are market-determined, and some will not, and the Department will make that determination on a case-by-case basis, based on the facts and evidence on the record. Thus, because of the mixed, transitional nature of

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<sup>170</sup> See Carbon Steel Wire Rod From Poland; Final Negative Countervailing Duty Determination, 49 FR 19374 (May 7, 1984) (Wire Rod from Poland) and Carbon Steel Wire Rod From Czechoslovakia: Final Negative Countervailing Duty Determination, 49 FR 19370 (May 7, 1984) (Wire Rod from Czechoslovakia).

<sup>171</sup> See, e.g., Wire Rod from Czechoslovakia, 49 FR at 19373.

<sup>172</sup> See Memorandum from Shana Lee-Alaia and Lawrence Norton to David M. Spooner, Assistant Secretary of Commerce, regarding “Countervailing Duty Investigation of Coated Free Sheet Paper from the People’s Republic of China, “Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China’s Present-Day Economy,” (March 29, 2007) (Georgetown Steel Memorandum), a public document available at <http://ia.ita.doc.gov/download/nme-sep-rates/prc-cfsp/china-cfs-georgetown-applicability.pdf> and the Department’s Central Records Unit at room 7046 of the main Commerce building.

<sup>173</sup> Id. at 4-5.

<sup>174</sup> Id. at 5.

<sup>175</sup> Id.

<sup>176</sup> Id.

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 cannot be applied 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.<sup>177</sup> The issue in Georgetown Steel was whether the Department could apply CVD laws (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 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 those exports, because it could not determine whether that government had bestowed a subsidy (then called a "bounty or grant") upon them.<sup>178</sup> While the Department did not explicitly limit its decision to the specific facts of the Soviet Bloc in the mid-1980s, its conclusion was based on those facts. The CAFC accepted the Department's logic, agreeing that, "Even if one were to label these incentives as a 'subsidy,' in the loosest sense of the term, the governments of those nonmarket economies would in effect be subsidizing themselves."<sup>179</sup> 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.<sup>180</sup> Thus, Georgetown Steel did not hold that the Department could choose not to apply the CVD law to exports from NME countries, where it was possible to do so. Instead, the CAFC simply deferred to the Department's determination that it was unable to apply the CVD law to exports from Soviet Bloc countries in the mid-1980s.

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

{T}he agency administering the countervailing duty law has broad discretion in determining the existence of a "bounty" or "grant" under that law. We cannot say that the Administration's conclusion that the benefits the Soviet Union and the German Democratic Republic provided for the export of potash to the United States were not bounties or grants under section 303 was unreasonable, not in accordance with law or an abuse of discretion. Chevron at 842-845.

Georgetown Steel at 1318 (emphasis added).

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.

The DP Master Group's 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

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<sup>177</sup> See Georgetown Steel at 1318.

<sup>178</sup> See, e.g., Wire Rod from Czechoslovakia, 49 FR at 19373.

<sup>179</sup> See Georgetown Steel at 1316.

<sup>180</sup> Id. at 1318.

the CVD law to NMEs on several occasions. For example, on October 10, 2000, Congress passed the PNTR Legislation. In section 413 of that law, which is now codified in 22 U.S.C. § 6943(a)(1), Congress authorized funding for the Department to monitor “compliance by the People’s Republic of China with its commitments under the World Trade Organization (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.”<sup>181</sup> The PRC was designated as an NME at the time this bill was passed, as it is today. Thus, Congress not only contemplated that the Department possesses the authority to apply the CVD law to the PRC, but authorized funds to defend any CVD measures the Department might apply.

This statutory provision is not the only instance where Congress has expressed its understanding that the CVD law may be applied to NMEs in general and the PRC in particular. In that same trade law, Congress explained that “{o}n November 15, 1999, the United States and the People’s Republic of China concluded a bilateral agreement concerning the terms of the People’s Republic of China’s eventual accession to the World Trade Organization.”<sup>182</sup> 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.”<sup>183</sup> In these statutory provisions, Congress is referring, in part, to the PRC’s commitment to be bound by the Agreement on Subsidies and Countervailing Measures (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.<sup>184</sup> 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’ 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.<sup>185</sup> 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. Further, Congress thought the provisions of the Accession Protocol important enough to direct that they be monitored and enforced, a direction codified in U.S. law.

In sum, the Department has authority to apply the CVD law to NMEs under U.S. law. Further, the Department’s decision to apply the CVD law to the PRC, as explained in the

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<sup>181</sup> See 22 U.S.C. § 6943(a)(1) (emphasis added).

<sup>182</sup> See 22 U.S.C. § 6901(8).

<sup>183</sup> See 22 U.S.C. § 6841(5).

<sup>184</sup> See CFS Decision Memorandum at Comment 1.

<sup>185</sup> See 22 U.S.C. § 6941(5).

Georgetown Steel Memorandum, is within the Department's discretion and in accordance with law. Accordingly, the Department's application of the CVD law in this proceeding is appropriate.

**Comment 2:           Whether Application of the CVD Law to Chinese Imports Violates the APA**

The GOC and DP Master Group argue that the Department's imposition of countervailing duties on Chinese imports violates the requirements of the APA, which sets procedures that must be followed when agencies formulate, amend, or repeal a rule.<sup>186</sup> The respondents assert that the Department's change of methodology to apply the CVD law to China falls within the rule-making rubric. Specifically, they state that the Department's previous long-held position that the CVD law does not apply to NMEs meets the APA's definition of a rule as "the whole or part of an agency statement of general or particular applicability and future effects designed to implement, interpret, or prescribe law or policy."<sup>187</sup> In support of their argument, that the Department's practice rose to the level of "rule," respondents discuss the Department's statements of legal interpretation regarding the application of CVD law concurrent with the application of the AD NME methodology. They state that on three past occasions the Department issued statements on the imposition of CVD duties against imports from NMEs, following a notice and comment period, and each time found that countervailing duties could not be imposed against NMEs. Those occasions were: (1) in 1984, the Department adopted its position not to apply the CVD law to NMEs; (2) in the 1993 "General Issues Appendix," the Department affirmed its 1984 decision not to apply the CVD law to NMEs; and (3) in 1998, the Department promulgated its CVD regulations confirming that it did not intend to impose CVD duties against NMEs.

The respondents assert that the Department's treatment of NMEs in the CVD context was a definitive interpretation. As such, they argue that it is not permissible for the Department to apply the CVD law to Chinese imports prior to the final amendment of the applicable rules promulgated through established rulemaking procedures. The DP Master Group adds that, although the Department issued a notice to the public on December 15, 2006, regarding the application of the CVD law to imports from the PRC, it never addressed the comments made by the parties as required by the APA.<sup>188</sup> Therefore, the company asserts, because the Department failed to follow the required procedures, the initiation of this investigation was unlawful and should be rescinded.

**Department's Position:**

We disagree with the GOC and the DP Master Group that our decision to apply the CVD law to NMEs is subject to the APA's notice-and-rulemaking procedures because those procedures do not apply to "interpretative rules, general statements of policy or procedure, or

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<sup>186</sup> Reference to 5 U.S.C. § 553(c) (opportunity to participate in the process) and 5 U.S.C. § 551(5) (providing that rulemaking includes information, amendment, or repeal of a rule).

<sup>187</sup> See 5 U.S.C. § 551(4).

<sup>188</sup> See Application of the Countervailing Duty Law to Imports From the People's Republic of China: Request for Comment, 71 FR 75507 (December 15, 2006).

practice.”<sup>189</sup> The Department’s position on this issue was fully explained in CFS from the PRC and respondents have raised no new arguments here. Therefore, we are adopting our analysis in CFS from the PRC for this proceeding, incorporated herein by reference.<sup>190</sup>

### **Comment 3: Double Counting/Double Remedy**

The GOC and DP Master Group argue that the Department cannot apply the CVD law and the AD NME methodology concurrently because such action results in unlawful double remedies. The GOC notes that the CIT held in GPX II that the Department’s current interpretation of the NME AD statute in relation to the CVD statute is unreasonable and the Department must not impose the CVD law on imports from a NME country because its methodologies can result in the imposition of a double remedy.<sup>191</sup> The GOC discusses that, on remand, the Department attempted to impose CVD remedies and to offset those countervailing duties against the respondents’ calculated AD cash deposit rate.<sup>192</sup> The court, however, held that this approach was unreasonable and noted that with this offset, the combination of the CVD margin and NME AD cash deposit rate will always equal the unaltered NME AD margin and that this renders concurrent CVD and AD investigations unnecessary. The court also held that such an offset does not comply with the statute, 19 U.S.C. § 1677(a), which list the specific offsets to export price and constructed export price that are permissible. The GOC notes that the court therefore held that the Department:

“must forego the imposition of the countervailing duty law on the nonmarket economy products before the court because its actions on remand clearly demonstrate its inability, at this time, to use improved methodologies to determine whether and to what degree double counting occurs when NME antidumping remedies are imposed on the same good, or to otherwise comply with the unfair trade statutes in this regard.”<sup>193</sup>

Agreeing with the court, the GOC and DP Master Group assert that the current AD/CVD methodologies as applied to Chinese imports are unfair and effectively punish Chinese companies twice for the same act. They assert that this unfairness comes when the Department offsets an alleged subsidy first by imposing a countervailing duty and then measures dumping by constructing normal value for comparison to U.S. prices by using surrogate values. They state that these surrogate values disregard domestic costs and prices on the assumption that those prices are “subsidized” and those surrogate values allegedly offset the subsidy element of Chinese prices.

The respondents add that double counting is acute in the drill pipe investigation because the Department is investigating the provision of inputs for LTAR. The DP Master Group provides an illustration of the double remedy in this case. They discuss that the Department preliminarily calculated a CVD margin of 4.96 percent for the provision of green tubes at LTAR. In the AD investigation, the Department uses a surrogate value for green tubes that, by

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<sup>189</sup> See CFS Decision Memorandum at Comment 2 (citing 5 U.S.C. § 553(b)(3)(A)).

<sup>190</sup> Id.

<sup>191</sup> See GPX II.

<sup>192</sup> See GPX III at 8.

<sup>193</sup> Id. at 3.

definition, does not include the 4.96 percent subsidy. They state that under the Department's current practice, however, the effect of the green tube subsidy is included in the U.S. sales used to calculate the dumping margin. Thus, in the calculation of the AD margin using the NME methodology, the Department captures the effect of the lower price due to subsidized green tube purchases and provides an antidumping duty to remedy the effect. The result, the DP Master Group asserts, is a double remedy for a single, alleged trade-distorting act.

The respondents argue that, as the CIT held in GPX III, due to the potential double counting and the inability of the Department to determine whether and to what degree this double counting is occurring, the Department should not apply CVD law while also applying AD NME methodology in a parallel AD case. The DP Master Group also argues that the Department, and not respondents, bears the burden of demonstrating that no double remedy arises through simultaneous application of the CVD law and the AD NME methodology. Until the Department develops methodologies to address this problem and can demonstrate that no double remedy exists, the respondents argue that the Department must terminate this CVD investigation.

