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Investigation
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DATE: December 17, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

RE: Countervailing Duty (CVD) Investigation: Utility Scale Wind
Towers (Wind Towers) from the People's Republic of China (the
PRC)

SUBJECT: Issues and Decision Memorandum for the Final Determination

I. Summary

On June 6, 2012, the Department of Commerce (the Department) published the *Preliminary Determination* in this CVD investigation.¹ On June 22, 2012, the Department published a notice to align the final of this CVD investigation with the final of the companion antidumping (AD) investigation on wind towers from China.² On July 6, 2012, the Department issued a post-preliminary determination analysis regarding the Enterprise Income Tax Law, Research and Development Program and the Hot-Rolled Steel Producer Submissions filed by the Respondents.³ The respondents in this investigation are CS Wind China Co., Ltd. and its affiliates (collectively, CS Wind) and Titan Wind Energy (Suzhou) Co., Ltd. and its affiliates (collectively, the Titan Companies).

On July 12, 2012, we conducted verification with the Government of the People's Republic of China (GOC) in Beijing covering the research and development income tax offset program and the export buyer's credits program, and issued the verification report on August 24,

¹ See *Utility Scale Wind Towers From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 33422 (June 6, 2012) (*Preliminary Determination*).

² See *Utility Scale Wind Towers From the People's Republic of China: Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 77 FR 37653 (June 22, 2012).

³ See Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding "Post-Preliminary Analysis" (July 6, 2012) (*Post-Prelim Analysis*); see also Memorandum to the File from Patricia Tran, International Trade Compliance Analyst, AD/CVD Operations 3, regarding "Additional Documents for Post-Preliminary Analysis" (July 6, 2012) (*Additional Documents for Post-Prelim Analysis*).



2012.⁴ From July 23 through July 7, 2012, we conducted verification with CS Wind and issued the verification report on October 2, 2012.⁵ From July 30 through August 3, 2012, we conducted verification with the Titan Companies and issued the verification report on October 2, 2012.⁶

Petitioner, GOC, CS Wind, and Titan Companies submitted case briefs on October 16, 2012, and rebuttal briefs on October 22, 2012.⁷ A hearing was not held in this investigation as no interested party requested a hearing.

On November 2, 2012, the Department released PRC benchmark interest rate data for the years 2001 to 2011, and provided interested parties with the opportunity to submit comments on the benchmark rates.⁸ The Department did not receive any comments.

The Department originally extended the deadline for this final determination until December 15, 2012. As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the final determination of this investigation is December 17, 2012.⁹

The “Subsidies Valuation Information,” “Use of Facts Otherwise Available and Adverse Inferences,” and “Analysis of Programs” sections below describe the subsidy programs and the methodologies used to calculate 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 positions on the issues raised in the briefs. Based on the comments received and our verification findings, we

⁴ See Memorandum to the File, through Melissa Skinner, Director, AD/CVD Operations 3, from Mark Hoadley, Program Manager, and Emily Halle, International Trade Compliance Analyst, AD/CVD Operations 6, regarding “Verification of the Questionnaire Responses Submitted by the Government of the People’s Republic of China” (GOC Verification Report) (August 24, 2012).

⁵ See Memorandum to Melissa Skinner, Director, AD/CVD Operations, Office 3, through Eric Greynolds, Program Manager, AD/CVD Operations 3, from David Neubacher, International Trade Compliance Analyst, Office of Deputy Assistant Secretary for AD/CVD Operations, and Patricia M. Tran, International Trade Compliance Analyst, AD/CVD Operations, Office 3, regarding “Verification Report for CS Wind” (CS Wind Verification Report) (October 2, 2012).

⁶ See Memorandum to Melissa Skinner, Director, AD/CVD Operations, Office 3, through Eric Greynolds, Program Manager, AD/CVD Operations, Office 3, from Patricia M. Tran, International Trade Compliance Analyst, AD/CVD Operations, Office 3, and David Neubacher, International Trade Compliance Analyst, Office of Deputy Assistant Secretary for AD/CVD Operations, regarding “Verification Report for Titan Companies” (Titan Companies Verification Report) (October 2, 2012).

⁷ To correct a bracketing error, Petitioner resubmitted its October 22, 2012, rebuttal brief on October 23, 2012. On November 1, 2012, the Department rejected the GOC’s October 22, 2012, rebuttal brief because it contained affirmative arguments. See Department’s Letter to Curtis, Mallet-Prevost, Colt & Mosle LLP regarding “Rejection of the GOC Rebuttal Brief” (November 1, 2012). The GOC submitted a revised rebuttal brief on November 2, 2012.

⁸ See Memorandum to All Interested Parties from Kristen Johnson, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations 8, regarding “Interest Rate Benchmark Memorandum (2001 – 2011)” (November 2, 2012).

⁹ See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane” (October 31, 2012), attached to Memorandum to the File from Kristen Johnson, International Trade Compliance Analyst, Operations, Office 8, regarding “Tolling of Deadlines ” (November 1, 2012).

have made certain modifications to the *Preliminary Determination*. These modifications are discussed below. 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:

General Issues

- Comment 1: Application of CVD Law to China
- Comment 2: Simultaneous Application of CVD and AD Non-Market Economy Measures

Preferential Policy Lending

- Comment 3: Specificity of Preferential Policy Lending
- Comment 4: Whether State-Owned Commercial Banks Are Authorities
- Comment 5: Use of an In-Country Benchmark to Measure the Benefit from Preferential Policy Lending
- Comment 6: Flaws in the Calculation of the External Preferential Policy Lending Benchmark

Export Buyer's Credits Program

- Comment 7: Application of Adverse Facts Available (AFA) to the Export Buyer's Credits Program
- Comment 8: Selection of AFA Rate for Export Buyer's Credits
- Comment 9: Treatment of the AFA Rate for Export Buyer's Credits in the AD Investigation

Provision of Hot-Rolled Steel (HRS) for Less Than Adequate Remuneration (LTAR)

- Comment 10: Whether the HRS Allegation Was Sufficient to Initiate an Investigation
- Comment 11: Whether Application of AFA for HRS LTAR Establishes the Existence of a Financial Contribution
- Comment 12: Whether HRS Producers are Authorities
- Comment 13: Specificity Finding for HRS for LTAR
- Comment 14: Whether HRS Purchases are Alloy or Non-Alloy
- Comment 15: Construction of HRS Benchmark

Provision of Electricity for LTAR

- Comment 16: Electricity Benchmarks

Tax Programs

- Comment 17: *De Jure* Specificity of Three Tax Programs; Whether the Tax Programs Are Limited to Certain Enterprises or Groups of Enterprises

Company-Specific Issues

- Comment 18: Allocation of CS Wind's Grants
- Comment 19: VAT and Import Duties in the Benchmark Used to Calculate CS Wind's Benefit Under the HRS for LTAR Program

- Comment 20: Whether the Department Should Apply Total AFA for HRS for LTAR with Respect to Titan Companies
- Comment 21: Titan Companies' Sales Denominator

II. Subsidies Valuation Information

A. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2011, through December 31, 2011, which corresponds to the GOC's and respondents' most recently completed fiscal year at the time we initiated this investigation. *See* 19 CFR 351.204(b)(2).

B. 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) there is cross-ownership between an input supplier and a downstream producer and production of the input 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) (*Fabrique*).

CS Wind¹⁰

The Department selected CS Wind (consisting of CS Wind China Co., Ltd. and CS Wind Corporation) as a mandatory respondent. The companies that responded to the Department's questionnaires and were verified are CS Wind China Co., Ltd. (CSWC)¹¹ and its cross-owned affiliate, CS Wind Tech (Shanghai) Co., Ltd. (CSWS). CSWC and CSWS are affiliated with other companies. CS Wind provided information on those affiliates to demonstrate that none of them were required to provide questionnaire responses under the Department's attribution and cross-ownership regulations.

CSWC, the Chinese producer of subject merchandise, was established on September 8, 2006, as a foreign invested enterprise (FIE) in the Lianyungang Economic and Technological Development Zone (LETDZ), Lianyungang City, Jiangsu Province. CSWC is wholly-owned by CS Wind Corporation (CS Wind Korea).¹² In 2006, CS Wind Korea was established in Korea and has no Chinese based ownership.¹³ CS Wind Korea is the entity that sells the PRC-origin wind towers and related equipment produced by CSWC to foreign markets, including the United States.¹⁴

Established on November 23, 2009, in Shanghai, CSWS is the wholly-owned subsidiary of CSWC.¹⁵ CSWS is a domestically-owned trading company that sells minor inputs (e.g., paint) to CSWC for the production of subject merchandise.¹⁶

Pursuant to 19 CFR 351.525(b)(6)(vi), we determine that CSWC and CSWS are cross-owned because of common ownership. Regarding CSWS, we attribute any subsidy received by the company as directed under 19 CFR 351.525(b)(6)(iv). As such, for this determination, we have attributed any subsidy received by either CSWC or CSWS to the combined sales of both companies, excluding inter-company sales. Hereinafter, we refer to CSWC and CSWS collectively as CS Wind, unless otherwise indicated.

Titan Companies¹⁷

Titan Wind Energy (Suzhou) Co., Ltd. (Titan Wind) responded to the Department's original and supplemental questionnaires on behalf of itself and five cross-owned affiliates: Titan Lianyungang Metal Product Co. Ltd. (Titan Lianyungang), Baotou Titan Wind Power Equipment Co., Ltd. (Titan Baotou), Shenyang Titan Metal Co., Ltd. (Titan Shenyang), Titan (Suzhou) Wind Power Equipment Co., Ltd. (Titan Suzhou), and Shanghai Tianshen Investment Management Co., Ltd. (Shanghai Tianshen).

Titan Wind was established on January 18, 2005, as an FIE in Taicang Economic Development Zone.¹⁸ Its original name was Titan (Suzhou) Metal Product Co., Ltd. (Titan

¹⁰ For company information, see CS Wind's Initial Questionnaire Response (April 2, 2012) (CS Wind IQR) at 2-6 and Exhibit CVD-4.

¹¹ Company was previously known as "CS Wind Tech Co., Ltd." During the POI, the company changed its English name to "CS Wind China Co., Ltd." See CS Wind's IQR at 2.

¹² See CS Wind IQR at 2-6 and Exhibit CVD-4.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ For company information, see Titan Companies IQR (April 2, 2012) at 5-12 and Exhibit 1.

Metal) and changed to Titan Wind Energy (Suzhou) Co. Ltd. in December 8, 2009.¹⁹ Its original legal organization also transformed from a limited liability company to a joint stock limited company at that time.²⁰ Shanghai Tianshen is a holding company with significant ownership in Titan Wind. Titan Wind reported that it, in turn, owns the majority (*i.e.*, wholly owns or owns more than 50 percent) of the shares of Titan Lianyungang, Titan Baotou, Titan Shenyang and Titan Suzhou.²¹ Because all of these companies have common ownership through Titan Wind, we preliminarily determined that Shanghai Tianshen, Titan Wind, Titan Lianyungang, Titan Baotou, Titan Shenyang and Titan Suzhou are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Titan Wind, Titan Lianyungang, Titan Baotou, and Titan Shenyang are producers of subject merchandise; Titan Suzhou provides inputs for the production of subject merchandise; and Shanghai Tianshen is a holding company and does not produce any merchandise. At the *Preliminary Determination*, the subsidies received by these companies were attributed according to the rules established in 19 CFR 351.525(b)(6)(ii) and (b)(6)(iv).²² Arguments submitted by parties regarding the attribution of subsidies provided to these companies are discussed at Comment 21. As discussed in that comment, in the *Preliminary Determination*, the Department incorrectly used as the denominator the total consolidated sales of only the producers for subsidies received by Titan Wind. We have reviewed parties' comments and determine that for the final determination, the subsidies received by these companies are more accurately attributed according to the rules established in 19 CFR 351.525(b)(6)(ii), (b)(6)(iii) and (b)(6)(iv). Regarding the holding company, Shanghai Tianshen, normally the Department would attribute subsidies received by the firm over its total consolidated sales, as described under 19 CFR 351.525(b)(6)(iii). However, we determine that the information supplied by the Titan Companies does not allow the derivation of a consolidated sales figure.²³ As a result, we have attributed subsidies to Shanghai Tianshen in the manner described below. Hereinafter, we refer to Shanghai Tianshen, Titan Wind, Titan Lianyungang, Titan Baotou, Titan Shenyang and Titan Suzhou, collectively as Titan Companies, unless otherwise indicated.

We determine that multiple sales denominators are appropriate for use in the attribution of subsidies to Titan Companies. For the final determination, to attribute a subsidy received by Titan Wind, we used as the denominator the total consolidated sales of Titan Wind, Titan Lianyungang, Titan Baotou, Titan Shenyang, and included since the *Preliminary Determination*, Titan Suzhou, exclusive of sales among affiliated companies, for 2011. For subsidies received by Titan Lianyungang, Titan Baotou, or Titan Shenyang, we used as the denominator the total consolidated sales of producers, Titan Wind, Titan Lianyungang, Titan Baotou, Titan Shenyang, exclusive of sales among affiliated companies, for 2011. To attribute a subsidy received by Titan Suzhou, we used as the denominator the total consolidated sales of Titan Wind, Titan Lianyungang, Titan Baotou, Titan Shenyang, and Titan Suzhou, exclusive of sales among affiliated companies, for 2011. As explained above, we find we are unable to derive a

¹⁸ See Titan Companies IQR at 5.

¹⁹ *Id.* at 6 – 8.

²⁰ *Id.* at 8.

²¹ *Id.* at 10 – 12.

²² See *Preliminary Determination*, at 77 FR at 33429

²³ As stated above, Titan Companies reported Shanghai Taishen is the parent company of Titan Wind. Shanghai Tianshen's 2009, 2010, and 2011 financial statement is not reported on a consolidated basis (incorporating its own financial information and its affiliates). See Titan Companies IQR at Exhibit 15, 16, 17 and its April 27, 2012, supplemental questionnaire response at Exhibit SCVD – 27 and SCVD – 28.

consolidated sales figure for Shanghai Tianshen. Therefore, to attribute a subsidy received by Shanghai Tianshen, we used as the denominator the total consolidated sales of Shanghai Tianshen, Titan Wind, Titan Lianyungang, Titan Baotou, Titan Shenyang, and Titan Suzhou, exclusive of sales among affiliated companies, for 2011.²⁴ Lastly, to attribute an export subsidy received by a company, we used as the denominator the 2011 export sales of Titan Wind because it is the only cross-owned company with export sales.

C. 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 12 years. No interested party has claimed that the AUL of 12 years is unreasonable. CS Wind has argued that grants derived based on the company's locating its facility in the LETDZ should be allocated over 50-years, which is the term of its land-use rights. The Department disagrees and has addressed these arguments at Comment 18.

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.

D. Benchmarks and Discount Rates

The Department has investigated loans received by the respondents from PRC policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies (see 19 CFR 351.524(b)(1)). The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

In its case brief, the GOC asserts that the Department should consider current PRC market conditions and not merely cite back to dated findings, such as *CFS from the PRC*,²⁵ for its selection of benchmark interest rates.²⁶ The GOC argues that the Department should use PRC-based market rates given the reforms in the PRC financial sector since *CFS from the PRC*,

²⁴ See Department's methodology and treatment of RZBC Co. Ltd. and its affiliates in *Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 76 FR 33219 (June 8, 2011), and unchanged in the final results, *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011) (*Citric Acid from the PRC First Review*), and accompanying Issues and Decision Memorandum (Citric Acid First Review Final Decision Memorandum) at "Attribution of Subsidies."

²⁵ 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 the accompanying Issues and Decision Memorandum (CFS Decision Memorandum).

²⁶ See GOC Case Brief (October 16, 2012) at 21-22.

and not a calculated external benchmark, which it contends has flaws.²⁷ The Department considered the GOC arguments and continues to find that, based on the difficulties inherent in using a PRC benchmark, the use of an external market-based benchmark interest rate is necessary. See Comments 5 and 6, below.

Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, the Department uses comparable commercial loans reported by the company as a benchmark.²⁸ If the firm did not have any comparable commercial loans during the period, the Department’s regulations provide that we “may use a national average interest rate for comparable commercial loans.”²⁹ Section 771(5)(E)(ii) of the Act also indicates that the benchmark should be a market-based rate.

For the reasons first explained in *CFS from the PRC*,³⁰ loans provided by PRC banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a PRC benchmark for loans, the Department is selecting an external market-based benchmark interest rate.³¹

We first developed in *CFS from the PRC*³² and more recently updated in *Thermal Paper from the PRC*,³³ the methodology used to calculate the external benchmark. Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank’s classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from the PRC*, the pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.³⁴ Beginning with 2010, however, the PRC is in the upper-middle income category.³⁵

²⁷ *Id.* 21-24.