Petitioners respond that a WTO panel recently found that nothing in the WTO agreements is inconsistent with applying antidumping duties under an NME methodology while at the same time applying countervailing duties.<sup>194</sup>

### **Department's Position:**

We disagree with the GOC and DP Master Group. First, their reliance on the GPX decisions is misplaced because those decisions are not final and conclusive because a final order has not been issued and all appellate rights have not been exhausted. Second, the respondents have not cited to any statutory authority for not imposing countervailing duties so as to avoid the alleged double remedies or for making an adjustment to the CVD calculations to prevent an incidence of alleged double remedies. If any adjustment to avoid a double remedy is possible, it would only be in the context of the AD investigation. We note that this position is consistent with the Department's decisions in recent PRC CVD cases.<sup>195</sup> The Department's position is more fully detailed in the final determination of the concurrent antidumping investigation.

### **Comment 4: Cutoff Date for Identifying Subsidies**

The DP Master Group claims that the Department has applied an incorrect cutoff date for measuring countervailable subsidies. They assert that the cutoff date should be January 1, 2005, because that date was the beginning of the POI in CFS from the PRC and it was only then that the Department, in the preliminary determination, claimed that the CVD law was applicable to the PRC. They discuss that the Department's use of December 11, 2001, as the cutoff date conflicts with its past practice of applying the CVD law only after finding that a country is no longer an NME. The DP Master Group notes that when Sulfanilic Acid from Hungary was published, the Department's determination that Hungary was no longer an NME coincided with the determination that Hungary was now subject to the CVD law, thereby setting a clear cutoff

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<sup>194</sup> See US-CVD at 236-60.

<sup>195</sup> See, e.g., Paper for High-Quality Print Decision Memorandum at Comment 3; Seamless Pipe Decision Memorandum at Comment 3; and OCTG Decision Memorandum at Comment 2.

date for the application of the CVD law. See Sulfanilic Acid Decision Memorandum at Comment 1.

Petitioners disagree with the Department's decision to not investigate subsidies bestowed prior to the date of China's WTO accession. For several reasons, they argue that the Department should reconsider its decision. First, they note that the CIT recently ruled in GPX II, that the Department must determine if it can measure specific pre-accession subsidies where it investigates Chinese subsidy programs. Second, they state that a condition of China's WTO accession was that China would become subject to subsidies disciplines and disclose countervailable subsidies that it had provided at or before its WTO accession to permit other members to address them. Third, they discuss that the Congressional approval of China's WTO accession was conditioned upon China's commitment to adhere to subsidies disciplines. Therefore, petitioners assert that, while most of the companies involved in this case were founded after the date of China's accession, the Department should investigate any pre-accession subsidies to them or their predecessors.

The GOC argues that petitioners' arguments must be rejected because they provide no basis upon which to contravene the Department's precedent of refusing to examine alleged subsidy benefits received prior to when the Department determines that the CVD law applies to a particular country. The GOC asserts that the cutoff date should be no earlier than January 1, 2005, the start of the POI in CFS from the PRC.

The DP Master Group states that the Department need not address petitioners' argument because all companies were either formed or acquired after December 2001.<sup>196</sup> They add that the acquired company,<sup>197</sup> which existed prior to December 2001, received only recurring subsidies that would be expensed in the year of receipt rather than allocated, as verified by the Department.<sup>198</sup>

### **Department's Position:**

Consistent with recent PRC CVD determinations,<sup>199</sup> we continue to find that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law, and have adopted December 11, 2001, the date on which the PRC became a member of the WTO, as that date.

We have selected December 11, 2001, because of the reforms in the PRC's economy in the years leading up to that country's WTO accession and the linkage between those reforms and the PRC's WTO membership.<sup>200</sup> 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

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<sup>196</sup> See DP Master Group IQR at 14-16, and DP Master Group Verification Report at 2-3.

<sup>197</sup> Jiangyin Yinhui Plastic Steel Factory – now known as SPM.

<sup>198</sup> See DP Master Group Verification Report at 4-5.

<sup>199</sup> See, e.g., Paper for High-Quality Print Decision Memorandum at Comment 4; Seamless Pipe Decision Memorandum at Comment 4; and OCTG Decision Memorandum at Comment 3.

<sup>200</sup> See Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001).

language in Article 15(b) regarding benchmarks for measuring subsidies and the PRC's assumption of obligations with respect to subsidies provide support for the notion that the PRC economy had reached the stage where subsidies and disciplines on subsidies (e.g., countervailing duties) were meaningful.

We disagree that adoption of the December 11, 2001, date is unfair because parties did not have adequate notice that the CVD law would be applied to the PRC prior to January 1, 2005, (the start of the POI in the investigation of CFS from the PRC). Initiation of CVD investigations against imports from the PRC and possible imposition of duties was not a settled matter even before the December 11, 2001, date. For example, in 1992, the Department initiated a CVD investigation on lug nuts from China. See Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks From the People's Republic of China, 57 FR 877 (January 9, 1992). In 2000, Congress passed PNTR Legislation (as discussed in Comment 1) which authorized funding for the Department to monitor "compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China."<sup>201</sup> Thus, the GOC and PRC exporters were on notice that countervailing duties were possible well before January 1, 2005.

We further disagree that Sulfanilic Acid from Hungary is controlling in this case. 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.

Additionally, with regard to petitioners' argument that subsidies granted prior to the cut-off date should be included in this investigation, we first do not find petitioners' reliance on GPX II to be persuasive because we do not agree with the decision, and because the decision is not final and conclusive. We also reiterate that economic changes that occurred leading up to and at the time of WTO accession allow us to identify or measure countervailable subsidies bestowed upon Chinese producers. In this regard, the Department is not providing the PRC with preferential treatment. The Department is simply acknowledging its ability to identify and measure subsidies as of December 11, 2001, based on economic conditions in the PRC. Therefore, the Department is fully within its authority in not applying the CVD law to the PRC prior to December 11, 2001.<sup>202</sup>

As such, for the above reasons and consistent with CWP from the PRC, as well as other recent 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.<sup>203</sup>

#### **Comment 5: Critical Circumstances**

Contrary to the Department's preliminary finding, the DP Master Group argues that critical circumstances do not exist with respect to imports of drill pipe from China. They first assert that producers, exporters, or importers had knowledge of, or a reason to believe that a proceeding was likely almost six months prior to the filing of the case. In support of their

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<sup>201</sup> See 22 U.S.C. § 6943(a)(1) (emphasis added).

<sup>202</sup> See Georgetown Steel at 1318.

<sup>203</sup> See, e.g., CWP Decision Memorandum at Comment 2.

argument, the DP Master Group refers to a declaration from the partner and owner of a company involved with drill pipe, drill collar, and other drilling equipment, that was submitted to the Department. They claim that the declaration demonstrates that such parties had reason to believe in June 2009, that a proceeding was likely.<sup>204</sup> They assert that, while the Department characterizes the information contained in the declaration to refer merely to “fundraising that might result in the event of an investigation,”<sup>205</sup> the declaration, in fact, provides particular evidence that importers, exporters, or producers had reason to believe that a proceeding was likely.

The DP Master Group states that the Department’s characterization of the record evidence as “speculative” ignores the low regulatory standard and the nature of evidence relied upon by the Department in the past to justify moving the base and comparison periods. They state that the regulation requires no more than “importers, or exporters or producers {having a} reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely.”<sup>206</sup> They add that in similar contexts, the CIT has explained that “The ‘reason to believe or suspect’ standard is thus a relatively ‘low threshold’ -- less demanding than ZMC suggests, and clearly less rigorous than required for an actual finding of ... fact.”<sup>207</sup>

The DP Master Group notes that in past cases the Department has modified the base and comparison periods when non-specific newspaper articles provided speculation that a proceeding was likely. For example, in Steel Wire Rod from Germany, the Department relied upon two articles in a steel industry bulletin that mentioned possible AD cases against four countries, not including Germany, a private-party letter, and an article in an industry newsletter that referred to trade actions without specifying Germany or AD or CVD actions.<sup>208</sup> Also, in Steel Products from Japan, the DP Master Group states that the Department relied upon non-specific articles relating to ambiguous trade remedies to find massive imports.<sup>209</sup>

The DP Master Group asserts that the Department has not provided an explanation of how the quality of evidence in this case (i.e., the declaration) is different than the quality of evidence in other proceedings where the Department has modified the base and comparison periods based on less specific information.

The DP Master Group also asserts that the Department relied upon an incorrect five-month base and comparison period to determine whether or not massive imports existed. They claim that a six-month base and comparison period demonstrates that there were no massive imports and state that the Department has the relevant monthly data on the record to do a six-month evaluation.<sup>210</sup> They additionally assert that the record does not contain evidence that any countervailable benefit received by the company was contingent upon export performance.

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<sup>204</sup> See DP Master Group Third SQR at Exhibit 69.

<sup>205</sup> See Preliminary Critical Circumstances Determination 75 FR at 49892.

<sup>206</sup> See 19 CFR 351.206(i), and Humane Society of the United States v. Clinton, 44 F. Supp. 2d 260, 274 (CIT 1999) (“This Court has decided that belief, not knowledge, is sufficient to satisfy the reason to believe standard found in the Driftnet Act.”).

<sup>207</sup> See Zhejiang Mach. Imp. and Exp. Corp. v. United States, 473 F. Supp. 2d 1365,1374 (CIT 2007).

<sup>208</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Germany, 67 FR 55802 (August 30, 2002) (Steel Wire Rod from Germany), and accompanying Issues and Decision Memorandum (Steel Wire Rod from Germany Decision Memorandum) at Comment 6.

<sup>209</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 24329 (May 6, 1999) (Steel Products from Japan).

<sup>210</sup> See DP Master Group Third SQR at Exhibit 68.

Petitioners question the DP Master Group's claim that it had reason to believe in June 2009, that a proceeding was likely when petitioners, themselves, had not decided to file a petition until December 2009. Petitioners state that the company's export actions indicate that it was not aware that a proceeding was likely until after the petition was filed. Petitioners add that the company's shipment of massive quantities of the subject merchandise after the filing of the petition, but before the Preliminary Determination, exemplifies the type of behavior that the critical circumstances provisions were intended to address. Because the DP Master Group's imports and export subsidization meet the statutory criteria, petitioners assert that the Department should make a final affirmative critical circumstances determination.

### **Department's Position:**

We disagree with the DP Master Group and continue to find that it is appropriate to use a five-month base and comparison period to determine whether there were massive imports over a relatively short period, pursuant to section 703(e)(1)(B) of the Act.

Section 703(e)(1)(B) of the Act provides that the Department will find that critical circumstances exist if there have been massive imports of drill pipe over a relatively short period. Section 351.206(i) of the regulations, defines "relatively short period" (or comparison period) as normally being the period beginning on the date the proceeding commences (*i.e.*, the date of the petition is filed), which, in this case, was December 31, 2009, and ending at least three months later. As stated in the Preliminary Critical Circumstances Determination, we have used a five-month comparison period of January 2010 through May 2010, which represents the maximum amount of shipment data that can be examined prior to the preliminary determination of this investigation, which was signed on June 7, 2010. When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition.<sup>211</sup> As such, we preliminarily used a five-month base period of August 2009 through December 2009. Our verification findings do not lead us to change our preliminary determination to use a five-month base (*i.e.*, August 2009 through December 2009) and comparison period (*i.e.*, January 2010 through May 2010). See DP Master Group Verification Report at 8-9, for reconciliation of sales of subject merchandise to the United States for the period August 2009 through May 2010.

We also disagree with the DP Master Group's claim that our characterization of a declaration as "speculative" ignores the low regulatory standard and the nature of evidence relied upon in past cases to justify moving the base and comparison periods. Although in prior cases the Department has adjusted these periods, because importers, exporters, or producers had reason to believe that an investigation was likely prior to the filing of a petition, the evidence put forth by the DP Master Group in this case does not rise to the level of that provided in those cases, which included specific, widely available publications. Contrary to the DP Master Group's claims, the information in Steel Wire Rod from Germany and Steel Products from Japan was not weaker than the information here. In Steel Wire Rod from Germany, where the Department concluded that importers, exporters, and producers had reason to believe a proceeding was likely, the Department had trade publications (*i.e.*, Metal Bulletin and WireLine), which alerted importers, exporters, and producers to the likelihood of investigations of wire rod involving a number of countries. See Steel Wire Rod from Germany Decision Memorandum at Comment 6. In Steel Products from Japan, the Department relied on numerous press reports from early to

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<sup>211</sup> See Steel Products from Japan 64 FR at 24338.

mid-1998 regarding rising imports, falling domestic prices resulting from imports, and domestic buyers shifting to foreign suppliers to conclude that importers, exporters, and producers had reason to believe or suspect that an investigation was likely. See Steel Products from Japan, 64 FR at 24338.

In this investigation, the DP Master Group submitted a single declaration from the partner and owner of a company involved with drill pipe, drill collar, and other drilling equipment who allegedly had conversations with others in the industry about paying for AD and CVD investigations.<sup>212</sup> The declaration is speculative in that it centered on fundraising which might result in the event of investigations and does not demonstrate that any action was taken by the DP Master Group during that alleged early knowledge period. In fact, the record shows the contrary – *i.e.*, a massive increase in shipments to the United States after the petition was filed. See Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “Critical Circumstances Shipment Data Analysis,” (January 3, 2011). As such, we continue to find that there were massive imports over a relatively short period, pursuant to section 703(e)(1)(B) of the Act

We further disagree that the record is void of evidence that any countervailable benefit received by the DP Master Group was contingent upon export performance. As discussed above, we find that the DP Master Group received countervailable export subsidies during the POI under both the “Technology to Improve Trade R&D Fund” and “Outstanding Growth Private Enterprise and Small and Medium-sized Enterprises Development in Jiangyin Fund” programs. Therefore, we continue to find that the DP Master Group, under section 703(e)(1)(A) of the Act, received countervailable subsidies that are inconsistent with the Subsidies Agreement.

**Comment 6:           Attribute Benefits From Tied Subsidies Only to The Products That Benefit**

Petitioners discuss that the Department is investigating subsidies in the form of provision of steel rounds and green tubes and the purchase of equipment. They assert that, in each case, the benefits of the subsidies flow to particular products and not all of the goods or services sold by the DP Master Group. For example, they state with regard to green tubes, the benefits flow to only drill pipe and not drill collar, heavyweight drill pipe, or other products not made from green tubes. In the case of equipment, they argue that the subsidies benefit only products made with that equipment. Petitioners note that 19 CFR 351.525(b)(6) provides that if a subsidy is “tied” to the production or sale of a particular product, the Department will attribute the subsidy only to sales of that product. Petitioners also refer to the Department’s decision in LEU Final, where the Department attributed the benefit of research subsidies for centrifuge production and other specific projects only to those products that could use the technology resulting from the research. See Notice of Final Affirmative Countervailing Duty Determinations: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom, 66 FR 65903 (December 21, 2001) (LEU Final), and accompanying Issues and Decision Memorandum (LEU Decision Memorandum) at Comment 14. As such, petitioners argue that to achieve the most accurate results for the final determination, the Department should attribute subsidies in the form of provision of goods only to the goods that benefit from them.

The DP Master Group responds that the subsidies were not tied to any particular product and, therefore, should be attributed to total sales. They state that, contrary to petitioners’

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<sup>212</sup> See DP Master Group Third SQR at Exhibit 69.

assertions, the Department looks “only to the stated purpose of the subsidy ... at the time of bestowal.”<sup>213</sup> With regard to green tubes and imported equipment, they state that there is no record evidence demonstrating that the GOC provided those benefits for a particular product or tied the receipt of either of these subsidies to the production or sale of a particular product. They add that steel rounds are used in the production of both drill collars and drill pipe. Additionally, with regard to the LEU Final, the DP Master Group states that the research and development subsidies “tied” to uranium enrichment facilities were specifically provided for the development and production of the subject merchandise and, thus, were tied to a particular product, consistent with 19 CFR 351.525(b)(5)(i).

The GOC asserts that, consistent with the regulations and established methodology, the Department correctly attributed subsidies from raw material purchases to the consolidated sales of the DP Master Group companies that produced or sold drill pipe, exclusive of intra-company sales.

### **Department’s Position:**

The Department has addressed this same issue in Racks from the PRC and PC Strand from the PRC, in which petitioners there urged the Department to attribute subsidy benefits under the provision of wire rod for LTAR program to respondents’ sales of products containing wire rod. See Racks Decision Memorandum at Comment 10, and PC Strand Decision Memorandum at Comment 17. As in those investigations, we disagree with petitioners’ argument and continue to attribute the subsidy benefit to the DP Master Group’s total sales.

The Preamble states:

Our tying rules are an attempt at a simple, rational set of guidelines for reasonably attributing the benefit from a subsidy based on the stated purpose of the subsidy or the purpose we evince from record evidence at the time of bestowal.

See 63 FR at 65403. The times of bestowal for the input subsidies are the points in time when respondents purchased green tubes and steel rounds from GOC authorities during the POI. As in Racks from the PRC, petitioners in the instant investigation, appear to base their position on a product classification that simply groups together different products that use a common material input. As in Racks from the PRC, we find this classification does not identify a product that the GOC intended to benefit at the time of bestowal of either the green tubes or steel rounds subsidy. See Racks Decision Memorandum at Comment 10. Further, information on the DP Master Group’s product lines demonstrates that the GOC could not have intended to benefit specific products produced by the companies at the time of bestowal of the input subsidies or exemption of VAT/import duties for imported equipment. The DP Master Group companies produce drill pipes, heavy weight drill pipes, drill collars, tool joints, and protection rings.<sup>214</sup>

Concerning LEU Final, we find that petitioners’ reference to that determination is misplaced. In the LEU Final, the Department attributed the benefit of research and development subsidies to only those products that benefitted from those subsidies based on information that at the time of bestowal the subsidies were for particular products/projects. For example, funds provided under the “Enrichment Technology Research and Development” program were to

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<sup>213</sup> See Preamble, 63 FR at 65403.

<sup>214</sup> See DP Master Group IQR at 15-16.

encourage improvements of centrifuge technologies and to fund the research of lasers. See LEU Decision Memorandum at Enrichment Technology Research and Development Program. Similarly, funds provided under the “Forgiveness of Centrifuge Enrichment Capacity Subsidies” program were for the promotion of uranium enrichment. Id. at “Forgiveness of Centrifuge Enrichment Capacity Subsidies.” As such, pursuant to 19 CFR 351.525(b)(i), we attributed the research and development subsidies provided to Urenco Ltd. over the company’s sales of subject merchandise as well as those products that were produced using the same technology that came about as a result of the research and development subsidies.

Conversely, the record of the instant investigation does not demonstrate that at the times of bestowal for the input subsidies and exemption of VAT/import duties for imported equipment that the GOC intended those subsidies to benefit specific products produced by the DP Master Group.

**Comment 7:           Apply 2009 Short-Term Interest Rate Benchmark and Adjust Benefit Calculation Based on China’s Inflation Rate**

The GOC states that the Department recently released the calculation for the 2009 short-term interest rate benchmark for the PRC.<sup>215</sup> The GOC discusses that a comparison of the lending and consumer price index (CPI) rates from 2008 and 2009, shows that the lending rates declined relatively little in 2009, while there was a noticeable drop in the CPI rates. The GOC, therefore, notes that the 2009 CPI adjusted rates, because they were calculated after deducting the CPI rates from the lending rates, were much higher in 2009, than they were in 2008. The GOC also notes that for Belize and Thailand, where the CPI rates for 2009 were negative, the CPI adjusted rates (or “real” interest rates) were higher than the actual lending rates. After calculating the simple average of the five World Governance Indicators and applying the regression analysis, the GOC notes that the result was a higher external benchmark rate in 2009, of 8.58 percent.<sup>216</sup>

The GOC and the DP Master Group also note that in the case of China, the 2009 inflation rate based on CPI data from the IFS was negative 0.70 percent.<sup>217</sup> The GOC adds that China experienced the same phenomenon as Belize and Thailand, where the “real interest rate” was higher than the actual lending rates after taking into account the negative CPI rate.

Therefore, the GOC and DP Master Group assert that, since the Department has stated that its benchmark methodology for China is based on the necessity of adjusting inflation to allow for a comparison between the “real cost of money” in China and in the group of benchmark countries,<sup>218</sup> the Department should make an adjustment to the actual interest rate to account for the negative PRC inflation rate. The GOC notes that the Department’s benchmark calculation contains this adjustment for Belize and Thailand, where the CPI adjusted rates (i.e., “real” interest rates) for these two countries were higher than the lending rates because of negative CPI rates (i.e., negative inflation). The GOC argues that the same adjustment should be made to the DP Master Group’s actual interest rates due to the China’s negative inflation rate of negative 0.70 percent in 2009. The GOC adds that for the final determination, an “apples-to-apples” comparison requires that the Department’s methodology recognize the “real” interest

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<sup>215</sup> See 2009 Short-Term Interest Benchmark Rate Memorandum.

<sup>216</sup> Id. at 16.

<sup>217</sup> Id. at 5.

<sup>218</sup> See CFS Decision Memorandum at Comment 10.

rate that the DP Master Group paid during the POI which, because of the negative inflation rate in China during the POI, was higher than the actual lending rates on its loans. The GOC asserts that such an adjustment is necessary to achieve parity with the Department's inflation-adjusted benchmark rate.

### **Department's Position:**

We agree with the GOC and the DP Master Group that the Department should incorporate the PRC's negative inflation rate into the benefit calculation under the "Central and Provincial Policy Lending to Chinese Drill Pipe Producers" program. Because the derivation of the short-term benchmark interest rate for the POI includes adjustments for both positive and negative inflation, we must also account for both positive and negative inflation when adjusting the interest payments the DP Master Group made on its government-issued loans during the POI. In this manner, the Department ensures an "apples-to-apples" comparison.