²⁸ See 19 CFR 351.505(a)(3)(i).

²⁹ See 19 CFR 351.505(a)(3)(ii).

³⁰ See CFS Decision Memorandum at Comment 10; see also Memorandum to the File from Kristen Johnson, International Trade Compliance Analyst, AD/CVD Operations, Office 3, regarding “Placement of Banking Memoranda on Record of the Instant Investigation” (May 29, 2012)(Banking Memoranda).

³¹ 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.”

³² See CFS Decision Memorandum at Comment 10.

³³ See *Lightweight Thermal Paper From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying Issues and Decision Memorandum (*Thermal Paper Decision Memorandum*) at 8-10.

³⁴ See World Bank Country Classification, <http://econ.worldbank.org/>; see also Memorandum to All Interested Parties from Kristen Johnson, International Trade Compliance Analyst, Antidumping and Countervailing Duty

After identifying the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation – the strength of governance as reflected in the quality of the countries’ institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators.

This methodology relies on data published by the World Bank and International Monetary Fund. At the time of the *Preliminary Determination*, the World Bank had not yet published all the necessary data (*i.e.*, the World Governance Indicators) for year 2011 (the POI), which the Department requires to compute a short-term benchmark interest rate for the PRC. Therefore, at the *Preliminary Determination*, where the use of a short-term benchmark rate for 2011 was required, we applied the 2010 short-term benchmark rate. Also, as noted in the *Preliminary Determination*, we stated that the loan benchmark may be updated for the final determination, pending all necessary 2011 data. Those data, have since been released. We therefore constructed the 2011 benchmark interest rate using the Department’s established regression-based methodology and released the rate computation for all years 2001 – 2011, to interested parties for comment on November 2, 2012.³⁶ The Department did not receive any comments.

In each year from 2001-2009, and 2011, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.³⁷ For 2010, however, the regression does not yield that outcome for the PRC’s income group.³⁸ As discussed in the *Preliminary Determination*, this contrary result for a single year does not lead the Department to reject the strength of governance as a determinant of interest rates.³⁹ Therefore, while we have continued to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009, and 2011. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries, consistent with the *Preliminary Determination*.

Many of the countries in the World Bank’s upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they 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 countries identified as “upper middle income” by the World Bank for 2010 and 2011, and “lower middle income” for 2001-2009. First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, 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

Operations 8, regarding “Interest Rate Benchmark Memorandum (2001 – 2011)” (Interest Rate Benchmark Memorandum) (November 2, 2012).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*, and Memorandum to the File from Patricia Tran, International Trade Compliance Analyst, AD/CVD Operations, Office 3, regarding “Additional Documents for Preliminary Determination” (Additional Documents Memorandum) (May 29, 2012) at Attachment I for Federal Reserve Consultation Memorandum.

³⁸ See Interest Rate Benchmark Memorandum.

³⁹ See *Preliminary Determination*, 77 FR at 33430.

lending rate or that based its lending rate on foreign-currency denominated instruments.⁴⁰ Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.⁴¹

The resulting inflation-adjusted benchmark lending rates are included in the respondents' final calculations memoranda. Because these rates are net of inflation, we adjusted the benchmark to include an inflation component.

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. 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.⁴²

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.⁴³ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

Foreign Currency-Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is again following the methodology developed over a number of successive PRC investigations. For US dollar short-term loans, the Department used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Likewise, for any loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-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.

⁴⁰ For example, in certain years Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L'Este reported dollar-denominated rates; therefore, such rates have been excluded.

⁴¹ For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country's real interest rate was 34.95 percent and 37.25 percent, respectively. See Interest Rate Benchmark Memorandum.

⁴² See, e.g., *Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*Rectangular Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Rectangular Pipe Decision Memorandum) at 8.

⁴³ 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 Rate Benchmarks

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 non-recurring subsidies.

The resulting interest rate benchmarks that we used in the final calculations are provided in the respondents' final calculations memoranda.

E. Benchmarks for Less Than Adequate Remuneration (LTAR) Programs

Provision of Hot-Rolled Steel (HRS) for LTAR

We continue to find that the GOC is the predominant provider of HRS in the PRC and that its significant presence in the market distorts all transaction prices.⁴⁴ As a result, we cannot rely on domestic prices in the PRC as a "tier-one" benchmark. For the same reasons, we determine that import prices into the PRC cannot serve as a benchmark. Therefore, for the final determination, we continue to rely on tier-two benchmarks, *i.e.*, world market prices available to purchasers in the PRC, pursuant to 19 CFR 351.511(a)(2)(ii).

For the *Preliminary Determination*, we used HRS plate prices from MEPS International (MEPS), SteelBenchmarker, and Steel Orbis to measure the benefit from the HRS provided for LTAR.⁴⁵ After the issuance of the *Preliminary Determination*, we received comments from the parties on the type of HRS plate purchased by the respondents (*i.e.*, alloy or non-alloy), additional pricing data sources⁴⁶, and arguments regarding how to construct the world market prices. After considering those comments, we have made modifications to the construction of the HRS benchmark. *See* Comments 14 and 15, below.

For this final determination, we determine that the type of HRS purchased by the respondents is non-alloy steel. *See* Comment 14, below, for a full discussion. Arguments submitted by parties with regards to the construction of the benchmark are discussed in Comment 15. We have used the following sources for HRS world market prices: Global Trade Information Services (GTIS), Steel Orbis, MEPS, Metal Bulletin, Steel Business Briefing (SBB), and SteelBenchmarker. We have derived the monthly HRS world market prices by simple averaging the selected prices, pursuant to 19 CFR 315.511(a)(2)(ii). 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. Regarding delivery charges, we have added ocean freight to the monthly benchmark prices. With regard to inland freight charges that would be incurred to deliver HRS from the port to the company's facility, we added a freight cost to the benchmark. We also added to the benchmark prices the applicable duties and VAT for imports of HRS plate, as reported by the GOC. CS Wind argued that the Department should not add import duties and VAT to the benchmark prices used to calculate its benefit. *See* Comment 19. As discussed in that comment, the Department considered CS Wind's arguments, however continues to determine that import duties and VAT should be included in the benchmark prices used to calculate the company's benefit.

⁴⁴ *See Preliminary Determination*, 77 FR at 33434.

⁴⁵ *Id.*

⁴⁶ *See* Petitioner's June 15, 2012, CS Wind's July 9, 2012, and Titan Companies' July 9, 2012, submissions.

We then compared the derived monthly benchmark prices for HRS plate to CS Wind's and Titan Companies' actual purchase prices including taxes and delivery charges. For further information, please see respondents' final calculation memoranda.

Provision of Electricity for LTAR

In the *Preliminary Determination*, we relied, as AFA, on provincial tariff schedules submitted to the Department by the GOC for benchmark prices to measure the benefit from electricity provided to the respondents.⁴⁷ We continue to rely on those schedules for an electricity benchmark for this final determination.

CS Wind, in its case brief, argued that the Department applied the wrong electricity rates as benchmarks because of a translation error in the Zhejiang province electricity rate schedule. For reasons outlined below in Comment 16, the Department disagrees with CS Wind and continues to apply the same electricity benchmarks for the peak, normal, and valley rates under the large industrial user category as was done in the *Preliminary Determination*. However, for the final determination we have changed the benchmark rate for the "basic electricity maximum demand" category. After reviewing the provincial electricity rate schedules,⁴⁸ we realized that Guizhou province and not Zhejiang province has the highest rate for the basic electricity maximum demand category.⁴⁹ Guizhou province has a basic electricity maximum demand rate of 45, and Zhejiang province has a basic electricity maximum demand rate of 40. Therefore, for the final determination, where necessary, we applied a benchmark rate of 45 (Guizhou) for the basic electricity maximum demand. The benchmark for basic electricity maximum demand is the only benchmark that has been changed for the final determination.

III. Use of Facts Otherwise Available and Adverse Inferences

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

HRS Producers Are Authorities

In the *Preliminary Determination*,⁵⁰ relying upon the facts available with an adverse inference, we found that all producers of the HRS purchased by CS Wind and the Titan Companies were authorities within the meaning of section 771(5)(B) of the Act. For this final determination, we continue to determine, as AFA, that these producers are authorities, for all the reasons described

⁴⁷ *Id.* at 33435-36

⁴⁸ The GOC submitted the provincial electricity rate schedules in its April 18, 2012, supplemental response at Exhibit S1-1.

⁴⁹ See Memorandum to the File through Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 8, from Kristen Johnson, International Trade Compliance Analyst, AD/CVD Operations, Office 8, regarding "PRC Electricity Benchmark Rates" (December 17, 2012).

⁵⁰ See *Preliminary Determination*, 77 FR at 33425-26.

in the *Preliminary Determination*. Arguments from interested parties concerning this determination are discussed below under Comments 12.

Titan Companies – HRS Producers are Authorities

In our initial questionnaire to Titan Companies at III-8 and III-9, the Department requested that Titan Companies provide a spreadsheet showing, among other things, the producers of the HRS, which it purchased. We also requested that Titan Companies coordinate with the GOC to ensure that the GOC had the information it needed to accurately respond to the Department's questions in the "Information Regarding Input Producers in the PRC," appendix of the Department's questionnaire. On July 9, 2012, Titan Companies submitted HRS purchases made by Titan Lianyungang, Titan Shenyang, and Titan Baotou. In this submission, Titan Companies did not report the identity of the producers.

At verification, Titan Companies was able to contact its suppliers and provide the names of the producers of the merchandise purchased by Titan Lianyungang, Titan Shenyang, and Titan Baotou.⁵¹ However, for a few of the selected sales noted in Titan Companies verification report the actual HRS producers were not the reported HRS producers.⁵²

Because Titan Companies failed to accurately report its HRS producers, the GOC was unable to fully respond to "Information Regarding Input Producers in the PRC," appendix of the Department's questionnaire. As a result, necessary information is not on the record. Without this information, the Department is unable to analyze whether the new producers of HRS, reported at verification, are government authorities. The purpose of the verification process, as the name implies, is to verify the accuracy and completeness of submitted factual information. See 19 CFR 351.307(d). Typically, the Department does not accept new factual information provided at verification, except for minor corrections to previously submitted information. By failing to identify these producers until verification, Titan Companies significantly impeded the proceeding, and we are resorting to the facts otherwise available, pursuant to section 776(a)(2)(C) of the Act. Further, we find that Titan Companies failed to act to the best of its ability to comply with the Department's request for information regarding its HRS purchases. Consequently, an adverse inference is warranted in accordance with section 776(b) of the Act. As AFA, we find that the HRS from the producers that, Titan Companies first informed us of at verification was produced by a government authority, within the meaning of section 771(5)(B) of the Act.

Provision of HRS Is Specific to Wind Tower Producers

In the *Preliminary Determination*,⁵³ relying upon the facts available with an adverse inference, we found that the GOC's provision of HRS to wind tower producers is specific within the meaning of section 771(5A) of the Act. For this final determination, we continue to determine, as AFA, that provision of HRS to wind tower producers is specific, for the reasons described in the *Preliminary Determination*. Arguments from interested parties concerning this determination are discussed below under Comment 13.

⁵¹ See Titan Companies Verification Report at 10, 11, and Exhibit 9, 10, and 11.

⁵² *Id.* at 7.

⁵³ See *Preliminary Determination*, 77 FR at 33426-27.

Provision of Electricity for LTAR

In the *Preliminary Determination*,⁵⁴ relying on the facts available with an adverse inference, we found that the provision of electricity to CS Wind and Titan Companies 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 also relied on AFA in selecting the benchmark for determining the existence and amount of the benefit.⁵⁵ For this final determination, we continue to determine, relying upon AFA, that the provision of electricity constitutes a financial contribution and is specific. We also continue to determine that an adverse inference is appropriate in measuring the benefit from electricity provided to CS Wind and Titan Companies. Where possible, the Department will rely on the respondents' reported information to determine the existence and the amount of the benefit to the extent that such information is useable and verifiable. Thus, we have relied on the verified usage information reported by the respondents. Arguments from the interested parties concerning the benchmark applied to measure the benefit is discussed below under Comment 16.

Export Buyer's Credits

The Department has determined that the use of AFA is warranted in determining the countervailability of the Export Buyer's Credits Program. As discussed in detail below under Comment 7, the GOC refused to allow the Department to examine records regarding the recipients of export buyer's credits and refused to allow the Department to examine or query electronic databases regarding such recipients. Pursuant to section 776(a)(2)(D) of the Act, when an interested party provides information that cannot be verified, the Department uses the facts otherwise available. Further, pursuant to section 776(b) of the Act, we find that the GOC failed to cooperate by not acting to the best of its ability, because it refused to allow the Department to pursue the most appropriate methods of verification of this program and failed to provide details concerning alternative methods. Accordingly, an adverse inference is warranted. As AFA, we find, as discussed below under Comment 8, that CS Wind and Titan Companies benefitted from this program at the rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in a prior PRC proceeding.

Subsidies Discovered During the Investigation

In the *Preliminary Determination*, we determined, as AFA, that numerous subsidies discovered during the course of this investigation were countervailable grants.⁵⁶ For this final determination, we continue to determine, as AFA, that these subsidies are countervailable grants. No interested party submitted arguments concerning these subsidies.

VI. Terminated Programs

The GOC reported that certain programs used by the respondents have been terminated. In the *Preliminary Determination*, we determined that no program-wide-change adjustments to the cash deposit rate were warranted under 19 CFR 351.526(a). We noted that several of the programs, which the GOC claims were terminated, had residual benefits in the POI. For example, certain parties continue to enjoy benefits from the "Two Free, Three Half" income tax program for FIEs.

⁵⁴ *Id.* at 33427.

⁵⁵ *Id.*

⁵⁶ *Id.* at 33427 - 33428.

Additionally, the “Import Tariff and Value Added Tax Exemptions for Use of Imported Equipment” program still provides for residual benefits because import tariff and VAT exemptions were provided for the importation of capital equipment and, thus, those exemptions are treated as non-recurring subsidies pursuant to 19 CFR 351.524(c)(2)(iii).

We received no comments on this issue. Therefore, we are not making any adjustments to the cash deposit rates in this final determination for terminated programs.

V. Analysis of Programs

A. Programs Determined To Be Countervailable

1. Policy Lending to the Renewable Energy Industry

The Department finds that the GOC has placed great emphasis on targeting the renewable energy industry, including wind towers, for development in recent years. For example, the “Renewable Energy Law,” in Article 25, calls specifically for the use of loans in implementing the GOC’s plans for renewable energy: “Financial institutions may offer preferential loans with financial interest subsidy to projects for exploitation of renewable energy that are listed in the national development guidance catalogue of the renewable energy industry and meet the requirements for granting loans.”⁵⁷

The GOC’s “Guidelines of the Eleventh Five-Year Plan for National Economic and Social Development” (2006-2010) contains the section “All Out Develop Renewable Energy Resources” with the instruction to “carry out preferential finance and taxation and investment policies and mandatory market share policies, encourage the production and consumption of renewable energy resources . . .”⁵⁸ The “Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation” (December 2, 2005) (Decision 40) states that renewable energy is an encouraged category that is “to be encouraged and supported with policies and measures.”⁵⁹

Additionally, renewable energy is among the projects listed in the National Development Reform Commission’s (NDRC’s) “Directory Catalogue on Readjustment of Industrial Structure” (December 2, 2005) (the Catalogue), which contains a list of encouraged projects the GOC develops through loans and other forms of assistance, and which the Department has relied upon in prior specificity determinations for GOC lending programs.⁶⁰ The Catalogue includes the encouraged power project IV(5) for: “wind power and the development and utilization of such renewable energy as solar energy, geothermal energy, ocean power, and biomass power” and the encouraged machinery project XII(12) for: “manufacturing of clean energy power generation equipment (nuclear power, wind power, solar energy and tide, etc.)”⁶¹

⁵⁷ See Petition at Volume III, Exhibit III-7.

⁵⁸ See GOC IQR (April 2, 2012) at D-7.1, Chapter 12 “Optimize the Development of Energy Industry,” Section 4 “All Out Develop Renewable Energy Resources.”

⁵⁹ *Id.* at D-10, Article 14.

⁶⁰ See, e.g., *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*Tires from the PRC*), and accompanying Issues and Decision Memorandum (*Tires Decision Memorandum*) at “Government Policy Lending.”

⁶¹ See GOC IQR at Exhibit D-11.