### **Comment 8: Preferential Loans to the Drill Pipe Industry**

The DP Master Group argues that record evidence does not support the Department's preliminary finding that the GOC's policy directives demonstrated preferential lending treatment to the drill pipe industry. The company notes that in the Preliminary Determination, the Department cited five documents to support its determination that "the GOC has a policy in place to encourage the development of production of drill pipe through policy lending." See 75 FR at 33253. The DP Master Group, however, claims that none of the directives cited indicates a national GOC plan directing Chinese banks to extend loans on preferential terms to the drill pipe industry. For example, with regard to the 10<sup>th</sup> Five-Year Plan, the company states that there is no specific reference to the drill pipe industry. They state that, in the plan, the GOC discusses "welded pipe used in oil and gas transmission," as part of its plan to "meet the needs of west development ... to be used in oil and gas transmission pipeline."<sup>219</sup> The DP Master Group asserts that these statements reference pipes used for cross-country oil transmission, not drill pipe. They add that the GOC's references to "high strength, anti-crushing, corrosion resistant petroleum pipe, and high pressure boiler pipe" are listed under the category of "seamless steel pipe" and that there is no reference to drill pipe.<sup>220</sup> Similarly, with regard to the 11<sup>th</sup> Five-Year Program for Industrial Structural Adjustment and Development in Jiangsu, the company states that the program covers a broad range of industries, such as electronic information industry, petrochemical industry, and textile industry, but not the drill pipe industry.<sup>221</sup> As such, the DP Master Group argues that the information upon which the Department preliminarily relied does not provide any legal support for the conclusion that policy lending is specific to the drill pipe industry.

The DP Master Group further argues that even if the Department determines that there was policy lending, record evidence demonstrates that the loans were provided to the company based on commercial terms, not policy lending terms. The company asserts that none of the terms or language in the loan documentation indicates that the loans were extended on a non-commercial basis or due to any GOC industrial directive. The company argues that the facts of

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<sup>219</sup> See GOC IQR at Exhibit 12 "(III) Implementation Main Points; 2. Product Structure Readjustment."

<sup>220</sup> Id.

<sup>221</sup> Id. at Exhibit 15.

this investigation contrast with the facts of PC Strand from the PRC, where the Department found specific financing support for the PC wire industry and specific language contained in loan documentation that was consistent with the GOC’s industry policy goals for the PC wire industry. See PC Strand Decision Memorandum at “Federal, Provincial, and Municipal Level Policy Lending to Producers of PC Strand.”

Petitioners respond that, while the DP Master Group claims there is no government policy to support the drill pipe industry, the company does not dispute that the GOC supports the metallurgical industry, which includes drill pipe. They add that the Department has already found that the GOC has a policy of supporting the OCTG industry<sup>222</sup> and that drill pipe, a tubular product used for oil and gas exploration and production, is a subset of the OCTG industry. Further, with regard to the DP Master Group’s claim that it received loans on commercial terms, petitioners state that the argument is baseless given that the loans were provided by SOCBs at below-market interest rates as measured by the benchmark.

### **Department’s Position:**

We continue to find that loans received by the drill pipe industry from SOCBs were made pursuant to government directives. We disagree with the DP Master Group that this program is not de jure specific and that the loans received by the companies were provided on commercial terms.

In the Preliminary Determination, we found that the loans provided to the DP Master Group by SOCBs are de jure specific within the meaning of section 771 of the Act because of the GOC’s policy, as illustrated in national and sub-national plans and directives, to encourage and support the growth and development of steel products, which includes drill pipe. See 75 FR at 33252-33253. Included within the national and sub-national plans and directives highlighted by the Department are references to the development of “high-quality steel products with added value,”<sup>223</sup> “development of high strength, anticrushing and corrosion resistant petroleum pipe,”<sup>224</sup> “seamless steel tube,”<sup>225</sup> and “oil steel pipe,”<sup>226</sup> all of which describe drill pipe.<sup>227</sup>

In general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals. Where such plans or policy directives exist, we will find a policy lending program that is specific to the encouraged industry.<sup>228</sup> In the Preliminary Determination, we provided several examples of how the GOC, at the national and provincial levels, has advocated support for the drill pipe industry. Id. Additionally, the Department has previously determined that Article 34 of Law of the People’s Republic of China on Commercial Banks (Banking Law) states that banks should carry out their loan business under the guidance of the state industrial policies.<sup>229</sup>

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<sup>222</sup> See OCTG Decision Memorandum at Comment 21.

<sup>223</sup> See GOC IQR at Exhibit 15.

<sup>224</sup> Id. at Exhibit 12 for the 10<sup>th</sup> Five-Year Plan for the Metallurgical Industry at “(III) Implementation Main Points; 2. Production Structure Readjustment.”

<sup>225</sup> Id.

<sup>226</sup> See Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “Additional Document for Jiangsu Province – Development of Iron and Steel Industries,” (June 7, 2010).

<sup>227</sup> See Petition, Volume III (Countervailing Duties) at III-7 for description of drill pipe.

<sup>228</sup> See, e.g., Citric Acid Decision Memorandum at Comment 5.

<sup>229</sup> See OCTG Decision Memorandum at Comment 21.

The Department therefore found that the Banking Law, in some measure, stipulates that lending procedures be based on the guidance of government industrial policy.<sup>230</sup>

With regard to the 10<sup>th</sup> Five-Year Plan, that plan was not noted because it provided financing or credit support for the drill pipe industry, but rather to demonstrate the government's role in the steel industry. Specifically, the plan called for the development of key steel types that were mainly imported; high strength, anticrushing and corrosion resistant petroleum pipe was among the listed products.<sup>231</sup> Among the "policy measures" set out in the plan for achieving the objectives was the encouragement of enterprises to cooperate with foreign enterprises, particularly in the development of high value added products and high-tech products. Thus, the plan was not cited as a basis for policy lending, but to show that during the 10<sup>th</sup> Five-Year Plan period, the GOC had deemed "petroleum pipe" a high value added, high-tech product which needed to be developed and encouraged. The DP Master Group claims, with regard to this plan, that the GOC's references of support are for "seamless steel pipe" and that the directive supports development in the western part of China. We disagree. The 10<sup>th</sup> Five-year Plan is for the entire metallurgical industry and the improvement of the industry's economical performance and competitive ability of the steel enterprises.<sup>232</sup>

In regard to the Steel Plan at Article 16, the intent of the Department in citing the plan was not to assert that subsidies in this proceeding were provided for under this plan for this program, but rather to highlight the language in Article 16, which again calls for the development of "key technology" and supporting "key steel projects" through various methods.<sup>233</sup>

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

Adhering to combining market regulation with government guidance, we shall give full play to the fundamental role of the market in allocating resources, strengthen the reasonable guidance of state industrial policies, and realize optimal resource allocation.<sup>234</sup>

With regard to the 11<sup>th</sup> Five-Year Program for Industrial Structural Adjustment and Development in Jiangsu, the Department did not state in the Preliminary Determination, that the plan contained language concerning financing or lending supports, but rather demonstrated that the plan mirrored the national government's objective of supporting and promoting the production of innovative and high-value added products, including "special pipes" and OCTG.<sup>235</sup> We note that the drill pipe industry comprises part of the OCTG industry and that we found countervailable policy loans to the OCTG industry.<sup>236</sup>

In the Preliminary Determination, we, however, did note that the Special Program (Guihua) on Adjustment & Development of Iron and Steel Industries during the Eleventh Five-year Period in Jiangsu does advocate financing and lending supports:

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<sup>230</sup> Id.

<sup>231</sup> See GOC IQR at Exhibit 12.

<sup>232</sup> Id.

<sup>233</sup> Id. at Exhibit 10.

<sup>234</sup> Id. at Exhibit 13, for Decision 40 at 2.

<sup>235</sup> Id. at Exhibit 15; see also OCTG Decision Memorandum at Comment 21.

<sup>236</sup> See Petition, Volume III (Countervailing Duties) at III-7; see also OCTG Decision Memorandum at Policy Loans.

We shall strengthen the guidance of industrial policies, the support from credit policy and the regulation by fiscal and taxation policies to guide the direction of investments.<sup>237</sup>

Thus, taking into account all of the evidence, we determine that the GOC's industrial plans clearly indicate state support and, specifically, credit or financing support for the producers of drill pipe. In such circumstances, it is the Department's practice to find a policy lending program to be de jure specific to the industry, as described under section 771(5A)(D)(i) of the Act.<sup>238</sup>

Further, we disagree with the DP Master Group's argument that the banks acted according to market principles when providing the loans. As discussed in "Policy Loans to Chinese Drill Pipe Producers," above, the GOC reported that there is government ownership in each bank that provided financing to the DP Master Group. Because of the existence of government ownership, we continue to find, consistent with the Preliminary Determination, that those banks are SOCBs. See Preliminary Determination, 75 FR at 33253. In several past cases, the Department has concluded that the Chinese banking sector is distorted and that SOCBs are government authorities.<sup>239</sup> The Department has also determined that Article 34 of the Banking Law stipulates that lending procedures be based on the guidance of government industrial policy.<sup>240</sup> Thus, we determine that the absence of language in loan documentation explicitly stating that loans were extended on a non-commercial basis or due to government directive is not indicative that the loan were provided on a commercial basis given Article 34 and the banks acting as government authorities. As such, we find that such loans could not have been based on commercial terms, but based on the guidance of government industrial policy.

#### **Comment 9: Construction of the Green Tube Benchmark**

Petitioners argue that the Department should use prices only for OCTG in the benchmark for assessing the adequacy of remuneration for green tubes. They state that the OCTG category includes drill pipe, casing, and tubing (pipe products that are used in oil wells). Petitioners disagree with the Department's preliminary decision to include in the benchmark other tube products such as line pipe, mechanical tubing, boiler tube, and generic seamless pipe. Petitioners state that these lower-value products are not used in oil wells and do not have to undergo the same kind of stress as drill pipe and, therefore, have different alloy composition than green tube. Petitioners add that these products may not even be seamless tube but welded, a lower-value product made differently than green tube for drill pipe. They assert that some of the products included in the Department's preliminary benchmark, such as GOST 8731, A106, A53, and S355, are generic pipe with low value.

In support of their position, petitioners refer to the following statement by Raymond Miller, a technical director employed by a company that manufactures several types of tube including OCTG, line pipe, mechanical tube, and unfinished drill pipe:

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<sup>237</sup> See Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "Additional Document for Jiangsu Province – Development of Iron and Steel Industries," (June 7, 2010).

<sup>238</sup> See, e.g., PC Strand Decision Memorandum at Comment 21, and Citric Acid Decision Memorandum at Comment 5.

<sup>239</sup> See, e.g., Seamless Pipe Decision Memorandum at Comment 10 and Comment 11, and OCTG Decision Memorandum at Comment 20 and Comment 21.

<sup>240</sup> See OCTG Decision Memorandum at Comment 21.

For these reasons comparing the value of green tube for drill pipe to other tube products that are not OCTG would make no sense. ASTM A106 and API 5L B line pipe, and ASTM A519 mechanical tube, are typically carbon steel product with few alloying elements and cleanliness standards. They have a lower as rolled yield strength than either green tube for drill pipe, or casing or tubing, about 45,000 psi. Some of these products are not even seamless pipe, but welded. Still less valuable would be pipe made under the GOST 8731 standard. This is the same as the ASTM A106 or A53 product, the lowest grade of seamless pipe as that which might be found at a hardware store. The S355 seamless mechanical pipe is also a generic standard with a few alloy or cleanliness requirements and limited yield strength.<sup>241</sup>

Also, petitioners state that green tube, like alloy casing and alloy tubing, is made with alloy steel rather than carbon grade. They state that chromium, molybdenum, and nickel costs are so high that they drive the cost of these products higher than the costs of carbon steel pipe. They assert that adding prices for such products (*i.e.*, carbon) to a benchmark for unfinished drill pipe would detract from its accuracy and understate the value of green tube.

The DP Master Group states that, because there is no record evidence of green tube prices in China (*i.e.*, tier one prices), the Department should continue to use a tier-two benchmark, but make allowances for factors affecting comparability so the benchmark reflects green tube prices that would be available to purchasers in China. They note that in the Preliminary Determination, the Department used prices of seamless tubes that had been upset, heat treated, and threaded and that had premium connections attached. See Preliminary Determination, 75 FR at 33257. The company, however, states that its green tube purchases are not upset, heat treated, or threaded, and do not have couplings or tool joints attached.<sup>242</sup> They further claim that, by not making allowances for upsetting, heat treatment, threading, and connections, this resulted in an overvalued benchmark for green tube. Therefore, the DP Master Group asserts that, for the final determination, the Department should use the price of steel billets or J/K55 casing, adjusted, as the benchmark price for green tube.

Specifically, the DP Master Group states that steel billets are a sufficiently close product match to green tube and can be used as a proxy. They add that record evidence indicates that the billet price should be adjusted upwards to reflect the costs of converting a steel billet into a green tube and to reflect chemistry differences.<sup>243</sup>

The company also argues that another benchmark can be based upon seamless OCTG product, J/K55 casing, which is the OCTG product most like green tube and, therefore, comparable for benchmark purposes. The DP Master Group states that the yield strength and other mechanical properties of green tube are set by the quench and temper heat treatment applied to green tube after purchase.<sup>244</sup> They claim that the closest OCTG product to unaltered green tube is J/K55 casing which has undergone the least amount of heat treatment to alter its mechanical properties. The DP Master Group adds that petitioners do not dispute this, stating

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<sup>241</sup> See Petitioners' Additional Factual Information Submission (September 3, 2010) at Attachment 1 "Declaration of Raymond Miller" (Raymond Miller Declaration), paragraph 14.

<sup>242</sup> See DP Master Group Case Brief (November 4, 2010) at 21.

<sup>243</sup> See DP Master Group Rebuttal to Petitioners' Scope Comments (September 23, 2010) at Exhibit 2; see also DP Master Group Rebuttal to Petitioners' September 3, 2010 Factual Submission (September 14, 2010) at Exhibit 82 (Declaration of Mr. Liu Fu Qing, DP Master's engineer of production and quality), paragraph 8.

<sup>244</sup> See DP Master Group Rebuttal to Petitioners' Scope Comments (September 23, 2010) at Exhibit 3.

that “J55 and K55 grades of casing and tubing are not heat-treated (“Q&T”) product.”<sup>245</sup> As such, DP Master Group asserts that the yield strength of J/K55 casing is altered the least from its green tube stage when comparing among the three OCTG products used in the preliminary benchmark. They further state that the effect of the less-intense heat treatment (which distinguishes J/K55 casing from green tube) is offset by chemistry differences between green tube and J/K55 casing and, therefore, J/K55 casing is more like green tube than the other OCTG products in relation to the yield strength factor of comparability.

The DP Master Group further states that in contrast, N80Q and L80, have their yield strength altered by the extensive quench and temper heat treatment process, while having lesser differences in chemistry.<sup>246</sup> They state that the heat treatment, to which green tube for drill pipe and N80Q and L80 is subjected, is a temperature that takes the green tube into the austenitic phase, in which the microstructure and mechanical properties of the steel can be manipulated. Therefore, they claim the N80Q and L80 are like heat-treated green tube that has been subjected to the quench and temper process, and are not like the pre-heat treatment tube, which the company purchases.

The DP Master Group adds that J/K55 casing is the most like green tube in terms of upsetting. The green tube that they purchase to produce drill pipe is not upset and J/K55 casing is not upset even in its finished stage.<sup>247</sup> They state that, however, N80Q and L80 are upset and thus are not as similar to green tube.

Additionally, the DP Master Group discusses that all OCTG products require couplings or connections before they can be used on drilling rigs. In this respect, the DP Master Group states that J/K55 and N80Q casing are at a similar advanced stage of finishing, while the L80 series is more dissimilar because it includes premium connections.<sup>248</sup> The company asserts that all OCTG products are at a more advanced stage of processing than green tube, but J/K55 casing is the most similar because its yield strength is closest to its unaltered state, is not upset, and does not have premium connections, and any differences in chemistry are canceled out via the heat treatment to which J/K55 casing is subjected.

The company further argues that despite the similarities between green tube and J/K55 casing, price data for J/K55 casing must be adjusted to account for differences in comparability. First, the price must be adjusted upward because of the chemistry difference between green tube and J/K55 casing and then adjusted downward because green tube is not heat-treated, threaded, or joined to couplings like J/K55 casing. Regarding these adjustments, DP Master’s engineer in charge of production and quality explained that these two factors essentially cancel each other out: “generally speaking, the cost/price effect of heat treatment is the same of the cost/price effect of the chemistry difference between green tube used for drill pipe and green tube used for J/K55.”<sup>249</sup> However, the company claims that only after these adjustments are made will the J/K55 casing price reflect world market prices for green tube of the kind that they purchase.

The DP Master Group additionally states that if the Department determines that it does not have sufficient information to adjust steel billet or J/K55 casing prices, then the Department

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<sup>245</sup> Id. at Exhibit 2, Attachment 1, paragraph 6. “Q&T” refers to quench and temper.

<sup>246</sup> See DP Master Group Rebuttal to Petitioners’ September 3, 2010 Factual Submission (September 14, 2010) at Exhibit 82.

<sup>247</sup> See DP Master Group Verification Report at Exhibit 15 (page 19-27) and Exhibit 16 (page 3-27); see also Raymond Miller Declaration at paragraph 6.

<sup>248</sup> See DP Master Group Final Factual Submission (September 6, 2010) at Exhibit 78, page 2.

<sup>249</sup> See DP Master Group Rebuttal to Petitioners’ September 3, 2010 Factual Submission (September 14, 2010) at Exhibit 82, paragraph 12.

should use unadjusted, averaged J/K55 casing prices as the green tube benchmark. If the Department decides to not make comparability adjustments, then the Department should eliminate the N80Q and L80 data series from the green tube benchmark because these data reflect additional value from advanced manufacturing processes. However, if the Department keeps the N80Q and L80 data series, the green tube benchmark must be balanced by the lower price of steel rounds, which represent the price of green tube at the prior stage of processing.

Similarly, the GOC claims that information on the record demonstrates that the Department can construct monthly benchmark prices that more closely approximate the price of green tube used for drill pipe by using the reported prices for J/K55 casing.

In their rebuttal brief, petitioners state that, contrary to the DP Master Group's arguments, the record does contain usable tier-one benchmark prices and the Department should use them. However, if the Department continues to use a tier-two benchmark, then it should not modify the benchmark in the manner advocated by respondents.

Petitioners state that on May 24, 2010, they submitted Chinese import statistics regarding prices for Chinese HTS category 7304.23, "drill pipe, o/t stainless steel, smls, for use in drilling for oil or gas."<sup>250</sup> Petitioners discuss that for the preliminary determination the Department did not use the import data, stating incorrectly that it was not broken down by month and mistakenly thinking that petitioners argued that the import data would constitute a tier-two benchmark, rather than a tier-one benchmark.<sup>251</sup> For the final determination, petitioners argue that the Department should use the import data as a tier-one benchmark. They contend that the Department will use import prices as a tier-one benchmark even where prices for purely internal transactions are distorted by government predominance in a market because the foreign vendors do not need to accept non-market prices.<sup>252</sup>

Additionally, petitioners argue that there is no basis to make the modifications to the tier-two benchmark as advocated by the respondents. First, they discuss that the DP Master Group proposes constructing a benchmark for green tube by adjusting steel billet prices upward. Petitioners contend that this would result in a tier-three benchmark and the regulations prohibit using a tier three benchmark if there is a viable tier-one or tier-two benchmark. Second, petitioners discuss that respondents suggest the use of published prices for J/K55 casing grades of OCTG, adjusted downward to reflect the costs of finishing, and not the higher N80 and L80 grades. Petitioners state, however, that prices for finished OCTG are a conservative measure of drill pipe values and do not reflect the superior qualities of even unfinished drill pipe (i.e., green tube). As such, petitioners assert that confining the benchmark to J/K55 casing would make the comparison less accurate and understate the value of green tube for drill pipe. Petitioners add that the DP Master Group has acknowledged that finished OCTG is inferior to, and of lower value than, green tube for drill pipe with respect to chemistry. They note that the DP Master Group stated that the higher cost of drill pipe green tube material is "essentially" canceled out by the cost of heat treatment for J/K55. Petitioners further state that drill pipe green tube is not threaded, coupled, or upset and some of the OCTG that is sold (and hence included in published

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<sup>250</sup> See Petitioners' CVD Benchmark Data Submission (May 24, 2010) at 2-3 and Exhibit 1.

<sup>251</sup> Petitioners state that they cited to both the tier-one and tier-two regulation in their May 24, 2010, submission. Later, in their June 1, 2010, submission regarding "Response to DP Master's Benchmark Rebuttal and Supplemental Factual Information," they advocated using actual imports as a tier-one benchmark.

<sup>252</sup> See CWP Decision Memorandum at Comment 7, and Softwood Lumber Decision Memorandum at "Imports Into Canada," (even where government involvement in market has distorted internal transactions, data on actual imports would be useable if available).

price data) is not threaded, coupled, or upset.<sup>253</sup> Therefore, petitioners argue that an adjustment for threading and coupling, or upsetting is not warranted.

Third, petitioners state that DP Master Group's suggestion to average prices for steel billet with OCTG prices for a benchmark is wrong. Petitioners state that finished OCTG has many of the same characteristics as drill pipe green tube, as well as some differences, making it overall a comparable product. Steel billet, however, is an input to green tube that is less valuable in all respects. Therefore, petitioners argue constructing a benchmark based on a product that is superior in some ways and inferior in some ways to drill pipe is not improved by averaging them together. They add that the majority of billets that go into making the published prices are standard billet and those billets are inferior to the billet that makes the raw material for drill pipe.<sup>254</sup> Petitioners further state that even the DP Master Group recognizes that the chemistry of steel billet is inferior to the chemistry of green tube for drill pipe and, therefore, requires an upward adjustment.