Both respondents reported having outstanding loans during the POI and, in the *Preliminary Determination*, we found that this program conferred a countervailable subsidy.⁶² During verification of the respondents, the Department reviewed the companies' outstanding loans, including minor corrections to the respondents' previously reported loans.⁶³ At verification, we confirmed that all of CSWC's loans were for export financing.⁶⁴ At verification, Titan Companies explained that a portion of their previously reported loans are classified as export financing. We were able to confirm this fact and the remaining loans.⁶⁵

After considering arguments from the parties concerning the nature of the commercial banking industry, specificity of this program, and the appropriate benchmark to use (*see* Comments 3 through 6), we continue to find that this program provides a financial contribution pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and that the loans 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. We continue to determine that there is a program of preferential policy lending specific to the renewable energy industry, including wind towers, within the meaning of section 771(5A)(D)(i) of the Act. Additionally, because CSWC and the Titan Companies reported that they applied for bank loans in the form of export invoice financing,⁶⁶ we determine that such loans are specific under section 771(5A)(B) of the Act because receipt of the financing is contingent upon exporting and that these export loans confer a benefit within the meaning of section 771(5)(E)(ii) of the Act.

To calculate the benefit under this program, we used the benchmarks discussed in the "Subsidy Valuation Information" section above. To calculate the net subsidy rate attributable to CS Wind, we divided the benefit by total export sales, as described in the "Cross-Ownership" section. To calculate the net subsidy rate attributable to Titan Companies; first, we calculated the benefit for the export financing loans, then divided the benefit by total export sales in the manner described in the "Cross-Ownership" section, calculating a rate of 0.12 for export financing loans. Second, we calculated the benefit for Titan Companies' remaining loans, then divided the benefit by total sales in the manner described in the "Cross-Ownership," section, calculating a rate of 0.15 for non-export financing loans. Finally, we summed the two amounts to arrive at the net subsidy rate for Titan Companies.

On this basis, we determine a countervailable subsidy rate of 0.03 percent *ad valorem* for CS Wind and 0.27 percent *ad valorem* for Titan Companies.

2. Two Free, Three Half Program for FIEs

Under Article 8 of the "Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises" (FIE Tax Law), an FIE that is "productive" and scheduled to operate for more than ten years is exempt from income tax in the first two years of profitability and pays income taxes at half the standard rate for the next three years.⁶⁷ According to the GOC, the program was terminated effective January 1, 2008, by the

⁶² *See Preliminary Determination*, 77 FR at 33431-32.

⁶³ *See* CS Wind Verification Report at 1-2 and 9-10, and Titan Companies Verification Report at 1 and 12-15.

⁶⁴ *See* CS Wind Verification Report at 9.

⁶⁵ *See* Titan Companies Verification Report at 12-15.

⁶⁶ *See* CS Wind IQR at 21 and Titan Companies Verification Report at 13.

⁶⁷ *See* GOC IQR at 60-70.

“Enterprise Income Tax Law” (EITL), but companies already enjoying the preference were permitted to continue paying taxes at reduced rates.⁶⁸ In the *Preliminary Determination*, we found that CSWC and Titan Wind paid taxes at a reduced rate under this program during the POI.⁶⁹ At verification, we confirmed the respondents’ use of this program.⁷⁰

After considering arguments from parties concerning the specificity of this program (*see* Comment 17), we continue to find, as we did in the *Preliminary Determination*, that the “Two Free, Three Half” income tax exemption/reduction confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue foregone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemption/reduction afforded by the 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.

Consistent with the *Preliminary Determination*, we treated the income savings enjoyed by CSWC and Titan Wind as a recurring benefit, pursuant to 19 CFR 351.524(c)(1). To compute the amount of the tax savings for CSWC, we compared the income tax rate that the company would have paid in the absence of the program (22 percent) with the reduced income tax rate paid during the POI (11 percent). Similarly, to compute amount of tax savings for Titan Wind, we compared the income tax rate that the company would have paid in the absence of the program (25 percent) with the reduced income tax rate paid during the POI (12.5 percent).

Next, we divided CSWC’s and Titan Wind’s tax savings by the appropriate total sales for each company, as described in the “Cross-Ownership” section.

On this basis, we determine a countervailable subsidy rate of 0.32 percent *ad valorem* for CS Wind and 1.22 percent *ad valorem* for Titan Companies under this program.

3. Income Tax Benefits for FIEs Based on Geographic Location

Pursuant to Article 7 of the FIE Tax Law, productive FIEs established in a coastal economic development zone, special economic zone, or economic technology development zone pay a reduced corporate income tax rate of either 15 or 24 percent, depending on the zone.⁷¹ The GOC reported that after the EITL became effective January 1, 2008, all enterprises in China are subject to the unified tax rate of 25 percent regardless of whether they are located in a special economic zone.⁷² However, the GOC explained that, under Article 57 of the law, enterprises that enjoyed preferential policies of reduced tax rates are gradually transitioned to the statutory, uniform tax rate of 25 percent over a five-year period after the implementation of the new income tax law.⁷³ For tax year 2010, enterprises enjoyed a tax rate of 22 percent.⁷⁴

In the *Preliminary Determination*, we determined that CSWC received a countervailable subsidy under this program.⁷⁵ At verification, we confirmed CSWC’s use of this program and reduced tax rate because of its location in the Lianyungang Economic and Technological Development Zone.⁷⁶ No interested party submitted comments on this program.

⁶⁸ *Id.* at 70.

⁶⁹ *See Preliminary Determination*, 77 FR at 33432.

⁷⁰ *See* CS Wind Verification Report at 10, and Titan Companies Verification Report at 15.

⁷¹ *See* GOC IQR at 73.

⁷² *Id.* at 80.

⁷³ *Id.*

⁷⁴ *Id.* at 81.

⁷⁵ *See Preliminary Determination*, 77 FR at 33432-33.

Consistent with our preliminary determination, we continue to find that the reduced income tax rate paid by FIEs under this program confers a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the reduction afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit from this program, we treated the income tax savings enjoyed by CSWC as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To calculate the benefit, we compared the income tax rate that the company would have paid in absence of the program (25 percent) with the reduced income tax rate paid during the POI (22 percent). We divided the benefit by CS Wind's total sales, as described in the "Cross-Ownership" section.

On this basis, we determine a countervailable subsidy rate of 0.09 percent *ad valorem* for CS Wind under this program.

4. Enterprise Income Tax Law, Research and Development Program

Article 30.1 of the Enterprise Income Tax Law of the PRC created a new program regarding the deduction of research and development expenditures by companies, which allows enterprises to deduct, through tax deductions, research expenditures incurred in the development of new technologies, products, and processes. Article 95 of Regulation 512 provides that, if eligible research expenditures do not "form part of the intangible assets value," an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount. Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets costs. Titan Companies reported benefitting from this program during the POI, and the Department found in the *Post-Prelim Analysis* that the benefit received is countervailable.⁷⁷

The Department reviewed the use of this program by Titan Wind during verification, and met with central government officials to discuss the details of this program, including the application process and the use of the program by the respondents.⁷⁸ The Department has considered the arguments from the parties regarding the specificity of this program in Comment 17. We continue to find that this program provides a countervailable subsidy. This income tax deduction is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also continue to determine that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with research and development in eligible high-technology sectors and, thus, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program to Titan Companies, we treated the tax credits as recurring benefits, consistent with 19 CFR 351.524(c)(1).⁷⁹ To compute the amount of the tax

⁷⁶ *See* CS Wind Verification Report at 10.

⁷⁷ *See* Post-Prelim Analysis at 3.

⁷⁸ *See* Titan Wind Verification Report at 15, and GOC Verification Report at 2-3.

⁷⁹ These credits can be for either expensed or capitalized R&D expenditures. If a credit is for capitalized expenditures (*e.g.*, the expenditures were made toward developing an "intangible asset" or patent), however, the 50 percent deduction is amortized across the useful life of the developed asset. Thus, even credits for capitalized expenditures would be allocated over tax returns filed during a number of years and would thus be recurring. *Id.* at

savings, we calculated the amount of tax each respondent would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). We then divided the tax savings by the appropriate total sales denominator, as described in the “Cross-Ownership” section.

On this basis, we determine a countervailable subsidy rate of 0.24 percent *ad valorem* for Titan Companies.

5. Import Tariff and Value Added Tax Exemptions for Use of Imported Equipment

Enacted in 1997, the “Circular of the State Council on Adjusting Tax Policies on Imported Equipment” (GUOFA No. 37), exempts both FIEs and certain domestic enterprises from VAT and tariffs on imported equipment used in their production provided the equipment is not included in prescribed lists of non-eligible items, in order to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.⁸⁰ The GOC reported that, pursuant to the “Announcement of Ministry of Finance, China Customs, and State Administration of Taxation,” No. 43 (2008), the VAT exemption under the program was terminated.⁸¹ Companies however can still receive import duty exemptions.⁸²

In the *Preliminary Determination*, we found that CSWC received VAT and tariff exemptions under this program.⁸³

The Department has considered and addressed the parties’ specificity concerns relating to this program in Comment 17. We continue to determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue foregone by the GOC and they provide a benefit to the recipient 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 also determine that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises, *i.e.*, FIEs and domestic enterprises involved in “encouraged” projects.

Normally, we treat exemptions from indirect taxes and import charges, such as VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate the benefits to the year in which they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department normally treats it as a non-recurring benefit and allocates the benefit to the firm over the AUL.⁸⁴ At CS Wind’s verification, we verified the VAT and tariff exemptions that CSWC received for imported capital equipment.⁸⁵ Based on that verified information, we continue to determine that the VAT and tariff exemptions are tied to the capital structure or capital assets of the company, and, as such, should be allocated over time.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.⁸⁶ CSWC imported the equipment in 2007 and 2008.⁸⁷ For 2007, the benefits

Attachment II.

⁸⁰ *See* GOC’s IQR at 90-100.

⁸¹ *Id.* at 90-91.

⁸² *Id.*

⁸³ *See Preliminary Determination*, 77 FR at 33433.

⁸⁴ *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

⁸⁵ *See* CS Wind Verification Report at 11.

⁸⁶ *See* 19 CFR 351.524(b).

⁸⁷ *See* CS Wind’s First Supplemental Questionnaire Response (SQR) (April 30, 2012) at Exhibit S1-21.

received by CSWC under this program exceeded 0.5 percent of relevant sales for that year. We, thus, allocated the benefits received in 2007 over the AUL of 12 years, pursuant to 19 CFR 351.524(b)(1). For 2008, the benefits received by CSWC under this program did not exceed 0.5 percent of relevant sales for that year. As such, we expensed those benefits to the year in which they were received, *i.e.*, 2008, pursuant to 19 CFR 351.524(b)(2).⁸⁸

To allocate the 2007 benefits, we used the discount rates described above in the section “Subsidies Valuation Information” to calculate the amount of the benefit allocable to the POI. We then divided the benefit by CS Wind’s total sales, as described in the “Cross-Ownership” section.

On this basis, we determine a countervailable subsidy rate of 0.14 percent *ad valorem* for CS Wind under this program.

6. Provision of HRS for LTAR

Both CS Wind and Titan Companies reported purchasing HRS plate as an input to produce subject merchandise and identified several producers of this input from which they purchased HRS plate during the POI. In the *Preliminary Determination*, the Department found that this program conferred a countervailable subsidy.⁸⁹ During verification, the Department was able to confirm the information CS Wind provided regarding the identity of the firms that produced the HRS plate that, it purchased during the POI.⁹⁰ As discussed above in “Use of Facts Otherwise Available and Adverse Inferences” section, Titan Companies identified, for the first time at verification, the producers of HRS purchased by Titan Lianyungang, Titan Baotou, Titan Shenyang, and for some Titan Suzhou sales. The Department was able to verify and confirm the information Titan Companies provided regarding the identity of the firms originally identified that produced the HRS plate it purchased during the POI.⁹¹

We have considered the arguments from the parties on the nature of the HRS industry, including the GOC’s role in the industry, as well as the specificity of this program and the appropriate benchmark to use (*see* Comments 11 through 15). As discussed above in “Use of Facts Otherwise Available and Adverse Inferences” section, we continue to find, as we did in the *Preliminary Determination*, that the domestic producers of the HRS inputs purchased by the respondents during the POI are authorities, relying upon AFA. As a result, we continue to determine that the HRS sold by these input producers constitute a financial contribution in the form of a provision of a good under section 771(5)(D)(iii) of the Act. And we continue to find, as AFA, the provision of HRS at LTAR is specific to wind tower producers. We also continue to find that the respondents received a benefit to the extent that the HRS, that they purchased, was provided for LTAR.⁹²

The Department continues to use a tier-two benchmark pursuant to 19 CFR 351.511(a)(2)(ii), *i.e.*, world market prices, to calculate a benefit for each respondent equal to the difference between the delivered benchmark prices and the delivered prices each respondent paid. For more information on the benchmark prices applied in the final calculations, *see* “Benchmarks for LTAR Programs” section, above, and Comment 15, below. We then divided

⁸⁸ See CS Wind’s Final Calculations.

⁸⁹ See *Preliminary Determination*, 77 FR at 33433-35.

⁹⁰ See CS Wind Verification Report at 4-9.

⁹¹ See Titan Companies Verification Report at 4-12.

⁹² See section 771(5)(E)(iv) of the Act.

the total benefits for each respondent by the appropriate total sales denominator.

On this basis, we determine a countervailable subsidy rate of 9.88 percent *ad valorem* for CS Wind and 21.90 percent *ad valorem* for the Titan Companies under this program.

7. Provision of Electricity for LTAR

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section, we are basing our determination regarding the government’s provision of electricity in part on AFA. In the *Preliminary Determination*, the Department determined that CS Wind and Titan Companies received a countervailable subsidy through purchasing electricity for LTAR.⁹³ During verification of the respondents, we reviewed electricity invoices with regard to the electricity purchased during the POI.⁹⁴

We continue to find that, in not providing the requested information for this program, 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 the provision of electricity in the PRC and determine that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act.⁹⁵ To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the companies’ verified consumption volumes and rates paid.

To calculate the electricity benchmark, in accordance with 19 CFR 351.511(a)(2), we selected the highest non-seasonal provincial rates in the PRC for each user category of the respondents (*i.e.*, “large industry,” “general industry and commerce,” and “base charge” (either maximum demand or transformer capacity), as provided by the GOC in the 2009 provincial electricity tariff schedules, which were in effect during the POI and which are more fully discussed in the “Benchmarks for LTAR Programs” section, above. Additionally, where applicable, we identified and applied the highest peak, normal, and valley rates within a category.⁹⁶

CS Wind argues that the Department applied, in the preliminary calculations, the wrong electricity rates as benchmarks because of a translation error in the Zhejiang province electricity rate schedule. For reasons outlined below in Comment 16, the Department disagrees with CS Wind and continues to apply the same electricity benchmarks for the peak, normal, and valley rates under the large industrial user category as was done in the *Preliminary Determination*.

The benchmarks selected reflect an adverse inference, which we have drawn as a result 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.⁹⁷ Consistent with the *Preliminary Determination*, to determine whether the respondents received electricity for LTAR, we compared what the respondents paid for electricity to our benchmark prices. Based on this comparison, we determine that electricity was provided for LTAR and that a benefit exists in the total amount of the difference between each benchmark and the price paid for each type of electricity consumed

⁹³ See *Preliminary Determination*, 77 FR at 33435-36.

⁹⁴ See CS Wind Verification Report at 11-12, and Titan Companies Verification Report at 15-16.

⁹⁵ See “Use of Facts Otherwise Available and Adverse Inferences” section above.

⁹⁶ For more information on the selected provincial electricity rates used as benchmark rates in the benefit calculations, see Memorandum to the File from Kristen Johnson, International Trade Compliance Analyst, AD/CVD Operations, Office 8, regarding “PRC Electricity Benchmark Rates” (December 17, 2012).

⁹⁷ See section 776(b)(4) of the Act.

at each rate level.⁹⁸ To calculate the subsidy rate pertaining to the provision of electricity for LTAR, we divided the benefit amount by the appropriate sales denominator for each respondent as described in the “Cross-Ownership” section. Unlike in the *Preliminary Determination*,⁹⁹ we have not adjusted the benefit by any adjustment fees or discounts in the final calculations, because we determine that such adjustments are not appropriate given that the GOC failed to act to the best of its ability in providing to the Department the requested information concerning the provision of electricity in the PRC.

We determine a countervailable subsidy rate of 0.29 percent *ad valorem* for CS Wind and 0.53 percent *ad valorem* for Titan Companies under this program.

8. Support Funds for Construction of Project Infrastructure Provided by Administration Commission of LETDZ¹⁰⁰

In the *Preliminary Determination*, we found countervailable a grant that CSWC received in 2009, from the Lianyungang Economic and Technological Development Zone (LETDZ) Administration Committee, for the company’s investment within the zone.¹⁰¹ Subsequent to the *Preliminary Determination*, CS Wind disclosed that CSWC received an additional grant under this program.¹⁰² At the company’s verification, we verified the grants received by CSWC.¹⁰³

In its case brief, CS Wind argued that the grants should be allocated not over a 12-year AUL, but over 50 years, which is the length of CSWC’s land-use rights. We considered CS Wind’s argument; however, we continue to find that the grants should be allocated over a 12-year AUL. *See* Comment 18. Also, for reasons discussed in Comment 18, we have changed the name of this program from “Land Development Program Grant” to “Support Funds for Construction of Project Infrastructure Provided by Administration Commission of LETDZ.”