### **Department's Position:**

As noted on the record, there are no published world price data for green tube used in drill pipe production.<sup>255</sup> As such, we have to determine which price series data, on the record, are most reasonable to use in the construction of a green tube benchmark. At the Preliminary Determination, we noted that there was an overlap between green tubes and other types of seamless pipe and tube (e.g., casing and tubing) and used the seamless pipe and tube pricing data, as sourced from MBR, SBB, and SteelOrbis (SO), that was placed on the record by petitioners and the DP Master Group. See Preliminary Determination at 33256-33257. For this final determination to assess the adequacy of remuneration for the green tubes purchased by the DP Master Group, we have modified the construction of the green tube benchmark to include prices for only OCTG seamless casing.

When using an alternative product as a benchmark, we strive to find the products that are most like the one being evaluated. Adding products to the benchmark that are less like green tube would reduce the accuracy of the comparison. As such, we find that inclusion of line pipe, mechanical tubing, boiler tube, and generic seamless pipe in the benchmark is not appropriate because these products do not possess the necessary performance characteristics that would be used in oil and gas drilling.<sup>256</sup> Therefore, we have excluded the pricing for API 5LB, ASTM A519, Boiler Tube, S355 (60-160 diameter), and GOST 8731/8732 in the construction of the green tube benchmark prices.

To construct the benchmark for the final, we have averaged the price series data for the J/K55, N80Q, and L80 seamless casing categories, which are published by the MBR. Parties have advocated for use of the J/K55 products in the benchmark. Petitioners submitted on the record MBR published prices for grades of casing as evidence of the market price of green tube.<sup>257</sup> The DP Master Group argues that J/K55 is the OCTG product most like green tube and,

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<sup>253</sup> See Raymond Miller Declaration.

<sup>254</sup> Id. at paragraph 16.

<sup>255</sup> See, e.g. Petition at Volume III (Countervailing Duties), page III-26, and Raymond Miller Declaration at paragraph 4.

<sup>256</sup> See Raymond Miller Declaration at paragraph 14.

<sup>257</sup> For January 2009 through June 2009 pricing data, see Petition (December 31, 2009) at Volume I (Common Issues and Injury), Exhibit 15. For July 2009 through December 2009 pricing data, see Petitioners' Comments Regarding Preliminary Determination (May 28, 2010) at Exhibit 1.

therefore, comparable for benchmark purposes.<sup>258</sup> The GOC states that the “Department should select a more precise benchmark and use J/K55, the grade of finished seamless pipe and tube which is most similar to green tube.”<sup>259</sup>

We note that J/K55 casing is a carbon grade product.<sup>260</sup> The products covered under the scope of this investigation are steel drill pipe and steel drill collars without regard to the specific chemistry of the steel, *i.e.*, carbon, stainless steel, or other alloy steel. Because there are allowances in the scope for drill pipe without regard for chemistry, we, therefore, are using the J/K55.

The DP Master Group and the GOC have argued for certain adjustments to the J/K55 casing prices; however, neither party sufficiently explained or illustrated how information on the record could be used to adjust the J/K55 casing prices or provided documentation to support the reported cost adjustments. In fact, the DP Master Group states “if the Department determines that it does not have sufficient information to adjust ... J/K55 prices, the Department should use unadjusted J/K55 prices as the green tube benchmark.”<sup>261</sup> Moreover, the company states that the advocated adjustments cancel out each other.<sup>262</sup> Therefore, since we have no information supporting respondent’s argument, we have made no adjustment to the J/K55 casing prices for this final determination.

With the J/K55 casing prices, we have averaged the N80Q and L80 casing prices. The N80Q and L80 casing series include products that have been quenched and tempered and, therefore, may be more processed than green tube.<sup>263</sup> However, information on the record indicates that green tube used for drill pipe has an as-rolled yield strength of approximately 80,000 psi,<sup>264</sup> which is comparable to the psi for N80Q and L80.<sup>265</sup> In addition, there can be significant variations in products included within the N80Q and L80 casing designations reported by the MBR.<sup>266</sup> These can be variations in size, wall thickness, end finish, and length – each of which can affect the price of these products. For N80Q and L80, since there is no differentiation in these characteristics in the price lists, most notably in describing the products,<sup>267</sup> it appears there can be both finished and unfinished (*e.g.*, plain end) material included in these prices, making these prices a representative product for drill pipe green tube. Although the L80 category specifically references premium connections, the meaning of that notation is unclear.<sup>268</sup>

Green tube for drill pipe also requires extensive testing, cleanliness requirements, and tight dimensional tolerances (*e.g.*, wall thickness) because of the stress of high temperatures, pressures, and corrosive environments when drilling oil wells thousands of feet underground.<sup>269</sup> As such, information on the record suggests that higher grades of seamless alloy casing could

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<sup>258</sup> See DP Master Group Case Brief at 23.

<sup>259</sup> See GOC Case Brief (November 3, 2010) at 8.

<sup>260</sup> See Raymond Miller Declaration at paragraph 10.

<sup>261</sup> See DP Master Group Case Brief at 27.

<sup>262</sup> *Id.* at 26.

<sup>263</sup> See DP Master Group Rebuttal to Petitioners’ September 3, 2010 Factual Submission (September 14, 2010) at Exhibit 82 .

<sup>264</sup> PSI means pounds per square inch.

<sup>265</sup> See Raymond Miller Declaration at paragraph 5.

<sup>266</sup> See DP Master Group Final Factual Submission (September 6, 2010) at Exhibit 78, for the MBR’s January 2009 issue.

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> See Raymond Miller Declaration at paragraph 9, 10 and 12, and Petitioners’ Comments Regarding Preliminary Determination (May 28, 2010) at 2-3.

also be an accurate comparison for green tube used for drill pipe. In addition, the N80Q and L80 casing products are alloy steel, which is indicative of the overwhelming majority of green tubes used to make drill pipe.<sup>270</sup> The DP Master Group acknowledges that N80Q and L80 have lesser differences in chemistry to green tube for drill pipe than J/K55.<sup>271</sup> As the scope covers alloy drill pipe and collars, we determine that it is appropriate to include alloy products in the construction of the green tube benchmark. Also given that green tube for drill pipe requires higher yield strength, tighter dimension tolerances, and extensive testing/inspection, we find that including in the benchmark high-quality casing products (*i.e.*, N80Q and L80) is a conservative approach to constructing a benchmark price that is comparable to the prices for green tube used in drill pipe production. Therefore, for this final determination, we determine that an aggregate of the J/K55, N80Q, and L80 casing products is representative of a tube product used to produce drill pipe. To construct the green tube monthly benchmark prices, we have calculated a simple average of the monthly prices for those casing products as published by the MBR.

Additionally, we find there is no basis to the DP Master Group's argument to average billet prices into the green tube benchmark. As noted, there are no price data published for green tubes used in drill pipe production. Therefore, when constructing a benchmark, we must find a product that is most like the one being evaluated, *i.e.*, green tube for drill pipe. A billet is not like a green tube because it is a raw material of solid cross section, does not have of the value-added features of seamless pipe and tube, and does not possess the mechanical characteristics indicative of a tubular product that is made into drill pipe.<sup>272</sup> Green tube is a seamless tube made from a steel billet that is subjected to a piercing operation (*i.e.*, conversion to tube hollows), mandrel rolling (*i.e.*, formation of wall thickness), and stretch-reducing (*i.e.*, rolled to diameter).<sup>273</sup> Adding to the benchmark products less like green tube, such as billets, would reduce the accuracy of the comparison, not increase it. Further, with regard to the adjustments to the billet prices advocated by the DP Master Group, the company failed to sufficiently discuss the nature and purpose of the adjustments and provide documentation to support the reported cost estimates.<sup>274</sup> For these reasons, we have not included steel billets in the green tube benchmark.

Finally, with regard to petitioners' argument to use a tier one benchmark for green tubes, we have determined that it is reasonable to conclude that actual transaction prices are distorted as a result of the government's involvement in the market. See "Provision of Green Tubes for LTAR," above. On the basis of that finding, it is reasonable to conclude that the prices of goods that are imported into the domestic market are also distorted as a result of the government's involvement in the market. This is consistent with the language of the Preamble. As explained in the Preamble:

Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.<sup>275</sup>

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<sup>270</sup> See Raymond Miller Declaration.

<sup>271</sup> See DP Master Group Case Brief at 24 and footnote 75, and DP Master Group Rebuttal to Petitioners' September 3, 2010 Factual Submission (September 14, 2010) at Exhibit 82 at paragraph 9-11.

<sup>272</sup> See Raymond Miller Declaration at paragraph 15-16.

<sup>273</sup> See DP Master Group Additional Comments Prior to Preliminary Determination (June 1, 2010) at Exhibit 57 and Exhibit 58.

<sup>274</sup> See DP Master Group Case Brief at 22-23.

<sup>275</sup> See Preamble 63 FR at 65377.

As such, pursuant to section 776(a)(1) of the Act, we determine that there is no suitable data on prices for green tubes that are available which could serve as a viable tier-one benchmark as described under 19 CFR 351.511(a)(2)(i).

**Comment 10: Ministerial Error In the Green Tube Benefit Calculation**

The GOC discusses that, in the preliminary calculations, the Department included ocean freight costs in the benchmark. As stated in the Preliminary Determination, the Department used one set of ocean freight rates for shipments from the United States to China, and another set of ocean freight rates for shipments from Europe, Japan, and the Middle East. See Preliminary Determination, 75 FR at 33257. The GOC claims that the Department made a ministerial error with respect to the ocean freight rates used for shipments from the United States to China. Specifically, the GOC states that the Department converted the U.S. dollar freight rates into RMB twice, which resulted in overstating the monthly average benchmarks for green tube.

**Department's Position:**

We agree with the GOC. For this final determination, we eliminated the double conversion of the ocean freight rates into RMB for shipments from the United States and recalculated the benchmarks using the correct U.S. dollar freight rates for shipments from the United States to China. See DP Master Group Final Calculations.

**Comment 11: The Department Should Account For the Premium Quality of Steel Rounds**

Petitioners assert that Department's preliminary finding that the DP Master Group did not receive a benefit from the provision of steel rounds is a reflection of the relatively low quality of the steel rounds included in the benchmark and not the actual value of the steel rounds that the company purchased. They state that the alloy content of the steel rounds used to make green tubes must suffice to give the drill pipe strength. They add that steel rounds used to make other forms of OCTG do not have the same amounts of high-price molybdenum and chromium as steel rounds usable for drill pipe. Petitioners claim that since non-OCTG types of steel rounds predominate international trading, the published prices for steel rounds or billet reflect these low-alloy products.

In support of their position, petitioners refer to the following statement of Raymond Miller, a technical director employed by a company that manufactures several types of tube including OCTG, line pipe, mechanical tube, and unfinished drill pipe:

Steel billet used to make green tube for drill pipe would have the same chemical composition as green tube for drill pipe. However, published steel billet price data reflect a mix of all sorts of globally traded billets. The vast majority of this is low-grade carbon steel with no expensive alloying elements such as molybdenum, chromium, etc. Alloy or high-strength low alloy billets suitable for drill pipe are only a tiny proportion of the total trade. The World Steel Association 2008 Yearbook estimated global production of steel long products, which are usually derived from billets at some point in their production process, at over 500 million metric, excluding seamless tube. That included for example

300 million metric tons of rebar and wire rod. Total seamless tube production was some 30 million metric tons. Total global drill pipe production is one million metric tons at most.