Consistent with the *Preliminary Determination*, we continue to find that grants issued under this program constitute a financial contribution under section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds, and a benefit under section 771(5)(E) of the Act. As discussed under “Use of Facts Otherwise Available and Adverse Inferences,” we are relying on AFA to determine that this grant program is specific under section 771(5A) of the Act, because the GOC failed to submit the requested information regarding the assistance provided under this program.

To calculate the benefit from the grants, we first applied the “0.5 percent expense test” described in 19 CFR 351.524(b)(2) and found that the grants were greater than 0.5 percent of the company’s total sales for the respective years in which the grants were approved.¹⁰⁴ Because the grants are non-recurring benefits consistent with 19 CFR 351.524(c)(2)(iii), we allocated the benefits over the 12-year AUL in the year in which each grant was received, *i.e.*, 2006 and 2009, and applied a discount rate discussed in the “Benchmarks and Discount Rates” section, above.

⁹⁸ *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).

⁹⁹ *See Preliminary Determination*, 77 FR at 33435-36.

¹⁰⁰ In the *Preliminary Determination*, the name of this program was “Land Development Program Grant” (*see* 77 FR at 33436).

¹⁰¹ *See Preliminary Determination*, 77 FR at 33436.

¹⁰² *See* CS Wind Post-Preliminary Factual Submission (July 9, 2012) at 2-3.

¹⁰³ *See* CS Wind Verification Report at 12.

¹⁰⁴ *See* Memorandum to the File from Kristen Johnson, International Trade Compliance Analyst, AD/CVD Operations, Office 8, regarding “Final Calculations for CS Wind China Co., Ltd., CS Wind Tech (Shanghai) Co., Ltd., and CS Wind Corporation” (December 17, 2012) (CS Wind Final Calculations).

We then divided the benefit, allocated to the POI, by total sales, as described in the “Cross-Ownership” section.

On this basis, we determine a countervailable subsidy of 0.55 percent *ad valorem* for CS Wind under this program.

9. Award for Good Performance in Paying Taxes

In the *Preliminary Determination*, we found countervailable a grant that CSWC received during the POI from the LETDZ Administration Committee for its good performance in paying taxes for fiscal year 2010.¹⁰⁵ We verified CSWC’s receipt of this grant and found no discrepancies.¹⁰⁶

The Department did not receive any comments on this program from any interested party. Therefore, we continue to find that the grant issued under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds, and a benefit under section 771(5)(E) of the Act. Based on CSWC’s response, the grant is limited to the top 20 income tax-payers located in the LETDZ. As such, we determine that this grant program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

To calculate the benefit from the grant, we first applied the “0.5 percent expense test” and found that the grant amount approved in 2011 is less than 0.5 percent of CS Wind’s total sales, as described in the “Cross-Ownership” section, above. As such, we expensed the grant to the year of receipt, the POI.

On this basis, we determine a countervailable subsidy of 0.02 percent *ad valorem* for CS Wind under this program.

10. Award for Taicang City to Support Public Listing of Enterprises

In the *Preliminary Determination*, we found countervailable a grant that Titan Wind received during the POI from the Taicang City government awarding bonus payments to Titan Wind in recognition of the company’s successful listing on the Shenzhen Stock Exchange.¹⁰⁷ We verified Titan Wind’s receipt of this grant and found no discrepancies.¹⁰⁸

The Department did not receive any comments on this program from any interested party. Consistent with the Preliminary Determination, we continue to find that the grant issued under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds, and a benefit under section 77(5)(E) of the Act. Based on Titan Companies’ response, the grant was expressly limited to firms undertaking an IPO. As such, we determine that this grant program is *de jure* specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from the grant, we first applied the “0.5 percent expense test” described in 19 CFR 351.524(b)(2). We preliminarily find that the total grant amount approved in 2010 is greater than 0.5 percent of the company’s total sales for 2010. Because the 2010 grant is a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii), we are allocating the benefit over the 12-year AUL in the years in which it was received, 2010 and 2011, and applied a

¹⁰⁵ See *Preliminary Determination*, 77 FR at 33436-37.

¹⁰⁶ See CS Wind Verification Report at 12-13.

¹⁰⁷ See *Preliminary Determination*, 77 FR at 33437.

¹⁰⁸ See Titan Companies Verification Report at 17.

discount rate discussed in the “Benchmarks and Discount Rates” section above. We then divided the benefit amount attributed to the POI by Titan Companies’ total consolidated sales for 2011 (less inter-company sales). On this basis, we determine that Titan Companies received a net countervailable subsidy of 0.06 percent *ad valorem*.

11. Awards for Taicang City to Promote Development of Industrial Economy for the Three-year Period of 2010 to 2012

In the *Preliminary Determination*, we found countervailable a grant which Titan Wind received during the POI for doubling output in three years.¹⁰⁹ We verified Titan Wind’s receipt of this grant and found no discrepancies.¹¹⁰

The Department did not receive any comments on this program from any interested party. Consistent with the *Preliminary Determination*, we continue to find that the grant issued under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds, and a financial benefit under section 771(5)(E) of the Act. As discussed under “Use of Facts Otherwise Available and Adverse Inferences,” we are relying on AFA to determine that the grant program is specific because the GOC failed to submit the requested information regarding grants provided under the program.

The grant that Titan Wind received during the POI was less than 0.5 percent of Titan Companies’ total sales in the manner described in the “Cross-Ownership” section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI. On this basis, we determine that Titan Companies received a countervailable subsidy of 0.02 percent *ad valorem*.

12. Special Funds for Development of Science and Technology

In the *Preliminary Determination*, we found countervailable a grant that Titan Wind received during the POI from the government’s science and technology development fund.¹¹¹ We verified Titan Wind’s receipt of this grant and found no discrepancies.¹¹²

The Department did not receive any comments on this program from any interested party. Consistent with the *Preliminary Determination*, we continue to find the grant issued under this program constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under “Use of Facts Otherwise Available and Adverse Inferences,” we are relying on AFA to determine that the grant program is specific because the GOC failed to submit the requested information regarding grants provided under the program.

The grant that Titan Wind received during the POI was less than 0.5 percent of Titan Companies’ total sales in the manner described in the “Cross-Ownership” section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI. On this basis, we determine that Titan Companies received a countervailable subsidy of 0.01 percent *ad valorem*.

¹⁰⁹ See *Preliminary Determination*, 77 FR at 33437.

¹¹⁰ See Titan Companies Verification Report at 17.

¹¹¹ See *Preliminary Determination*, 77 FR at 33437.

¹¹² See Titan Companies Verification Report at 17.

13. Award for Baotou Rare Earth High and New Technology Industrial Development Zone for Excellent Construction Projects

In the *Preliminary Determination*, we found countervailable a grant that Titan Baotou received during the POI for “excellent construction projects.”¹¹³ We verified Titan Baotou’s receipt of the grant and found no discrepancies.¹¹⁴

Consistent with the *Preliminary Determination*, we continue to determine that the grant received by Titan Baotou constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under “Use of Facts Otherwise Available and Adverse Inferences,” we are relying on AFA to determine that the grant program is specific because the GOC failed to submit the requested information regarding grants provided under the program.

The grant that Titan Baotou received during the POI was less than 0.5 percent of Titan Companies’ total sales in the manner described in the “Cross-Ownership” section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI. On this basis, we determine that Titan Companies received a countervailable subsidy of 0.02 percent *ad valorem*.

14. Export Credit Subsidy Programs: Export Buyer’s Credits

Through this program, the Export-Import Bank of China (EX-IM Bank) provides loans at preferential rates for the purchase of exported goods from the PRC. The Department found that this program was not used by the respondents in the *Preliminary Determination*.¹¹⁵ However, the Department was not able to verify the reported non-use of export buyer’s credits during verification.¹¹⁶ As explained in the “Use of Facts Otherwise Available and Adverse Inferences” section, we determine, relying upon AFA, that export buyer’s credits confer a countervailable subsidy to CS Wind and Titan Companies. Our determination regarding the countervailability of the program, our reliance on AFA and our selection of the appropriate rate to apply to this program are explained in further detail under Comments 7 and 8, below. On this basis, we determine a countervailable subsidy rate of 10.54 percent *ad valorem* for CS Wind and 10.54 percent *ad valorem* for Titan Companies under this program.

B. Programs Determined Not To Provide Countervailable Benefits During the POI

1. Production Expansion and Stable Employment Award

As discussed in the *Preliminary Determination*, CSWC was approved for and received a grant from the financial bureau of the LETDZ Administration Committee in 2009, for the company’s production and export expansion.¹¹⁷ We verified CSWC’s receipt of this grant and found no discrepancies.¹¹⁸

¹¹³ See *Preliminary Determination*, 77 FR at 33437.

¹¹⁴ See Titan Companies Verification Report at 17.

¹¹⁵ See *Preliminary Determination*, 77 FR at 33438.

¹¹⁶ See GOC Verification Report at 14-19.

¹¹⁷ See *Preliminary Determination*, 77 FR at 33438.

¹¹⁸ See CS Wind Verification Report at 13.

The Department did not receive any comments on this program from any interested party. As, such, consistent with the *Preliminary Determination*, we continue to find that the award represents less than 0.5 percent of the company's total export sales for 2009. As such, this grant is expensed in 2009, the year of receipt, under 19 CFR 351.524(b)(2), and not allocable to the POI.

2. Titan Companies' Other Subsidies Discovered During the Investigation

As discussed in the *Preliminary Determination*, Titan Companies reported it received a total of 18 grants from various governmental entities.¹¹⁹ We verified Titan Companies' receipt of these grants and noted two additional grants received by Titan Wind in 2008.¹²⁰

The Department did not receive any comments on these programs from any interested party. As such, consistent with the *Preliminary Determination*, we continue to find those grants for which the award represents less than 0.5 percent of Titan Companies' total sales, as described in the "Cross-Ownership" section, for the year of approval are expensed to the year of receipt, under 19 CFR 351.524(b)(2), and not allocable to the POI. In addition, consistent with our past practice, we determine that benefits from grants received during the POI but resulted in a net subsidy rate that is less than 0.005 percent ad valorem should not be included in our net countervailing duty rate calculations.¹²¹ The grants are listed below:

- a) Bonus for quality system authentication (Award of Taicang City for Cell Projects of Eco-City Construction (Environmental System Certification Award))
- b) Encouragement for expanding domestic market Awards of Expanding Domestic Demands and Encouraging Consumption
- c) Bonus for foreign trade promotion (Awards of Taicang City to Promote Foreign Trade Development)
- d) Support fund for small-and-medium-sized enterprises (Support and Development Funds of Taicang City for Small and Medium-Sized Enterprises (SMEs))
- e) Bonus for significant increase in tax payment (Awards of Taicang City to Encourage Enterprise Development and Tax Payment)
- f) Bonus for environment-friendly production (Green Production Awards)
- g) Support fund (Industry Support Funds of Huangpu District)
- h) Energy saving fund (Special Funds for Energy Conservation)
- i) Patent promotion fund (Patent Special Funds of Taicang City)
- j) Science and technology development fund (Special Funds of Jiangsu Province for Science and Technology Support Program)
- k) Support fund for industrial upgrading (Special Funds of Jiangsu Province for Industry Transformation and Upgrading)
- l) Bonus for Obtaining Patent.

¹¹⁹ See *Preliminary Determination*, 77 FR at 33438.

¹²⁰ See Titan Companies Verification Report at 17.

¹²¹ See Steel Wheels Decision Memorandum at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District."

C. Programs Determined To Be Not Used

We determine that the respondents did not apply for or receive benefits during the POI under the programs listed below:

1. Export Product Research and Development Fund
2. Subsidies for Development of “Famous Brands” and “China World Top Brands”
3. Sub-Central Government Subsidies for Development of “Famous Brands” and “China World Top Brands”
4. Special Energy Fund of Shandong Province
5. National Defense Science and Technology Industry Grants for the Wind Power Equipment Industry
6. Funds for Outward Expansion of Industries in Guangdong Province
7. Renewable Energy Development Fund
8. Special Fund for Wind Power Manufacturing Grants
9. Government Provision of Aluminum for LTAR
10. Government Provision of Land-Use Rights to State-Owned Enterprises for LTAR
11. Government Provision of Land-Use Rights by the Hunan Province Government for LTAR
12. Income Tax Reductions for Export-Oriented FIEs
13. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
14. Tax Reductions for FIEs Purchasing Chinese-Made Equipment
15. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
16. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises
17. Tax Offsets for Research and Development for FIEs
18. City Tax and Surcharge Exemptions for FIEs
19. Tax Reductions for High and New-Technology Enterprises Involved in Designated Projects
20. Preferential Income Tax Policy for Enterprises in the Northeast Region
21. Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
22. Hunan Province Special Fund for Renewable Energy Development
23. VAT Rebates on FIE Purchases of Chinese-Made Equipment
24. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund Program
25. Tax Benefits for Imported Large Power Wind Turbine System Key Components and Raw Materials
26. Export Seller’s Credits under Export Credit Subsidy Programs
27. Export Guarantees and Insurance for Green Technology

VII. Analysis of Comments

Comment 1: Application of CVD Law to China

Arguments of the GOC and CS Wind

- The retroactive application of Public Law 112-99 raises constitutional issues.
- Public Law 112-99 violates the *ex post facto* clause of the Constitution, the due process guaranteed by the Fifth Amendment to the Constitution, and equal protection of the laws also guaranteed by the Fifth Amendment.
- Because of the constitutional deficiencies, this investigation should be terminated.

Titan Companies' Arguments

- The lawfulness of the Department's decision to conduct a CVD investigation on PRC imports, while treating China as a non-market economy (NME) should be judged by the law as it stood at the time the decision was made (*i.e.*, *GPX Int'l Tire Corp. v. United States*, 666 F.3d 732 (Fed. Cir. 2011) (*GPX*)).

Petitioner's Rebuttal Arguments

- The law is clear. Public Law 112-99 ensures that the Department can apply the CVD law to NMEs.

Department's Position

Public Law 112-99 clarifies that the Department has the authority to apply the CVD law to imports from NME countries, such as China. Reliance upon the Federal Circuit's decision in *GPX* to contend that the Department lacks such authority is misplaced because that decision never became final and was in fact vacated by a subsequent decision of the Federal Circuit (*see GPX Int'l Tire Corp., v United States*, 678 F. 3d 1308 (Fed. Cir. 2012) (*GPX Fed. Cir.*)).

We disagree that Public Law 112-99 violates equal protection of the law as guaranteed by the Fifth Amendment's due process clause. Section 1 of Public Law 112-99 imposes no new obligation on parties, but merely reaffirms the Department's authority to apply the CVD law to NME countries. Thus, section 1 does not single out one group of companies and deny them the "protections" of section 2. Rather, section 1 simply confirms that existing law, to which all companies already were subject, applies. Further, the distinction between section 1 and section 2 of the legislation serves a rational purpose. As evidenced by the legislative history, section 2 of Public Law 112-99 was adopted, in part, to bring the United States into compliance with its WTO obligations.¹²² Given the statutory scheme for prospective implementation of adverse WTO decisions,¹²³ it was entirely reasonable for Congress to decline to upset the finality of

¹²² See, e.g., 158 Cong. Rec. at H1167–68, H1171 (daily ed. March 6, 2012) (statements of Representatives Camp, Brady, and Jackson Lee).

¹²³ See 19 U.S.C. 3533, 3538.

already-completed administrative determinations or to impose new obligations in administrative proceedings already in progress by requiring the Department to make adjustments not necessary to bring the United States into compliance with its WTO obligations.

Further, we disagree that the “retroactivity” of the legislation violates the Fifth Amendment’s due process clause. Section 1 of Public Law 112-99 is not retroactive. Rather, it clarifies existing law by ensuring that the Department will continue to apply the CVD law to NME countries. Congress enacted the legislation to prevent the Federal Circuit’s decision in *GPX* – a decision that would have changed existing law – from becoming final and taking effect.¹²⁴ In any event, even if section 1 of Public Law 112-99 were considered retroactive, it does not violate the due process clause. This is because the legislation has a rational basis, which is to correct a mistake and confirm the law in light of the *GPX* decision.¹²⁵

Lastly, we disagree that Public Law 112-99 is a prohibited *ex post facto* law. The *ex post facto* clause of the Constitution bars retroactive application of penal legislation, but, as just described, section 1 of Public Law 112-99 is not retroactive. Even if that section were considered retroactive, it is not penal, because it merely clarifies that the government can collect duties proportional to the harm caused by unfair foreign subsidization. In this regard, the CVD law is remedial in nature.