Published billet prices therefore cannot by themselves reasonably represent even the value of billet used to make green tube, let alone the green tube itself. To get an idea of the value of billet suitable for drill pipe one would need to add the value of the necessary alloying elements.<sup>276</sup>

Petitioners, therefore, argue that the Department should adjust the steel rounds benchmark prices based on the difference between the alloy content for drill pipe and other products.

The DP Master states that the Department should reject petitioners' arguments and continue to use the steel rounds benchmark used in the Preliminary Determination for three reasons. First, they contend that, contrary to petitioners' claim that the benchmark does not reflect the price of billets with alloying elements, the SBB data series reflect billets of "standard commercial grades and sizes."<sup>277</sup> Thus, the company asserts the benchmark includes carbon, alloy, and stainless steel billets. Second, the DP Master Group states that, despite petitioners' speculation that the global production volume of low-quality billets has affected reported prices, there is no record evidence to suggest that SSB billet prices are weight averaged according to end use, grade, chemistry of steel, or relative global production volume.<sup>278</sup> Therefore, they add that petitioners' claim that reported prices are lower because non-OCTG types of steel rounds predominate is speculative and irrelevant to the steel rounds benchmark calculation. Third, the DP Master Group notes that the Department determined that the same benchmark was accurate and reflective of steel rounds used in the production of OCTG products in OCTG from the PRC.

### **Department's Position:**

We have not made any adjustment to the steel rounds benchmark for the final determination. We find that petitioners have not sufficiently supported their arguments with regard to the benchmark price for steel rounds.

The SBB, the only benchmark source for steel round pricing on the record, states that the reported prices for billets are "standard commercial grades and series."<sup>279</sup> There is no evidence on the record to suggest that the SBB prices do not include prices for carbon, alloy, and stainless steel billets. Also, there is no record evidence to support petitioners' contention that non-OCTG types of steel rounds predominate international trading and, therefore, the published prices for steel rounds/billet reflect low-alloy products and not high-quality, high-strength alloys used for drill pipe and collar applications.

Additionally, petitioners argue that the steel rounds benchmark prices should be adjusted to account for the difference between the alloy content for drill pipe and other products. In support of their position, petitioners refer to the Raymond Miller declaration, in particular paragraph 11, in which percentages of alloying elements are presented and to attachments that

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<sup>276</sup> See Raymond Miller Declaration.

<sup>277</sup> See DP Master First SQR at 2 and Exhibit 44.

<sup>278</sup> Id.

<sup>279</sup> Id. at Exhibit 44.

contain molybdenum prices for May 2009, through December 2009, and chromium prices for July 2009 and October 2009.<sup>280</sup> Petitioners, however, do not discuss or illustrate how that information could be used to adjust the steel billet prices reported by the SBB. As such, we have no basis for adjusting the SBB pricing data.

**Comment 12:           Timing of Receipt of the Benefit Under the Two Free, Three Half Tax Exemption for FIEs**

The DP Master Group argues that the methodology utilized by the Department in the Preliminary Determination resulted in a skewed calculation that does not reflect the Department's responsibility to calculate accurate net subsidy rates.<sup>281</sup> The DP Master Group acknowledges that under 19 CFR 351.509(b)(1), the Department will "normally consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption . . . Normally this date will be the date on which the firm filed its tax return." The DP Master Group further acknowledges that the Department calculated the benefit in the manner described under 19 CFR 351.509(b)(1) and, as in Wire Decking from the PRC, where the Department determined that the respondent firm received the benefit at the time that it filed its annual tax return during the POI and not the dates on which it filed its estimated taxes during the POI.<sup>282</sup>

The DP Master Group contends that the Department should modify its practice in certain circumstances, such as the instant investigation, where there is a significant fluctuation in sales and taxes owed due to severe market changes. The company adds that the Department is permitted to deviate from the methodology described under 19 CFR 351.509(b)(1) as the regulation only requires that the Department "normally" use the filing date of the annual tax return as the date of receipt of the benefit. The DP Master Group also argues that in other proceedings the Department, in recognition of the effect that changes in market conditions can have, has deviated from its standard calculation methodologies. See, e.g., Brass Sheet and Strip From Germany: Amended Final Results of Antidumping Administrative Review, 75 FR 66347 (October 28, 2010) (Sheet and Strip from Germany), and accompanying Issues and Decisions Memorandum (Sheet and Strip Decision Memorandum), where the Department deviated from its normal practice of using a 12-month period to measure whether dumping had occurred. The DP Master Group claims that it experienced a dramatic change in market conditions and financial performance during the period between 2008 and 2009.<sup>283</sup> The company, therefore, asserts that the Department's use of its standard calculation methodology under 19 CFR 351.509(b)(1) in the Preliminary Determination did not take the change in market conditions into consideration and, thus, produced a skewed net subsidy rate.

To remedy that skewed result, the DP Master Group contends that the Department must use the tax savings listed on DP Master's and Liangda's 2009 tax returns (which were filed in 2010) as the numerator and the group's 2009 sales as the denominator. The DP Master Group adds that, as administrative reviews look to the most recently completed calendar year and tax

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<sup>280</sup> See Raymond Miller Declaration and Attachment 3 and 4 for prices, which were also submitted in Petitioners' Additional Factual Information (September 3, 2010).

<sup>281</sup> See 75 FR at 33254.

<sup>282</sup> See Wire Decking Decision Memorandum at Comment 21.

<sup>283</sup> The exact nature of DP Master's financial performance during the period 2008 through 2009, is business proprietary information and cannot be disclosed on the public record. For further information, see the business proprietary version of the DP Master Group Case Brief (November 3, 2010) at 40.

liability in the PRC is calculated on a calendar year basis, the applicable tax return will always be available for use in future reviews of this proceeding.

Alternatively, the DP Master Group argues that the Department could use the tax savings listed on quarterly tax returns that it filed during the POI as the numerator and the group's 2009 sales as the denominator. The company asserts that the facts of the instant investigation are distinct from those of Wire Decking from the PRC, where the Department rejected a similar argument.<sup>284</sup> The DP Master Group claims that, unlike the respondent in that case, it did not have the option of choosing to prepay taxes. Rather, the DP Master Group claims that it was compelled to prepay its taxes pursuant to Article 54 of the Law of the People's Republic of China on Enterprise Income Tax. The DP Master Group further argues that the law requires that pre-paid taxes be based on "actual profits" and, thus, pre-paid taxes may serve as an accurate basis on which to calculate the subsidy benefit.

The DP Master Group acknowledges that pre-paid quarterly filings, such as those it filed during the POI, may require adjustments due to inaccuracies or official tax audits. The company, however, argues that the amount owed to the GOC was finalized in the quarter when it was required to file the quarterly tax returns and that the adjustments the company subsequently made to the quarterly filings simply fixed misreporting and other tax penalties levied by GOC tax authorities.

Petitioners respond that, in the Preliminary Determination, the Department, consistent with 19 CFR 351.509(b)(1)(c) and its practice, correctly determined whether the company received a benefit from this tax program based on the annual income tax return filed in the POI and allocated the benefits to the company's POI sales. Petitioners state that there is no basis for the Department to change its long-standing practice and effectively repeal the regulation as to the timing of tax benefits, because of "severe market changes" that the DP Master Group claims it experienced from 2008 to 2009. They add that under such an approach, instead of the consistency and predictability of a regulation, the Department would allocate tax subsidies on an ad hoc basis. Additionally, petitioners state that the one case cited by the DP Master Group, i.e., Wire Decking from the PRC, supports the Department's approach in the Preliminary Determination. Petitioners note that in Wire Decking from the PRC, the Department calculated the tax subsidies under the Two Free/Three Half Tax Exemption program using the annual tax return filed during the POI and allocated the benefit to respondent's sales during the POI. In this instant investigation, petitioners assert that the Department should continue to allocate the DP Master Group's tax subsidies for the 2008 tax year to the firm's sales in 2009, when it filed its 2008 income tax return and its tax liability was finalized.

### **Department's Position:**

We disagree with the DP Master Group's argument that the Department erred when it considered the benefit under the Two Free, Three Half Tax Exemption for FIEs program as having been received on the date on which the company filed its annual tax return during the POI. Under 19 CFR 351.509(b)(1), the Department will consider the benefit as having been received:

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<sup>284</sup> See Wire Decking Decision Memorandum at Comment 21.

. . . on the date on which the firm would otherwise have had to pay the taxes associated with the exemption or remission. Normally, this date will be the date on which the firm filed its tax return.

As further discussed in the Preamble,<sup>285</sup> the Department's goal is to equate the timing of receipt of the benefit with the date the firm knew the amount of its tax liability.<sup>286</sup> The Department further explains that, based on its experience, the date in which a firm knows its tax liability is normally the date on which it files its tax return.<sup>287</sup> The Department applied the approach described under 19 CFR 351.509(b)(1) in Wire Decking from the PRC when it calculated the benefit using the 2008 annual tax return respondent filed during the 2009 POI and not the 2009 annual tax return the respondent filed in 2010:

. . .the tax savings that DHMP ultimately realizes under the two free, three half program for tax year 2009, will not be finalized until the firm files its 2009 tax return, which will occur during calendar year 2010. It is for this reason that the Department normally equates the timing of receipt of income tax benefits with the date on which the recipient firm files its tax return because it is at that time that savings under income tax subsidy programs are definitively known.<sup>288</sup>

Thus, the Department's approach in the Preliminary Determination was consistent with its regulations and practice.

The DP Master Group attempts to argue that the date of receipt on which the benefit under the tax program was known and realized (*i.e.*, the date on which it would have otherwise had to pay the taxes associated with the tax exemption) coincided with the date the 2009 annual tax returns were filed. As stated above, the Department addressed this very argument in Wire Decking from the PRC. Further, on this point we note that the 2009 annual tax returns were filed in April 2010, which is outside of the POI, and, thus, begs the question how the DP Master Group could have used its 2009 annual tax return as the basis for knowing and realizing the tax savings received under the program during the POI.<sup>289</sup>

We also disagree with the company's alternative suggestion that the Department should use the quarterly 2009 tax filings made during the POI as the basis for the benefit. On this point, we note that the final quarterly filing for tax year 2009 was filed in 2010, which is outside of the POI, and, therefore is not suitable for use in the benefit calculations. As stated in the verification report, "Company officials indicated that the sub-ledger for income tax payable followed the same pattern for 2009, in that the final "obligated" payment was made in 2010, and reflected in the tax return filed in April 2010."<sup>290</sup>

Moreover, the quarterly 2009 tax filings do not reflect the date on which the firm would otherwise have had to pay the taxes associated with the exemption or remission during the POI,

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<sup>285</sup> See 63 FR at 65376.

<sup>286</sup> Further, section 351.509(c) of the regulations indicates that, for purposes of expensing the tax benefit, the Department will expense the tax exemption, remission, or deferral to the year in which the benefit is considered to have been received, which is the date on which the firm filed its tax return during the period of review or investigation.