Comment 2: Simultaneous Application of CVD and AD NME Measures

GOC’s Arguments

- This proceeding is unlawful given the Department has no mechanism to account for double-counting of duties when a CVD remedy is applied in conjunction with a NME AD remedy. Such adjustments are only authorized for cases that post-date Public Law 112-99.
- WTO Appellate Body found that “{t}he amount of countervailing duty cannot be ‘appropriate’ in situations where that duty represents the full amount of the subsidy, and where antidumping duties, calculated at least to some extent on the basis of the same subsidization, are imposed concurrently to remove the same injury to the domestic industry.”¹²⁶
- In this investigation, the Department has countervailed alleged input subsidies such as HRS while at the same time using surrogate values for such inputs in the companion AD investigation.
- The GOC claims the Department accepts that this investigation is an appropriate situation to offset double-counting as demonstrated in the recent Section 129 proceedings intended

¹²⁴ See, e.g., 158 Cong. Rec. at H1167–68 (daily ed. March 6, 2012) (statements of Representatives Camp, Levin, Rohrabacher, and Boustany).

¹²⁵ See, e.g., *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992) (upholding retroactive legislation that corrected unexpected results of judicial opinion).

¹²⁶ See *Appellate Body Report, United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011) (*WTO AB Decision*) at para 582.

to implement the WTO Appellate Body's findings in DS379,¹²⁷ and there is time to implement those findings in this case.

CS Wind's Arguments

- The statute, even as amended, contains an inherent prohibition against double-counting, which requires the Department to take double-counting into account in this case.¹²⁸
- The requirement for an adjustment is also consistent with WTO obligations. The Appellate Body concluded that the Department's simultaneous imposition of CVDs and ADs calculated using the NME methodology presented a likely double remedy not permitted under the Agreement on Subsidies and Countervailing Measures (SCM).¹²⁹
- Since the Department may now apply the CVD law to an NME, it must take into account whether that application will result in double remedies or double-counting (*citing Drawn Stainless Steel Sinks from the People's Republic of China: Antidumping Duty Investigation*, 77 FR 60673 (October 4, 2012) (*AD Sinks Preliminary Determination*) (adjusting the antidumping duty margins downward as a result of the companion CVD investigation)).

Titan Companies' Arguments

- Congress recognized the problem of double-counting in Public Law 112-99; however, section 2(a) of the law to prevent double-counting is applicable only to proceedings initiated on or after the date of its enactment.
- The Department's application of its AD NME methodology to calculate Titan Companies' AD margin, while countervailing alleged subsidies on Titan Companies' sales of subject merchandise, amounts to the application of a "special rule" to the parallel AD and CVD investigations, based on different effective dates in Public Law 112-99.
- In order to avoid imposing an unlawful double remedy, the Department should not impose the CVD law retroactively and terminate this CVD investigation.

Petitioner's Rebuttal Arguments

- While the legislation permits the adjustment of the AD margin if the Department can reasonably estimate whether a subsidy increased the margin, this provision is only applicable to proceedings that were initiated after the bill was enacted.
- The President signed the bill into law on March 13, 2012. The Department initiated the AD and CVD investigations of wind towers on January 24, 2012. As such, the Department should reject the respondents' arguments concerning double remedies and

¹²⁷ See, e.g., *Final Determination: Section 129 Proceeding Pursuant to the WTO Appellate Body's Findings in WTO DS379 Regarding the Antidumping and Countervailing Duty Investigations on Circular Welded Carbon Quality Steel Pipe from the People's Republic of China* (July 31, 2012) at 18.

¹²⁸ With reference to *Wheatland Tube Co. v. United States*, 495 F.3d 1355, 1358 (Fed. Cir. 2007).

¹²⁹ See *WTO AB Decision* at para. 571.

continue to assess the full amount of both CVD and AD duties on subject merchandise as required by Congress' statutory mandate.

Department's Position

We disagree with the respondents. The Department can simultaneously apply CVD measures in this final determination while at the same time treating the PRC as an NME in the concurrent AD investigation. Section 1 of Public Law 112-99 makes clear that the CVD law applies to products from NME countries, and therefore applies to this investigation. Further, section 2 of Public Law 112-99, relating to an adjustment in certain instances of simultaneous application of CVD remedies and NME AD remedies, does not apply to this investigation, because this investigation was initiated prior to the effective date of section 2. The Federal Circuit made clear that, for investigations prior to the effective date of section 2, no adjustment for overlapping remedies is required. It stated that the "clear implication of this new provision is that the pre-existing statute did not contain a prohibition against double-counting."¹³⁰ The Federal Circuit concluded "that the statute prior to the enactment of the new legislation did not impose a restriction on Commerce's imposition of countervailing duties on goods imported by NME countries to account for double-counting."¹³¹

Moreover, the legislative history for Public Law 112-99 makes clear that Congress had a rational basis for confirming the Department's authority to apply the CVD law to products from NME countries while ensuring that, for WTO compliance purposes, the Department could, going forward, make adjustments to AD duties to account for any overlap in AD and CVD remedies demonstrated to exist.¹³² Given the statutory scheme for prospective implementation of adverse WTO decisions,¹³³ it was entirely reasonable for Congress to decline to upset the finality of already-completed administrative determinations or to impose new obligations in administrative proceedings already in progress by requiring the Department to make adjustments not necessary to bring the United States into compliance with its WTO obligations.

Regarding reference to the *WTO AB Decision*, that decision involved an "as applied" challenge to the eight AD and CVD determinations at issue in that case, and the Department's recent implementation applied only to those eight AD and CVD determinations.¹³⁴ Neither the decision nor the implementation applies to this investigation. The Federal Circuit has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.¹³⁵

CS Wind's reference to the adjustment made under section 777A(f) of the Act in the *AD Sinks Preliminary Determination* is misplaced. As discussed above, section 2 of Public Law 112-99, relating to an adjustment of the AD margin, is not applicable in the wind towers AD and

¹³⁰ See *GPX Fed. Cir.* at 1312.

¹³¹ *Id.*

¹³² See, e.g., 158 Cong. Rec. H1167 (daily ed. March 6, 2012) (statement of Rep. Camp).

¹³³ See 19 U.S.C. 3533, 3538.

¹³⁴ See *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China*, 77 FR 52683 (August 30, 2012) (*DS379 Implementation*).

¹³⁵ See *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005) (*Corus I*); *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (*Corus II*); and *NSK Ltd. v. United States*, 510 F.3d 1375, 1380 (Fed. Cir. 2007) (*NSK Fed. Cir.*).

CVD investigations, because the investigations were initiated prior to March 13, 2012. The sinks investigations were initiated on March 21, 2012.

CS Wind argues that the statute generally proscribes overlapping imposition of duties for the same unfair trade practice, but identifies no provision of the statute containing such a prohibition.¹³⁶ CS Wind instead cites *Wheatland Tube v. United States*, 495 F.3d 1355 (Fed. Cir. 2007), and *U.S. Steel Group v. United States*, 15 F. Supp.2d 892 (CIT 1998), reversed on other grounds, 225 F.3d 1284 (Fed. Cir. 2000), as legal support for that position. As CS Wind acknowledges, however, both of those cases involved the Department’s refusal to deduct actual duties from U.S. prices in AD proceedings. This case, however, concerns subsidies, not duties, rendering those cases inapposite.

Lastly, regarding the CS Wind’s argument that “double-remedy or double-counting concerns can be paramount and suffice as the sole basis for the Department’s reasonable interpretation of the AD/CVD statutes,” the Department notes that no party has placed any evidence on the record to demonstrate that double-counting has occurred or will occur in this proceeding. Without any factual basis to support CS Wind’s claim of a “double remedy,” the Department need not address CS Wind’s argument that the agency may “reasonably interpret” the statute to address such concerns.

Comment 3: Specificity of Preferential Policy Lending

GOC’s Arguments

- The GOC does not exert control over PRC banks to direct financing to the wind towers industry.
- The Department has mischaracterized the GOC’s policy and planning documents. Contrary to the Department’s *Preliminary Determination*, those documents do not reveal a policy lending program for wind towers.
- Actual loan documents submitted by the GOC indicate noting about the existence of a policy lending program, but a supportive regulatory environment that makes lending to a particular sector less risky, which is a commercial consideration, not a policy mandate.

Titan Companies’ Arguments

- The *Preliminary Determination* states that “financial institutions *may* offer preferential loans” (emphasis added).¹³⁷ That financial institutions may give loans under favorable terms is not evidence that they did.
- No evidence on the record that the loans provided to respondents were anything other than commercial loans.

¹³⁶ See CS Wind Case Brief (October 16, 2012) at 7-9.

¹³⁷ See *Preliminary Determination*, 77 FR at 33430 (citing the Renewable Energy Law).

Petitioner's Rebuttal Arguments

- The GOC's implication that such plans do not mandate actions by financial institutions is unsupported by the record evidence and the Department's findings in prior proceedings.
- The GOC provides for preferential policy lending to wind tower producers under numerous PRC central government plans and other policy directives, notably including the Renewable Energy Law, the Medium and Long-Term Development Plan for Renewable Energy in China, and China's five-year plans.
- The Department has previously found that the Chinese Banking Law "stipulates that lending procedures be based on the guidance of government industrial policy."¹³⁸
- The Department has also found that the mention of specific products or projects in PRC government plans or catalogues demonstrates that the plans do not reflect mere "government aspirations," but rather show that government policy lending is specific and countervailable.¹³⁹

Department's Position

Contrary to the GOC's assertion that the Department mischaracterized the record, the laws and policies examined by the Department unequivocally support a conclusion that there is a program of preferential policy lending specific to the renewable energy industry, which includes the wind towers industry.

In the *Preliminary Determination*,¹⁴⁰ we referred to several laws and directives of the GOC, which indicate that it has targeted the wind towers industry for development and preferential policy lending:

Renewable Energy Law, in Article 25, calls specifically for the use of loans in implementing the GOC's plans for renewable energy:¹⁴¹ "Financial institutions may offer preferential loans with financial interest subsidy to projects for exploitation of renewable energy that are listed in the national development guidance catalogue of the renewable energy industry and meet the requirements for granting loans."

The GOC's "Guidelines of the Eleventh Five-Year Plan for National Economic and Social Development" (2006-2010) contains the section "All Out Develop Renewable Energy Resources" with the instruction to "carry out preferential finance and taxation and investment policies and mandatory market share policies, encourage the production and consumption of

¹³⁸ See, e.g., *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC*), and accompanying Issues and Decision Memorandum (Aluminum Extrusions Decision Memorandum) at Comment 28; and *Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) (*Steel Wheels from the PRC*), and accompanying Issues and Decision Memorandum (Steel Wheels Decision Memorandum) at Comment 22.

¹³⁹ See *Tires Decision Memorandum* at Comment E.1.

¹⁴⁰ See *Preliminary Determination*, 77 FR at 33431-32.

¹⁴¹ Article 2 of the Renewable Energy Law states that "renewable energy means non-fossil energy, including wind energy, solar energy, water energy, biomass energy, geothermal energy, and ocean energy." See *Petition at Volume III, Exhibit III-7*.

renewable energy resources”

At Article 5 of the “Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation” (Decision 40), the GOC announced that: “We shall actively support and develop new energy and renewable energy industries, encourage the development and utilization of substitute resources for petroleum, and clean energy, as well, actively propel the industrialization of clean coal technology, and speed up the development of wind power, solar energy, and biomass energy, etc.” Decision 40 states that renewable energy is an encouraged category that is “to be encouraged and supported with policies and measures.”

Renewable energy is also among the projects listed in the NDRC’s “Directory Catalogue on Readjustment of Industrial Structure” (Catalogue No. 40), which contains a list of encouraged projects the GOC develops through loans and other forms of assistance. Specifically, Catalogue No. 40 includes the encouraged power project IV(5) for: “wind power and the development and utilization of such renewable energy as solar energy, geothermal energy, ocean power, and biomass power” and the encouraged machinery project XII(12) for: “manufacturing of clean energy power generation equipment (nuclear power, wind power, solar energy and tide, etc.)”

The GOC argues that none of this evidence demonstrates that the respondents’ loans were provided in accordance with any laws or policies mandating such loans to wind tower producers. However, the documents on the record are clear evidence of the GOC’s decision to target the wind towers industry for development. Such targeting was the basis of our specificity decision in the *Preliminary Determination*.¹⁴² In investigating allegations of preferential policy lending, the Department has consistently found specificity where there is evidence that an industry has been targeted for development and where lending is contemplated as a means of such development.

For example, in *CFS from the PRC*, we stated:

{T}o determine whether the policy alleged by petitioner confers countervailable subsidies on the producers and exporters of the subject merchandise, the Department must first ascertain whether the GOC has a policy in place to support the development of the paper industry. Specifically, the Department must determine whether record evidence supports the conclusion that the GOC carries out industrial policies that encourage and support the growth of the paper sector through the provision of preferential loans.¹⁴³

The Department continues to find that these governmental paper policies, when viewed collectively, document and provide evidence of the GOC’s specific and detailed policy to encourage the development of the domestic forestry and paper industry through preferential financing initiatives. Importantly, the cited documents contemplate affirmative State action to implement the government’s policies and, in fact, mandates their implementation by

¹⁴² See *Preliminary Determination*, 77 FR at 33431-32.

¹⁴³ See CFS Decision Memorandum at Comment 8.

various levels of government, as opposed to providing mere guidance, as claimed by respondents.¹⁴⁴

In *Steel Wheels from the PRC*, we phrased the policy as follows: “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.”¹⁴⁵ In that same investigation, we added: “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.’ . . . {Therefore} the Banking Law, in some measure, stipulates that lending procedures be based on the guidance of government industrial policy.”¹⁴⁶ Thus we found the existence of a “casual nexus” between the GOC’s industrial policies and lending.

Recently, in *Solar Cells from the PRC*, the Department examined several of the laws and directives that are also on the record of this investigation including the Renewable Energy Law. In that investigation, the Department found that the Renewable Energy Law is not an aspirational document, but a mandatory measure for the development of the renewable energy industry, which calls for preferential lending.¹⁴⁷ Given that, we find the GOC’s assertion that loan documents on the wind towers record indicate nothing about the existence of a policy lending program completely baseless. The fact is a respondent’s loan documents contain reference to the Renewable Energy Law.¹⁴⁸

To Titan Companies’ argument that just because the Renewable Energy Law states that financial institutions “may offer” preferential loans does not mean that such loans were provided, we find, given the totality of evidence, that PRC banks provide preferential financing to the renewable energy industry, an industry promoted for development by the GOC.

Based on the Department’s analysis of policy lending, evidence on the record of this investigation, and consistent with the reasoning regarding policy lending to the renewable energy industry recently articulated in *Solar Cells from the PRC*, we determine that preferential policy lending has been provided to wind tower producers and that the provision of this preferential policy lending is *de jure* specific to the renewable energy industry, which includes wind tower producers.

¹⁴⁴ *Id.*

¹⁴⁵ See Steel Wheels Decision Memorandum at Comment 22 (citing *Drill Pipe From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Drill Pipe Decision Memorandum) at Comment 8).

¹⁴⁶ *Id.* (citing *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 21).

¹⁴⁷ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*), and accompanying Issues and Decision Memorandum (Solar Cells Decision Memorandum) at Comment 14.

¹⁴⁸ See Memorandum to the File from Patricia M. Tran, International Trade Compliance Analyst, AD/CVD Operations, Office 3, regarding “Excerpt of Internal Loan Documents” (May 29, 2012).

Comment 4: Whether SOCBs Are Authorities

GOC's Arguments

- The Department's analysis of whether commercial banks in China are government authorities cannot be determined by whether these banks are majority government owned, and cannot rely on facts from a period that predates conditions governing the PRC banking system in 2010.
- The Department's assessment must focus on evidence relevant to the question of whether the entity is "vested with or exercises governmental authority."¹⁴⁹
- The Department has an obligation to investigate SOCBs in the current market, taking into account reforms and improvements in the PRC financial sector since *CFS from the PRC*.¹⁵⁰

Petitioner's Rebuttal Arguments

- It is well established under Department precedent that PRC state-owned banks are government authorities.¹⁵¹
- PRC banking system is dominated by state policy banks and SOCBs, which make loans based on political directive from the central or provincial governments, rather than creditworthiness or other market-based factors.
- The Department has determined that the GOC remains involved in the banking sector.¹⁵² There is no evidence on the record of this investigation to warrant a reversal of the Department's finding on this issue.

Department's Position

The Department explained in *CFS from the PRC* why SOCBs are "authorities" within the meaning of section 771(5)(B) of the Act. Contrary to the GOC's arguments, our findings were not, and are not, based upon government ownership alone. For example, we stated:

. . . information on the record indicates that the PRC's banking system remains under State control and continues to suffer from the legacies associated with the longstanding pursuit of government policy objectives. These factors undermine the SOCBs ability to act on a commercial basis and allow for continued government control resulting in the allocation of credit in accordance with government policies. Therefore, treatment of SOCBs in China as commercial banks is not warranted in this case.¹⁵³

¹⁴⁹ Reference to *WTO AB Decision* at para. 345.

¹⁵⁰ *Id.* at para. 352 and 354.

¹⁵¹ *See, e.g.*, Solar Cells Decision Memorandum at Comment 13.

¹⁵² *See* CFS Decision Memorandum at Comment 8, *see also* Banking Memoranda.

¹⁵³ *Id.*

In order to revisit the determination in *CFS from the PRC*, there must be evidence warranting a reconsideration. However, there is no such evidence on the record of this investigation. In its case brief, the GOC mentions “reforms and improvements,”¹⁵⁴ but fails to cite to any record information to support its argument.

While it has made similar claims in other recent investigations, it has never provided any evidence suggesting that even the most basic facts of the *CFS from the PRC* analysis have changed. For example, in *OCTG from the PRC*, we noted:

{T}he GOC has failed to provide evidence that the government has divested itself of ownership in Chinese banks. The GOC has failed to address the issue of real risk assessment within the Chinese banking sector. The GOC has failed to address interest rate and deposit rate ceilings and floors set by the government. The GOC has failed to address both *de jure* and *de facto* reforms within the Chinese banking sector. The GOC has failed to address the elimination of policy-based lending within the Chinese banking sector. Therefore, the GOC has failed to provide the information that would warrant a reconsideration of the Department’s determination in {the CFS from the PRC investigation}.¹⁵⁵

Similarly, the GOC never provided a factual basis for reconsidering the *CFS from the PRC* decision in this instant investigation. In response to the Department’s questions regarding lending to the renewable energy industry, the GOC stated that “the record and analysis of the Department in its 2007 *CFS from PRC* determination has little or no temporal relevance to the instant investigation.”¹⁵⁶ The GOC, however, did not submit any explanation or documentation regarding reforms and improvements that occurred in the PRC financial sector since *CFS from PRC*.

Regarding the GOC’s arguments concerning the *WTO AB Decision*, that decision involved an “as applied” challenge to the eight AD and CVD determinations at issue in that case, and the Department’s recent implementation applied only to those eight AD and CVD determinations.¹⁵⁷ Neither the decision nor the implementation applies to this investigation. The Federal Circuit has held that WTO reports are without effect under U.S. law, “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the URAA.¹⁵⁸

For these reasons, we continue to find that SOCBs are authorities capable of providing a direct financial contribution to the respondents.

Comment 5: Use of an In-Country Benchmark to Measure the Benefit from Preferential Policy Lending

GOC’s Arguments

- A domestic interest rate from the PRC should be used as the most appropriate benchmark for short-term and long-term interest rates.

¹⁵⁴ See GOC Case Brief (October 16, 2012) at 21.

¹⁵⁵ See OCTG Decision Memorandum at Comment 20.

¹⁵⁶ See GOC IQR at 53-55.

¹⁵⁷ See *DS379 Implementation*.

¹⁵⁸ See *Corus I*, 395 F.3d 1347-49; *Corus II*, 502 F.3d 1375; and *NSK Fed. Cir.*, 510 F.3d 1380.

- The Department has an obligation to investigate current market conditions and not cite back to dated findings, such as *CFS from the PRC*, with respect to the issue of benchmarks.
- Macro-level government intervention in a financial market does not mean that lending rates are distorted. No evidence on the record that any loans were provided to the respondents on non-commercial terms or at the direction of the government.

Petitioner's Rebuttal Arguments

- It is not possible to adjust domestic benchmarks to account for market distortions, as any attempt to do so would be a highly complex, speculative, and impracticable exercise.
- Loans provided by PRC banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Therefore, an external benchmark is necessary.

Department's Position

The Department has explained the need for an external benchmark when measuring the benefit from loans provided by SOCBs in the PRC in several prior investigations and reviews.¹⁵⁹ We summarized our reasoning in the *Preliminary Determination*, where we found that 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.¹⁶⁰ Therefore, any loans received by respondents from private PRC or foreign-owned banks are unsuitable benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Because of the special difficulties inherent in using a PRC benchmark for loans, the Department must use an external market-based benchmark interest rate.

The practice of using an external benchmark for lending in the PRC was first established in *CFS from the PRC*.¹⁶¹ That decision was based on an extensive study conducted by the Department into the GOC's role in commercial bank lending.¹⁶² The study included verification meetings the Department held during the investigation with GOC banking and regulatory officials and a review of reports issued by other organizations on the subject, such as the Organization for the Economic Cooperation and Development (OECD). Those findings are not case-specific, but rather apply to lending in general from PRC SOCBs. Thus, the findings have been adopted in all investigations involving policy lending (or preferential lending) since *CFS from the PRC*. The GOC provided no evidence in this investigation that would lead the Department to reconsider this determination. Therefore, the Department continues to find that the use of an external benchmark is consistent with the Act in such situations and, given the

¹⁵⁹Most recently in *Solar Cells from the PRC*, see Solar Cells Decision Memorandum at Comment 15.

¹⁶⁰See *Preliminary Determination*, 77 FR at 33429-30.

¹⁶¹See CFS Decision Memorandum at Comment 10.

¹⁶²See Banking Memoranda.

significant intervention of state-owned banks in the PRC's banking sector, appropriate for this PRC investigation.

Comment 6: Flaws in the Calculation of the External Preferential Policy Lending Benchmark

GOC's Arguments

- The short-term loan benchmarks reflect the economic conditions in and monetary policies of numerous other countries, incorporating the government influence of each country. The resulting benchmark, which is not a market-determined rate, does not relate to the economic or monetary conditions in China.
- Use of the regression analysis is results-oriented.
- Negative inflation-adjusted interest rates are excluded from the calculations without any justification.

Department's Position

The Department has previously addressed these arguments, most recently in *Solar Cells from the PRC*.¹⁶³ We reiterate our reasoning on an argument-by-argument basis as follows.

- *Benchmark, which relies on data from other countries, does not reflect the economic and monetary conditions in China.*

The Department has stated consistently since *CFS from the PRC*, that it would not be possible to control for all factors affecting interest rates in the PRC given our determination that the GOC's involvement in the lending sector mandates an external benchmark. For example, in *CFS from the PRC*, the GOC suggested we take the rate of savings into consideration. In response, we stated:

The GOC is correct that the level of savings in an economy is a key factor in interest rate formation, as savings form a large portion of the supply of funds in the financial system in many economies. However, in the case of China, the Department has already found the financial system not to be market-based, thus necessitating a third-country benchmark. Controlling for factors specific to China that drive interest rate formation would undermine the purpose of selecting an external benchmark, which is to find a rate that it is not affected by these China-specific factors. In other words, controlling for some of these factors (e.g., savings rate) would be inserting into our external benchmark the very distortions that were the basis for using an external benchmark in the first place.¹⁶⁴

We have, however, taken certain PRC-specific variables into consideration when doing so would not distort the benchmark. Thus, as explained in *CFS from the PRC*, we factored into our benchmark calculation the PRC's national income and its "governance factors," a variable reflecting the strength of the PRC's institutional infrastructure in the banking sector. Likewise,

¹⁶³ See *Solar Cells Decision Memorandum* at Comment 16.

¹⁶⁴ See *CFS Decision Memorandum* at Comment 10.

our benchmark methodology calculates a real rate and then adds to that real rate the PRC's own rate of inflation in order to derive a nominal rate. Thus a significant portion of the nominal rate – the inflation component – is entirely the product of the GOC's own monetary policy preferences.¹⁶⁵ Therefore, our use of an external benchmark complies with the directive of the Act to use “comparable commercial loans” to the extent doing so does not “reintroduce” the distortive effects of the GOC's involvement in the PRC banking sector.

- *Use of different methodologies (regression and averaging) to achieve specific outcomes for the benchmark interest rate.*

Until we began to investigate loans disbursed in 2010, the Department relied on a single methodology (*i.e.*, regression-based analysis) to derive short-term lending benchmarks in all investigations and reviews involving a preferential policy lending allegation. Not only was the methodology the same, the results were the same as well, with the identical data being used in all proceedings involving lending in a particular year (*i.e.*, all cases investigating lending provided in 2008 used the identical figures for benchmarks; likewise in 2009, *etc.*).

For loans disbursed in 2010, however, we relied on a somewhat different methodology to derive the short-term benchmark rate (*i.e.*, an average of the interest rates of the upper-middle income countries). This revision affected the short-term rate only; all other aspects of the methodology remained the same. As we explained in the *Preliminary Determination*, the change to the short-term rate was necessitated by the reclassification of the PRC as a “upper-middle income country.”¹⁶⁶ The change was made in a number of proceedings simultaneously.¹⁶⁷ The change was not made pursuant to a results-oriented decision of the Department. Rather, as explained in the *Preliminary Determination*, the decision was the result of certain data (*i.e.*, the governance factors) generating results inconsistent with theory. Thus the Department concluded the data were unreliable for this particular one-year period, *i.e.*, 2010.¹⁶⁸

For 2011 (the POI), the Department's regression-based analysis reflected the theory that stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. Therefore, we constructed the 2011 benchmark interest rate using the governance factors, as was done for each year from 2001 - 2009.

- *Negative interest rates are excluded without any justification.*

The Department has addressed this issue most recently in *Steel Wheels from the PRC*, we explained: “{T}he Department finds that negative-adjusted rates are not common, tend to be anomalous, and, moreover, are not sustainable commercially. Therefore, we continue to exclude negative real interest rates in calculating our regression-based benchmark rates.”¹⁶⁹ No new evidence or argument has been presented in this instant investigation to warrant a change in the

¹⁶⁵ See Tires Decision Memorandum at Comment E.4, for a detailed discussion of our consideration of governance factors and inflation in our methodology. The Department rejected the arguments of the U.S. industry in that investigation to exclude the PRC's own inflation rate from the benchmark methodology.

¹⁶⁶ See *Preliminary Determination*, 77 FR at 33429-30.

¹⁶⁷ See Solar Cells Decision Memorandum at “Loan Benchmarks and Discount Rates for Allocating Non-Recurring Subsidies” and Comment 16.

¹⁶⁸ While the POI in this case is 2011, we are countervailing loans which originated in earlier years.

¹⁶⁹ See *Steel Wheels Decision Memorandum* at Comment 24; see also *Citric Acid Decision Memorandum* at Comment 11.

Department's approach to exclude negative interest rates. We, thus, continue to rely on the benchmark methodology used in the *Preliminary Determination*.

Comment 7: Application of AFA to the Export Buyer's Credits Program

Petitioner's Arguments

- The GOC failed to cooperate to the best of its ability in responding to the Department's requests for information, and refused to allow the Department to conduct verification on the use of this program.
- Because of the GOC's misconduct, the Department must apply total AFA to this program and find that both respondents benefitted from the program to the fullest extent possible.
- As AFA, the Department should find that the GOC provided a financial contribution that was specific pursuant to sections 771(5)(D)(i) and 771(5A)(B) of the Act. Regarding the benefit, the Department recognized, in *Solar Cells from the PRC*, that it may assign AFA to the benefit when the government fails to respond.¹⁷⁰

GOC's Arguments

- The Department's analysis must focus on the wind towers record, and not the characterizations in the GOC's verification report regarding the solar cells record.
- In this investigation, the GOC complied with the Department's requests and, therefore, the GOC should have had the opportunity to explain the operation of the program and the respondents should have been afforded the opportunity to demonstrate non-utilization during verification.
- The Department verifiers made repeated references to the record of the solar cells investigation as a basis for denying the GOC an opportunity to provide an explanation of (1) the alleged program and (2) the manner by which the Department could verify non-utilization the respondents' verification in the wind towers investigation.¹⁷¹
- In wind towers, the GOC reported that the respondents did not utilize the program, and further explained that this program "cannot be implemented without knowledge of the exporters, because it will have substantial impact on pattern of financial and foreign exchange business administration on the part of exporter."¹⁷² The GOC, therefore, argues that it made clear in the sole opportunity given during the course of this investigation that it would be possible for the respondents to verify non-use. Further, contrary to the verification report's claim of "repeated" requests, the Department did not seek any additional information about this program from the GOC, clarification, or opportunity to cure any perceived defect in the information provided.

¹⁷⁰ See Solar Cells Decision Memorandum at Comment 18.

¹⁷¹ See GOC Verification Report at 3-6.

¹⁷² See GOC Second SQR at 6.

- Because there is no evidence on the wind tower’s record that any of the respondents’ U.S. buyers received export credits, the Department must conclude that there was no utilization of this program.

CS Wind’s Arguments

- CS Wind reported that “{n}one of CSWC’s or CSWS’s customers received export buyer credits during the POI.”¹⁷³ There is no instance where an interested party withheld information requested by the Department. When the GOC attempted to validate the responses at verification, it was denied the ability to do so because of statements made in the solar cells investigation.
- The Department has no legal basis upon which to impute non-cooperation by a party in one case to the same party in an entirely separate proceeding. “Commerce’s longstanding practice, upheld by {the CIT}, is to treat each segment of an antidumping proceeding, including the antidumping investigation and the administrative reviews that may follow, as independent proceedings with separate records and which lead to independent determinations.”¹⁷⁴
- As verified, all of CSWC’s export sales were made to its Korean parent CS Wind Corp., the only customer that could have been eligible for this program.¹⁷⁵ CSWC has complete, verifiable knowledge that the Export Buyer’s Credit program was not used.

Petitioner’s Rebuttal Arguments

- The GOC impeded this investigation by failing to adequately respond to the Department’s request for information in the initial questionnaire and a supplemental questionnaire.¹⁷⁶ The GOC replied that no export buyer’s credits were provided to respondents and failed to answer the questions regarding the respondents’ customers.¹⁷⁷
- Nevertheless, having been told that respondents did not benefit from the program, the Department attempted to verify program usage. The GOC, however, refused to cooperate with the verification.¹⁷⁸
- Any credits provided to CSWC or its parent would be export seller’s credits and not export buyer’s credits. CS Wind’s ultimate customers would be the entities that receive the buyer’s credits. The Department thus should disregard CS Wind’s argument.

¹⁷³ See CS Wind Second SQR at 22.

¹⁷⁴ See *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 75 FR 56989 (September 17, 2010).

¹⁷⁵ See CS Wind Verification Report at 3; see also CS Wind IQR at 8.

¹⁷⁶ See Department’s Initial Questionnaire and Second Supplemental Questionnaire to the GOC.

¹⁷⁷ See GOC Second SQR at 6.

¹⁷⁸ See GOC Verification Report at 3.

GOC's Rebuttal Arguments

- Given the record which demonstrates that respondents' buyers did not use or benefit from this program, there is no basis for the Department to resort to AFA.
- However, if the Department applies AFA with respect to financial contribution and specificity, it cannot apply AFA to the respondents with respect to utilization where the companies cooperated and declared no utilization.
- Contrary to Petitioner's assertions, the GOC complied with the Department's request for information. The instructions in the questionnaire do not require a government to provide the same degree of detail for programs not used as for utilized programs.¹⁷⁹ For example, the Department does not require completion of any associated appendices for programs not used.¹⁸⁰ The GOC met this standard for the Export Buyer's Credit program.
- Unlike in this investigation, in solar cells, the Department issued a supplemental questionnaire that explicitly sought additional information: "In order to verify {non-use}, the Department requests that you provide the following information," which was six questions about the program.¹⁸¹ It was the GOC's alleged failure to adequately respond to those questions that justified (1) the application of AFA and (2) the decision to not attempt to verify non-use at the respondents' verification.
- The verification, as memorialized in the verification report, did not account for the distinctions between the solar cells and wind towers records. In wind towers, the GOC provided information for how the respondents might verify non-utilization. For wind towers, the GOC should have been afforded the opportunity to verify that statement.
- The respondents should have been given the opportunity to verify non-use. The GOC cites to *Essar Steel*¹⁸² for support of its argument that the respondents retain the opportunity to demonstrate the absence of benefit, or non-use, when the government is found to have failed to act to the best of its ability.

CS Wind's Rebuttal Arguments

- CS Wind was direct about its knowledge regarding use of this program, stating "None of CSWC's or CSWS's customers received export buyer credits during the POI."¹⁸³ The Department never sought additional clarification on how CS Wind had such knowledge or whether this information could be verified.¹⁸⁴

¹⁷⁹ See Department's Initial Questionnaire at II-2.