<sup>287</sup> See 63 FR at 65376.

<sup>288</sup> See Wire Decking Decision Memorandum at Comment 21.

<sup>289</sup> See DP Master Group Verification Report at 11.

<sup>290</sup> Id.

as specified under 19 CFR 351.509(b)(1). The circumstances surrounding the 2008 quarter filings that the firm made during the POI make this fact clear. During verification, officials from the Department documented that the GOC tax authorities denied certain deductions and adjusted upward the taxable profit initially reported in the quarterly 2008 filings for DP Master.<sup>291</sup> The adjusted taxable profit amount was, in turn, used on DP Master's 2008 annual tax return to calculate the final total tax payable and, therefore, the final total amount of tax exemption received under the program during the POI.<sup>292</sup> Thus, the evidence collected at verification demonstrates that the 2008 annual tax return, which DP Master and Liangda filed during the POI, is the document that reflects the date on which each company would otherwise have had to pay the taxes associated with the exemption or remission offered under the program and, therefore, constitutes the correct source for determining the ultimate amount of tax savings realized during the POI. As such, we determine that the Department correctly calculated the benefit to the DP Master Group under the Two Free, Three Half Tax Exemption for FIEs program, as described under 19 CFR 351.509(b)(1).

**Comment 13:            Tying and Attribution Issues Regarding the Grant Received Under the Outstanding Growth Private Enterprise and Small and Medium-sized Enterprises Development in Jiangyin Fund**

In the Post-Preliminary Memorandum, the Department found that Chuangxin received a grant under the Outstanding Growth Private Enterprise and Small and Medium-sized Enterprises Development in Jiangyin Fund (Outstanding Growth Fund) program.<sup>293</sup> The Department found Chuangxin's receipt of the grant conferred a countervailable benefit upon the DP Master Group that was contingent upon exports.<sup>294</sup> Accordingly, the Department attributed the grant to the total export sales of the DP Master Group.

The DP Master Group contends that the Department erred in the Post-Preliminary Memorandum because the grant received under the Outstanding Growth Fund is tied to non-subject merchandise and is not contingent upon export performance. The DP Master Group explains that it stated that the grant was tied to non-subject merchandise in its supplemental questionnaire response.<sup>295</sup> Further, the company disputes statements in the DP Master Group verification report that the grant was for the expansion of the DP Master's production line.<sup>296</sup> The DP Master Group asserts that since the grant is tied to non-subject merchandise, the Department should refrain from including the grant in the final subsidy calculations, pursuant to 19 CRR 351.525(b)(5)(i).<sup>297</sup>

If the Department continues to find that the grant at issue is untied, the DP Master Group argues that it should attribute the subsidy to the group's total sales rather than to total export sales. Referencing 19 CFR 351.514(a), they state that an export subsidy is one in which "eligibility for, approval of, or the amount of, a subsidy is contingent upon export performance." The DP Master Group contends that "export performance" means "the provision of the subsidy

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<sup>291</sup> Id.

<sup>292</sup> Id.

<sup>293</sup> See Post-Preliminary Memorandum at 3.

<sup>294</sup> Id. at 4.

<sup>295</sup> See DP Master Group Third SQR at 1-3.

<sup>296</sup> See DP Master Group Verification Report at 20.

<sup>297</sup> 19 CFR 351.525(b)(5)(i) states that if a subsidy is tied to the production or sale of a particular product, the Department will attribute the subsidy only to that product.

is, in law or in fact, tied to actual or anticipated exportation or export earnings.” They discuss that the Department noted that the standard application form supplied by the GOC indicates that applicants must provide information concerning their exports in the three prior years and, referencing CFS from Korea, used the information requested in the application as a basis for finding the program export contingent.<sup>298</sup>

The DP Master Group asserts that the facts of CFS from Korea are distinct from those of the instant investigation and, thus, the Department cannot rely on the Korean investigation as a basis for finding the Outstanding Growth Fund program countervailable. They claim that in CFS from Korea, the application form of the program in question required information concerning the degree to which the project would promote exports and that the respondent firm conceded that export performance was an evaluation factor. In contrast, the DP Master Group argues the application form for the Outstanding Growth Fund program did not solicit information concerning prospective export growth or activity and the GOC explicitly denied that export performance or potential was a factor taken into consideration for purposes of determining eligibility.<sup>299</sup> Lastly, the company argues that by declining to verify information and statements made by the GOC concerning the eligibility requirements of the Outstanding Growth Fund program, the Department must accept the GOC’s statements as being true and accurate.

In their rebuttal brief, petitioners state that recipients of untied subsidies often use them for a specific purpose, but that does not make them tied. The issue, according to petitioners, is whether the government conditioned the grant on a particular use, or whether the subsidy could only be used for one purpose.

### **Department’s Position:**

First, the Department stands by the accuracy of the DP Master Group verification report, including the section of the report that states that the receipt of the grant in question was for the expansion of DP Master’s production line. As discussed above in “Attribution of Subsidies,” Chuangxin is not a producing enterprise, but a holding/investment company.

Second, we disagree with the DP Master Group’s argument that the Department incorrectly found the grant received by Chuangxin to be a subsidy attributable to the total export sales of the group. The company’s claim that the grant at issue is tied to non-subject merchandise is unfounded. In its June 18, 2010, supplemental questionnaire, the Department instructed the DP Master Group to respond to all items in the Standard Questions, Allocation, and Grant Appendices, as they applied to the grant Chuangxin received under the Outstanding Growth Fund program. In response to that questionnaire, the DP Master Group stated that the “government approval process” was “similar to the process described for the “Famous Brand” program discussed in its May 17, 2010, supplemental questionnaire response.<sup>300</sup> However, in its June 18, 2010, response, the DP Master Group failed to provide all of the information requested in the Standard Questions Appendix, including copies of the completed application form.<sup>301</sup>

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<sup>298</sup> See Post-Preliminary Decision Memorandum at 4; see also CFS from Korea Decision Memorandum at “Loans Under the Industrial Base Fund,” where the Department found subsidies provided under the program were export contingent because export activities were one of eligibility requirements.

<sup>299</sup> See GOC Second SQR at 10.

<sup>300</sup> See DP Master Group Second SQR at 5. The Department finds that grants under the Famous Brands program are countervailable and contingent upon export performance. See, e.g., PC Strand Decision Memorandum at “Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level.”

<sup>301</sup> Id.

Meanwhile, on June 30, 2010, the Department issued a supplemental questionnaire to the GOC in which it asked the GOC to provide the application form that the DP Master Group submitted under the Outstanding Growth Fund program. In its July 9, 2010, response, the GOC provided a blank copy of the application form used in the application process.<sup>302</sup> The blank application form submitted by the GOC requested information from the applicant concerning the name of the project, a narrative description of the project's technological achievement, and sections for examination opinions from the Departments of Commerce and Finance of the Government of Jiangsu Province.<sup>303</sup> However, in its response, the GOC stated that "DP Master should provide a copy of its completed application."<sup>304</sup>

Therefore, in the July 12, 2010, supplemental questionnaire, we again asked the DP Master Group to respond to all items in the Standard Questions Appendix as it pertained to its receipt of a grant under the Outstanding Growth Fund program. In its supplemental questionnaire response, the DP Master Group stated that it did not retain copies of the completed application form that it submitted to the administering authority.<sup>305</sup> During the verification, the DP Master Group confirmed its failure to retain a copy of the application form.<sup>306</sup>

When asked to provide the completed application form the DP Master Group submitted under the program, the GOC chose to turn the responsibility for providing the information over to the company and, despite the Department's repeated requests, the DP Master Group failed to provide the completed application form. As indicated above, the blank application form solicited information concerning the nature of the project and, thus, a completed application would have contained information that could have enabled the Department to evaluate the validity of the DP Master Group's claims that the grant received under the Outstanding Growth Fund program was tied to non-subject merchandise. However, given that the GOC and the DP Master Group failed to place the completed application form on the record of the investigation, the DP Master Group has no basis on which to substantiate its claim that the grant Chuangxin received under the program is tied to non-subject merchandise. Therefore, based on the information that is available on the record, we continue to find that the grant at issue is not tied to non-subject merchandise.

We also disagree with the DP Master Group's argument that the Department incorrectly attributed the grant to the group's total export sales. Section 771(5A)(B) of the Act and 19 CFR 351.514(a) state that an export subsidy is a subsidy that is in law or in fact, contingent upon export performance, alone or as one or two or more conditions. Given that the program's application form solicits information on export activity (e.g., applicants' total export sales and the share of export sale to total sales in the three prior years), we find that the program is contingent upon export performance and, thus, constitutes a specific export subsidy within the meaning of section 771(5A)(B) of the Act.

The DP Master Group incorrectly implies that the Act and the CVD regulations interpret "export performance" to mean that the provision of the subsidy is tied to prospective export activity and, as such, incorrectly argues that the program at issue is not export contingent because the application merely solicits retrospective information concerning export activity. The Preamble contains a non-exhaustive list of factors the Department may consider when

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<sup>302</sup> See GOC Second SQR at Exhibit 3.

<sup>303</sup> Id. During verification, officials of the DP Master Group confirmed that the blank application form submitted in the GOC's Second SQR (at Exhibit 3) was the form used when they applied for benefits under the Outstanding Growth Fund program. See DP Master Group Verification Report at 20.

<sup>304</sup> See GOC Second SQR at 9-10.

<sup>305</sup> See DP Master Group Third SQR at 2.

<sup>306</sup> See DP Master Group Verification Report at 20.

determining whether a program is export contingent as described under 19 CFR 351.514(a). Among the factors to be considered are application and approval documents, government collection of data regarding the program recipients' exports, and the exporting history of recipient firms or industries.<sup>307</sup> The Preamble further states that the Department need not examine all of the factors to determine that the program is an export subsidy if its examination of one or more factors provides sufficient evidence to determine that the program is an export subsidy.<sup>308</sup> Therefore, contrary to the DP Master Group's claims, the Preamble makes clear that the factors the Department examines when determining whether a subsidy program is export contingent are not limited to the prospective effect the program will have on an applicant's export activities. Furthermore, we find that the information solicited in the application form of the Outstanding Growth Fund program (e.g., information concerning export history and the share of export sales relative to total sales) clearly conforms to the Preamble's description of the factors that the Department uses to determine whether a program is export contingent.<sup>309</sup>

We also disagree with the company that the Department must accept as accurate the GOC's claims in the narrative of its questionnaire response that the program is not export contingent due to the fact that the Department did not verify this program with the GOC. Notwithstanding the GOC's claims concerning the Outstanding Growth Fund program, we find that the information solicited in the blank application form constitutes sufficient evidence to find that export activity is one of the criteria considered when determining eligibility under the program and, thus, that the program is specific under section 771(5A)(B) of the Act.

## **XI. Recommendation**

We recommend that you accept the positions described above.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date

<sup>307</sup> See 63 FR at 65380.

<sup>308</sup> Id.

<sup>309</sup> For the same reasons, we disagree with the DP Master Group's claims that the facts concerning CFS from Korea are distinct from those of the instant investigation.