¹⁸⁰ *Id.*

¹⁸¹ See Solar Cells Decision Memorandum at 60.

¹⁸² See *Essar Steel Limited v. United States*, 721 F. Supp. 2d 1285 (CIT 2010).

¹⁸³ See CS Wind First SQR at 27

¹⁸⁴ Reference to *Ta Chen Stainless Steel Pipe, Ltd. v. United States*, 23 CIT 804, 820 (1999) ("it is Commerce, not the respondent, which bears the burden of asking questions{,}" and Commerce must ask "clear" questions "to let the respondent know what information it really wants").

- Not only could the Department have verified CS Wind’s statement, but it was required to do so. Where, as in this case, “a respondent timely provides verifiable evidence in response to Commerce’s request, the Department is required, by statute, to consider such evidence.”
- Notwithstanding what transpired at the GOC’s verification, the Department was not permitted to disregard CS Wind’s information. As the court has explained, “it would be nonsensical to construe the statute to allow Commerce to reject {information}, in favor of facts otherwise available, even though it was information that could be . . . verified.”¹⁸⁵
- Having not met its statutory duty to verify this issue, the Department simply may not make an affirmative finding that CS Wind benefited from this program. At the very least, the Department is required to delay its investigation of this program pursuant to section 351.311(c) until the first period of review.¹⁸⁶
- Even if CS Wind’s ultimate U.S. customers could participate in a program from the Ex-Im Bank for payments made to Korea, the Petitioner ignores that the benefit under this program would go to the buyer of the product and not to the PRC producer. The statute is clear that “a benefit shall normally be treated as conferred where there is a benefit to the recipient . . .” (*see* section 771(5)(E) of the Act).

Titan Wind’s Rebuttal Arguments

- No evidence on the record that Titan had any knowledge of possible use of export buyer’s credits by its customers, and the Department had ample opportunity to verify that, but elected not to.
- Even if a customer obtains such financing without Titan’s knowledge, the recipient of the benefit would be the buyer and not Titan.

Department’s Response

The Department determines that the application of AFA is warranted in determining that the Export Buyer’s Credits Program is countervailable. Although the GOC responded to the Department’s questionnaires regarding this program, the GOC’s refusal to cooperate and allow the Department to verify non-use claims is the basis for our AFA decision..

In our initial questionnaire under “Export Credit Subsidy Programs,” we asked the GOC to complete the Standard Questions Appendix for the export buyer’s credits and provide

¹⁸⁵ *See JTEKT Corp. v. United States*, 675 F. Supp. 2d 1206, 1251 (CIT 2009); *see also China Kingdom Imp. & Exp. Co. v. United States*, 31 CIT 329, 1340 (CIT 2007) (“A deliberate refusal to subject certain factual information to a verification procedure is not the equivalent of a valid finding that, for purposes of § 1677e(a)(2)(D), such information ‘cannot be verified.’”).

¹⁸⁶ *See Citric Acid First Review Final Decision Memorandum at Comment 6* (deferring a determination of whether a steam coal for LTAR program was specific because the Department “failed to seek information from the GOC on the extent of use by the steam coal consuming industries”).

information on use of the credits by respondents' customers.¹⁸⁷ Similarly, in the initial questionnaire under "Export Credit Subsidy Programs," we asked the respondent companies to coordinate with the GOC to ensure that it had a complete list of their customers and to state the role the company (*i.e.*, respondent) plays in assisting customers obtain export buyer's credits.¹⁸⁸

In their respective responses, the GOC stated "None of the respondents or their reported cross-owned companies applied for, used, or benefited from the alleged programs during the POI;"¹⁸⁹ CS Wind stated "Not Applicable. CSWC and CSWS have not participated in or otherwise received benefits under this program;"¹⁹⁰ and Titan Companies stated "None of the responding companies benefited from this program prior to or during the POI."¹⁹¹

In light of those statements, the Department issued a supplemental questionnaire to the GOC and respondent companies asking for clarification of use of the Export Buyer's Credits.¹⁹² The GOC reported that "...to the best of its knowledge, none of the respondents or their reported cross-owned companies applied for, used or benefited from the alleged programs during the POI, including both export seller's credits, and export buyer's credits, and that this program, including the buyer's credit, cannot be implemented without knowledge of the exporters, because it will have substantial impact on pattern of financial and foreign exchange business administration on the part of exporter."¹⁹³ CS Wind reported that "none of CSWC's or CSWS's customers received export buyer credits during the POI."¹⁹⁴ Titan Companies stated that it "does not know whether any of its customers received export buyer credits during the POI, nor did Titan Wind provide any assistance to customers in obtaining the credits."¹⁹⁵ Given those conflicting statements on the record (*i.e.*, CS Wind reported its buyer did not use the credits, and Titan reported that it did not know whether any of this buyers received credits, while the GOC stated that respondent companies would be aware if any of their buyers received credits), the Department concluded that it would have to verify non-use of export buyer's credits at the Ex-Im Bank.

The Department determines that even if a respondent might have been involved in, or might have received some notification of its customer's receiving export credits, such secondary information is not the type of information that the Department needs to examine in order to verify that parties' responses are complete and accurate. For verification purposes, the Department must be able to test books and records in order to assess whether the questionnaire responses are complete and accurate, which means that we need to tie usage of the program to audited financial statements, as well as to review supporting documentation, such as, applications, approval letters, and loan agreements for financing programs. If all a company received was a notification that its buyers received the export credits, or if it received copies of completed forms and approval letters, we would have no way of establishing the completeness of the record because these notifications, forms and approval letters cannot be tied to the Ex-Im Bank's financial statements and records. Likewise, if an exporter informs the Department that it

¹⁸⁷ See Department's Initial Questionnaire at II-14, question G.2.

¹⁸⁸ *Id.* at III-19, question c and d.

¹⁸⁹ See GOC IQR at 103-105.

¹⁹⁰ See CS Wind IQR at 34-35.

¹⁹¹ See Titan Companies IQR at 44-45.

¹⁹² See Department's Second Supplemental Questionnaire (SQ) to the GOC (April 11, 2012) at 4; Department's First SQ to CS Wind (April 6, 2012) at 7; and Department's First SQ to Titan Wind (April 11, 2012) at 7.

¹⁹³ See GOC Second SQR at 6.

¹⁹⁴ See CS Wind First SQR at 22.

¹⁹⁵ See Titan Companies First SQR at 19.

has no information (presumably because its customers have never applied for export buyer's credits), there would be no way of confirming that in the exporter's books and records. Therefore, the Department decided that the only entity that possessed the supporting records that the Department needed to verify the accuracy of the reported non-use of the export buyer's credit program was the Ex-Im Bank. Specifically, because the Ex-Im Bank was the lender, the Department determined that it would have complete records of all recipients of export buyer's credits. The Department's experience is that granting authorities and governments in general keep track of the users of subsidy programs in the normal course of administering their programs, and that respondent governments use such records to respond to the Department's inquiries in CVD investigations. The Department could examine such records and query such databases to verify whether the U.S. customers of the company respondents had received export buyer's credits, and such records could then be tied to the Ex-Im Bank's financial statements.

Consequently, the Department notified the GOC that we intended to verify non-use of this program at the Ex-Im Bank, and our verification outline stated that we would need to review application and approval documents, among other records, and that we would need to query relevant electronic databases if relevant records were maintained electronically.¹⁹⁶ We clearly stated the purpose of such procedures was to ensure that none of the respondents' U.S. customers had received export buyer's credits.¹⁹⁷ The GOC did not notify the Department prior to or at the outset of verification that it had any concerns with the clear requests in the verification outline.¹⁹⁸ In fact, the GOC did not express any objection to these requests until the moment the Department began the export buyer's credit portion of the verification agenda with the Ex-Im Bank.

As detailed in the verification report, when the Department prepared to go to the Ex-Im Bank to verify, the GOC then informed the Department it would not be allowed to verify this program at the bank, and that bank representatives would speak with the verifiers at the Ministry of Commerce's (MOFCOM) headquarters in Beijing. The Ex-Im Bank representatives then joined the meeting and informed the verifiers that the decision to verify non-use with the Ex-Im Bank was based, in the GOC's view, on a false presumption: that verification of non-use of export buyer's credits could not be performed at the companies themselves.¹⁹⁹ The officials insisted they had previously explained that possibility to the Department, referring to the GOC's supplemental questionnaire response, that export buyer's credits would affect the respondents' financial and foreign exchange matters, and respondents should therefore be able to provide information regarding which customers used this program.

Also, at verification, the Ex-Im Bank officials stated that there were no applications or approved credits indicated in the database for the respondents' customers.²⁰⁰ The Department then asked to query the database to confirm that no U.S. customers in the wind towers investigation used export buyer's credits during the POI.²⁰¹ The GOC, however, refused to allow the Department to query the databases and records of the Ex-Im Bank to establish the accuracy

¹⁹⁶ See GOC Verification Outline (July 2, 2012) at 2.

¹⁹⁷ *Id.*

¹⁹⁸ The verification outline was issued on July 2, 2012, and the verification of the GOC commenced on July 12, 2012.

¹⁹⁹ See GOC Verification Report at 3-4.

²⁰⁰ *Id.* at 5.

²⁰¹ *Id.*

of the non-use claim.²⁰² The GOC, in fact, stated that “if {the Department} did not trust the officials’ statements, then it would be ‘nonsense’ to look at the database.”²⁰³

Finally, the GOC asserted that the Department’s understanding that buyer’s credits would not appear in the respondents’ records was incorrect.²⁰⁴ The GOC then offered to provide additional details regarding how the Department might verify non-use with respondent companies.²⁰⁵ The Department replied it was too late in the proceeding to accept new information and that the purpose of verification is to verify the accuracy of the information provided in the questionnaire responses.²⁰⁶

In its case brief, the GOC continues to argue that the Department could have verified non-use of export buyer’s credits with respondent companies. However, the GOC provided no information whatsoever regarding an exporter’s involvement in the application process for buyers beyond the statement that such credits would affect the exporter’s “financial and foreign exchange business administration.” Had the Department attempted to verify non-use at the respondents’ facilities with only this statement as guidance, we could have done no more than speculate on how to confirm non-use; any procedures we might have undertaken at the companies simply would have been guess work based on assumptions concerning the operations of the program, because the GOC had not provided to the Department any information regarding how respondent companies might be involved in the application process. In any event, a proper place to verify nonuse is with the granting authority.

The record evidence does not demonstrate how the Department could have discerned financial and foreign exchange activity related to buyer’s credits from financial and foreign exchange activity resulting from any other source (*e.g.*, a straightforward sale in U.S. dollars unrelated to export credits of any type). In other words, there is no evidence to demonstrate how, or even if, a sale made with a buyer’s credit and one made without such a credit would be differentiated in a respondent company’s books and records. In its questionnaire response,²⁰⁷ the GOC provided no additional information concerning how exactly an exporter’s financial and foreign exchange business administration would be affected. Certainly anytime a company makes a sale to a foreign market or otherwise, its finances are affected, and, whenever the sale is in a foreign currency, its foreign exchange accounts would be affected as well. This is true regardless of whether an export buyer’s credit is associated with the sale or not. The GOC had provided, in its response, no details concerning what exactly should be examined in terms of “financial” or “foreign exchange” activity in searching for export buyer’s credits in an exporter’s books and records.

CS Wind contends that the Department should have and could have verified non-use with respondent companies. The Department disagrees because one place to verify nonuse is with the granting authority. In any event, the GOC should permit verification of its own questionnaire responses. Moreover, it is the Department, and not a respondent or the GOC that determines the process by which information should be verified. Here, as described above, the Department reasonably determined that examining the records available at the Ex-Im Bank (*i.e.*, the granting authority) was the best way to verify the reported non-use of this program. Further, while the

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.* at 6.

²⁰⁵ *Id.*

²⁰⁶ *Id.* and at 7.

²⁰⁷ *See* GOC Second SQR (May 2, 2012) at 6.

Department has verified non-use with company respondents, this does not mean that verifying non-use with the relevant government agencies is somehow impermissible in these circumstances. There will still be certain occasions, such as with export buyer's credits, when the Department finds, based on the information provided by the respondents, that the best way to verify whether the program has been used is to examine the government's books and records because it is only the government that is in possession of the information and documentation that the Department finds to be most probative, such as loan applications, bank approval letters, and loan agreements, and because this documentation can then be tied to the Ex-Im Bank's audited financial statements.

We, therefore, do not agree with the GOC and the company respondents that we cannot apply AFA for this program given no indication on the record that the program was used by the respondents' export buyers. CS Wind's argument that the Department is required to delay its investigation of this program because it failed its statutory duty to verify this issue is without merit. The Department attempted to verify non-use of the program, but was prevented by the GOC from examining the only source documentation (the Ex-Im Bank's books and records) that would have been probative in this respect. The GOC and the respondents cannot now insist that we should make our decision based on non-verified evidence compiled from notifications to respondents and respondents' books and records. Citing *Citric Acid from the PRC First Review*, CS Wind argues that the Department should delay its investigation of this program. However, that case is inapposite. As CS Wind concedes, in that administrative review, the Department deferred making a determination on whether a steam coal for LTAR was specific because the agency had "failed to seek information from the GOC on the extent of use by the steam coal consuming industries."²⁰⁸ By contrast, in the instant investigation, the Department has not determined that it has insufficient information. Rather, the Department determines that it was unable to verify the information on the record because the GOC refused to cooperate in allowing the Department to conduct verification at the Ex-Im Bank.

We also disagree with the GOC's argument that verifiers from the Department made repeated references to the record of the solar cells investigation as a basis for denying the GOC an opportunity to provide an explanation of (1) the alleged program and (2) the manner by which the Department could verify non-utilization the respondents' verification in the wind towers investigation and, thus, the GOC Verification Report cannot be used as the basis for finding the Export Buyer's Credit program countervailable pursuant to AFA. The Department's AFA determination in this investigation is based on the facts of this investigation only. Specifically, as explained above, the Department notified the GOC that we intended to verify non-use of this program at the Ex-Im Bank, and our verification outline stated that we would need to review application and approval documents, among other records, and that we would need to query relevant electronic databases if relevant records were maintained electronically.²⁰⁹ At verification, the GOC refused to provide the Department verifiers with the information requested in the verification outline thereby impeding the Department's ability to conduct verification. Thus, as explained above, the Department's decision to apply AFA stems from the GOC's failure to allow the Department to verify record information as requested in the verification outline of this investigation. The GOC's attempts to set its own agenda at verification and provide what it deemed to be suitable alternative information does not mitigate its failure to allow the

²⁰⁸ See *Citric Acid First Review Final Decision Memorandum* at Comment 6.

²⁰⁹ See GOC Verification Outline (July 2, 2012) at 2.

Department to verify program information in the instant investigation.²¹⁰ These facts are the basis of the agency's AFA determination in this case.

We further disagree with the GOC that *Essar Steel* is applicable to the instant investigation. In *Essar Steel*, the Court explained that “typically foreign governments are in the best position to provide information regarding the administration of their alleged subsidy programs, including eligible recipients.”²¹¹ The Court added that generally, respondent companies have “information pertaining to the amount of benefit conferred on them by the program.”²¹² The Court in *Essar Steel* correctly outlines the Department's general practice, however the facts in this case do not fit the general pattern. In general, the Department relies on information from the foreign government under examination to determine whether an alleged subsidy program constitutes a financial contribution and is specific under the Act and relies on information from the respondent company to determine whether a benefit has been conferred.²¹³ As a result, in most instances, the Department can nonetheless determine that a countervailable subsidy was not conferred if it determines that the participating respondent did not use or benefit from the program.²¹⁴ However, the instant investigation does not reflect this fact pattern. As explained above, due to conflicting statements on the record (*i.e.*, CS Wind reported its buyer did not use the credits, and Titan reported that it did not know whether any of this buyers received credits, while the GOC stated that respondent companies would be aware if any of their buyers received credits) and the unique nature of the Export Buyer's program, the Department determined that the Ex-Im Bank was the appropriate place where non-use could be verified. Thus, the facts of the instant investigation are distinct from the facts of *Essar Steel*, and the Department has reasonably taken a different approach than the one outlined in *Essar Steel* in order to account for these facts.

As such, under section 776(a)(2)(D) of the Act, the Departments determines that the GOC and respondents provided information regarding non-use of this program that could not be verified, as provided for in section 782(i) of the Act. Here, the GOC refused to allow the Department to verify this information regarding non-use of this program. Therefore, the Department finds that the GOC failed to cooperate to the best of its ability, and accordingly, finds that an adverse inference is warranted under section 776(b) of the Act. On this basis, the Department determines that the GOC through the Export Buyer's Credits Program has provided a financial contribution under section 771(5)(D)(i) of the Act, which is specific under section 771(5A)(B) of the Act and provides a benefit under 771(5)(E) of the Act. Consistent with *Solar Cells from the PRC*, we determined that the Department may assign AFA to the benefit when the government fails to respond.²¹⁵ Regarding respondents' arguments that they themselves could

²¹⁰ See GOC Verification Report at 3-4.

²¹¹ *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1297 (CIT 2010)

²¹² *Id.*

²¹³ See *e.g.*, *Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 11397, 11399 (March 7, 2006) (unchanged in the *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 38861 (July 10, 2006).

²¹⁴ See *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Notice of Preliminary Results and Preliminary Partial Rescission of Countervailing Duty Administrative Review*, 72 FR 65299, 65301, (November 20, 2007) (unchanged in the *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Notice of Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 73 FR 14770 (March 19, 2008), in which the Department applied AFA with regard to financial contribution and specificity but, nonetheless, relied on usage information from the participating respondent to determine that no benefit was conferred.

²¹⁵ See *Solar Cells Decision Memorandum* at Comment 18.

not have theoretically benefited from this program given that it is directed at customers, we note where we have had such allegations and where we have found that such export buyer's credits have been used, we have consistently found such financing to be countervailable as a subsidy benefitting the exporter because the contribution is made in connection with the exportation of the merchandise and provides a direct benefit to the production and distribution of products.²¹⁶

The Department is applying the AFA determination for the Export Buyer's Credits to both respondent companies. Though CS Wind certified that its parent company, its export buyer, did not use the program, the GOC refused to allow the Department to verify the record information, which included non-use of this subsidy by CS Wind's buyers.

We note that in reaching the conclusion discussed above, we have relied solely on information contained on the record of the instant investigation. Thus, the GOC's assertions that the Department cannot rely on information from the Solar Cells investigation as the basis of its determination concerning the Export Buyer's Credit program is not relevant.

Comment 8: Selection of AFA Rate for Export Buyer's Credits

Petitioner's Arguments

- Based on the AFA methodology, the Department must apply the highest non-*de minimis* rate calculated for a similar program in a prior PRC proceeding.
- The highest rate ever calculated for a similar program is the 10.54 percent rate calculated for preferential policy lending in *Coated Paper from the PRC*,²¹⁷ and the Department should assign that rate to both respondents.

GOC's Rebuttal Arguments

- If the Department applies AFA, by statute, it must use a rate that can be corroborated.²¹⁸
- There is no basis for corroboration of an uncreditworthy lending rate applicable to respondent in another proceeding. Application of that rate amounts to assuming that either the respondents were uncreditworthy – of which there is no such finding – or that all the respondents' buyers were uncreditworthy, which cannot reasonably reflect reality.

²¹⁶ See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy*, 63 FR 40474, 40480 (July 29, 1998); *Final Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products From Austria*, 50 FR 33369 (August 19, 1985); and *Final Affirmative Countervailing Duty Determination; Certain Agricultural Tillage Tools From Brazil*, 50 FR 34525 (August 26, 1985).

²¹⁷ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from the PRC*), and *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); see also Solar Cells Decision Memorandum at Comment 19.

²¹⁸ 19 U.S.C. § 1677e(c).

CS Wind's Rebuttal Arguments

- The Department cannot use the 10.54 percent rate because CS Wind is not uncreditworthy and application of that rate to a creditworthy company cannot be corroborated or justified.
- Use of a rate from another proceeding is also inappropriate as there has been no finding that CS Wind's sales value (*i.e.*, the denominator) was not verified. The only finding the Department could arguably make is that CS Wind's benefit information is missing and it is only that information which the Department is permitted to apply adverse inferences.²¹⁹
- Not only must the Department use CS Wind's sales value in calculating the rate, but this investigation includes a policy lending program, which allows the Department to impute a company specific AFA benefit. The Department has found that policy lending is a "similar" program to the export buyer's credits²²⁰ and, therefore, can apply CS Wind's policy lending rate as the AFA rate. This rate is the only rate available that is fully corroborated and does not punitively impact CS Wind, which cooperated this proceeding.

Department's Position

The Department has an established practice for selecting AFA rates for programs for which no verified usage information was provided.²²¹ According to that practice,²²² for programs other than those involving income tax exemptions and reductions, we will apply the highest calculated rate for the identical program in the same proceeding if another responding company used the identical program. If no other company used the identical program within the proceeding, we will use the rate from the identical program in another CVD proceeding involving the country under investigation, unless the rate is *de minimis*. If there is no identical program match in any CVD proceeding involving the country under investigation, we will use the highest rate calculated for a similar program in another CVD proceeding involving the same country.

Given the Department's AFA hierarchy, CS Wind's argument to apply as AFA its policy lending rate fails because it is not an identical program within the proceeding. Because the Department has not calculated a rate for the Export Buyer's Credits program in this investigation, and has not calculated a rate for the program in another CVD PRC proceeding, the Department must identify the highest rate calculated for a similar program in another CVD PRC

²¹⁹ See *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011), quoting *Gerber Food (Yunnan) Co. v. United States*, 387 F. Supp. 2d 1270 (CIT 2005), ("{b}ecause Commerce is empowered to use adverse inferences only in 'selecting from among the facts otherwise available,' it may not do so in disregard of information of record that is not missing or otherwise deficient").

²²⁰ See Solar Cells Decision Memorandum at Comment 19.

²²¹ When the AFA determination applies solely to the financial contribution and specificity prongs of the countervailability determination, the Department may still calculate a rate using information supplied by the company respondents.

²²² See, e.g., *Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences."

proceeding. Consistent with *Solar Cells from the PRC*, we determine that a lending program is similar to the program at issue because the credits function as short-term or medium-term loans. We, therefore, determine that the highest calculated rate for a comparable lending program is 10.54 percent calculated for preferential policy lending in *Coated Paper from the PRC*. As noted above, under the AFA hierarchy, the Department seeks to find a similar program from another proceeding in which the benefit is treated the same. The Department has adopted its hierarchy as a means for identifying a rate that best matches what is known about the behavior of the government regarding the program or type of program. Given the facts of this case, that leads the Department to select the rate found for a similar program, *i.e.*, preferential policy lending in *Coated Paper from the PRC*. As noted, the Department does not have the necessary information about the operation of the Export Buyer's Credit program. This program differs from other subsidy programs typically examined by the Department in that the government provides funds to the buyers of respondents' merchandise with the goal of increasing respondents' sales. At verification, the GOC refused to provide information concerning buyers that participated in this program during the POI. Therefore, because we lack information regarding the specifics of the companies that benefit, it would be inappropriate to make speculative adjustments to the AFA hierarchy on the basis of alleged company-specific factors. In other words, assuming for arguments sake that such an adjustment for creditworthiness makes sense, the agency lacks the necessary information on the record regarding the companies that received this credit including, for example, the GOC's analysis of these companies' creditworthiness, to make any adjustment to the rate.

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 corroborate that information, to the extent practicable. To corroborate secondary information, the Department will examine the reliability and relevance of the information to be used, but need not prove that the selected facts available are the best alternative information.²²³ In this case, the preferential policy lending rate of 10.54 percent is an appropriate rate to apply because (1) it is a rate calculated in a recent CVD PRC final for a similar program based on the treatment of the benefit; and (2) the failure of the GOC to cooperate in Department's verification of the program usage has resulted in a lack of evidence on the record, which includes information on the buyers which may have utilized the program. In the absence of such information, the rate calculated in another proceeding provides the most reliable and relevant information about the government's practices regarding these kinds of programs. Many factors go into the calculation of a rate in any proceeding. For example, for lending programs that may include, among other things, the size of the loan, the interest rate on the loan, the term of the loan, the benchmark interest rate selected, and the size of the company's sales. When selecting an AFA rate, the Department is, by definition, operating with a lack of verifiable and reliable evidence about the impact of such factors in the case at hand. In the absence of reliable information to control for a comparison of such factors between another case and the case at hand, the Department has corroborated the rate selected to the extent practicable.

Comment 9: Treatment of the AFA Rate for Export Buyer's Credits in the AD Investigation

Petitioner's Arguments

²²³ See *Statement of Administrative Action* (SAA) at 869-870.

- The Department should not offset the AD cash deposit rate by the Export Buyer’s Credits program.
- The purpose of using AFA is to entice respondents to participate in AD and CVD investigations, and to not reward uncooperative behavior.
- If the Department offsets the AD rate, there will be no adverse inference applied to the respondents. The application of AFA will not provide an incentive to respond in the future and will not prevent respondents from benefitting from the GOC’s unresponsiveness unless the AD cash deposit rate is not offset.

Rebuttal Arguments of CS Wind and Titan Companies

- If the program is found countervailable, failure to offset the AD margin by the amount of the export subsidy would violate obligations under Article VI(5) of the General Agreement on Tariffs and Trade (GATT), which states that “no product ... shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.”

Department’s Position

Comments regarding adjustments to the AD rate are properly addressed on the record of the AD investigation. Parties should refer to the final determination in the AD investigation for further information on the treatment in AD cash deposits of the AFA rate for the Export Buyer’s Credits program.

Comment 10: Whether Allegation Was Sufficient to Initiate an Investigation of HRS for LTAR

GOC’s Arguments

- Petitioner premised the provision of HRS for LTAR allegation on the flawed proposition that state-ownership and control is a dispositive factor in identifying public bodies among input suppliers.
- Petitioner supported the allegation by citing to investigations with specific findings of financial contribution that have seen been repudiated by the WTO Appellate Body. For example in *CWP from the PRC*, the Department applied a majority ownership test and found “{s}pecifically, where an HRS producer-supplier is majority-owned by a government entity, we are treating that supplier as an authority.”²²⁴

²²⁴ See *Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*), and accompanying Issues and Decision Memorandum (*CWP Decision Memorandum*) at 63.

- The WTO Appellate Body rejected the Department’s findings of financial contribution in *CWP from the PRC*.
- According to the WTO Appellate Body, the public body determination cannot rest only on the degree of government ownership or control; a public body must be an entity that possesses and exercises governmental authority.²²⁵
- The Petition for this investigation does not provide any evidence demonstrating that any HRS producer possesses or exercises governmental authority and, thus, the investigation of HRS LTAR should be terminated.

Petitioner’s Rebuttal Arguments

- The Department, which has investigated this LTAR program numerous times and has found on numerous occasions that the GOC provided a financial contribution, properly initiated an investigation.
- The public bodies dispute has yet to be resolved before the WTO and, thus, the GOC’s arguments based on the *WTO AB Decision* are moot.

Department’s Position

We disagree with the GOC that the investigation into HRS for LTAR should be terminated and that the initiation standard was not met for the program. As an initial matter and with regard to the *WTO AB Decision*, that decision involved an “as applied” challenge to the eight AD and CVD determinations at issue in that case, and the Department’s recent implementation applied only to those eight AD and CVD determinations.²²⁶ Neither the decision nor the implementation applies to this investigation. The Federal Circuit has held that WTO reports are without effect under U.S. law, “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the URAA.²²⁷

Second, we do not agree that the initiation standard for the allegation was not met. Section 702(b)(1) of the Act states that petitioners must allege the elements necessary for the imposition of the duty imposed by section 701(a) of the Act (*i.e.*, financial contribution, specificity, and benefit) accompanied by information “reasonably available” to petitioners in support of those allegations. Consistent with that standard, the Department determined that the Petitioner, in this investigation, alleged the elements necessary for the imposition of CVD duties and that the allegation was supported by information reasonably available to it.²²⁸ Specifically,

²²⁵ Reference to *WTO AB Decision* at para. 317.

²²⁶ See *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People’s Republic of China*, 77 FR 52683 (August 30, 2012) (*DS379 Implementation*).

²²⁷ See *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005) (*Corus I*); *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (*Corus II*); and *NSK Ltd. v. United States*, 510 F.3d 1375, 1380 (Fed. Cir. 2007) (*NSK Fed. Cir.*).

²²⁸ See *Utility Scale Wind Towers From the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 77 FR 3447 (January 24, 2012), and accompanying Initiation Checklist at “Government Provision of Hot-Rolled Steel for LTAR.”

section 771(5)(B) of the Act states that a subsidy shall be deemed to exist if: (1) there is a financial contribution by an “authority” (defined as a government or any public entity) or an “authority” entrusts or directs a private party to make a financial contribution to a person; and (2) a benefit is thereby conferred. Further, that subsidy must be specific in accordance with section 771(5A) of the Act. Petitioner provided information on each of these elements, including references to multiple other CVD PRC cases in which the Department found that many Chinese companies receive HRS from state-owned enterprises (SOEs) at LTAR and that this constitutes a countervailable subsidy as well as provided information on SOEs that produce HRS.²²⁹

As such, the HRS for LTAR allegation was supported by “reasonably available” information and was sufficient under section 702(b)(1) of the Act to initiate an investigation.

Comment 11: Whether Application of AFA for HRS LTAR Establishes the Existence of a Financial Contribution

GOC’s Arguments

- The Department applied a combination of AFA that imputes both government ownership and the presence of Communist Party members within the input suppliers. However, neither of these imputed facts answers the question of whether an entity possesses, exercises or is vested with government authority in relation to the provision of HRS for LTAR. Rather these facts go to the issue of actual or potential control of a given entity, a circumstance that is not dispositive of the existence of a financial contribution by such entities.
- The Department fails to articulate how a finding of control justifies a finding of financial contribution within the meaning of the statute and the confines of international obligations.
- Further, the record is replete with specific information regarding the independence of enterprises in China and the restraints that exist on government interference in their operations.

Petitioner’s Rebuttal Arguments

- It is the GOC’s burden to prove that a supplier is devoid of state influence and is not a “government authority.” When the GOC fails to establish that, the Department is justified and within its authority to determine that any benefit received from the supplier is, by definition, the provision of a financial contribution from the government.
- Ample information on the record demonstrates the dominance and control of the GOC over the PRC steel industry, such as SOEs account for 72.59 percent of annual PRC domestic steel production,²³⁰ and the State Council continues to consider “pillar” industries, such as iron and steel, as “controlled industries.”²³¹

²²⁹ See Petition at Volume III, pages 35-36.

²³⁰ See GOC IQR at 11-12.

²³¹ See Petitioner’s Pre-Preliminary Comments (May 21, 2012), at Exhibit 7, page 149 (*China 2030: Building a Modern, Harmonious, and Creative High-Income Society*, The World Bank, Development Research Center of the

- Not only did the GOC fail to establish that HRS providers are not SOEs, but the GOC also failed to act to the best of its ability and provide to the Department information requested regarding HRS producers, including critical information concerning state influence over the HRS industry. Therefore, the Department should continue to find, applying AFA, that respondents received financial contributions from the SOEs.

Department’s Position

As explained in prior CVD PRC proceedings,²³² the Department normally looks to majority government ownership of an input producer to determine whether it is an “authority” within the meaning of section 771(5)(B) of the Act.²³³ As noted above, the *WTO AB Decision* involved an “as applied” challenge to the eight AD and CVD determinations at issue in that case, and the Department’s recent implementation applied only to those determinations.²³⁴ Neither the decision nor the implementation applies to this investigation. As such, the Department continues to consider government ownership as an important factor in determining whether input producers qualify as “authorities” under section 771(5)(B) of the Act for this final determination.

In this investigation, the GOC reported that all but one of the HRS producers were majority-owned by the government.²³⁵ With regard to the one HRS producer not majority-owned by the government, the GOC failed to provide all of the information requested in the “Information Regarding Input Producers in the PRC Appendix,” which covers corporate ownership, the identification of owners, directors, or senior managers who were GOC or Chinese Communist Party (CCP) officials or representatives, as well as the CCP’s structure and functions that are relevant to our determination of whether the producers of HRS are “authorities” within the meaning of section 771(5)(B) of the Act.²³⁶ Because of the GOC’s failure to cooperate in this investigation, the Department was justified in applying the adverse inference to determine that the HRS producer constituted a “authority” under section 771(5)(B) of the Act.

As such, we determine that HRS supplied by companies deemed to be government authorities constitute a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act.

Comment 12: Whether HRS Producers are Authorities

CS Wind’s Arguments

- CS Wind argues the Department’s *Preliminary Determination* to apply AFA to the GOC for its failure to provide certain ownership information regarding the respondents’ HRS suppliers is overly broad and does not follow the Department’s mandate to only apply an adverse inference to information missing from the record, citing to *Zhejiang Dunan*

State Council, the People’s Republic of China).

²³² See, e.g., *Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744 (April 11, 2012) (*Kitchen Shelving from the PRC*), and accompanying Issues and Decision Memorandum (*Kitchen Shelving Decision Memorandum*) at Comment 4.

²³³ See *Tires Decision Memorandum* at “Government Provision of Rubber for Less Than Adequate Remuneration.”

²³⁴ See *DS379 Implementation*.

²³⁵ See GOC Second SQR (May 2, 2012) at 5.

²³⁶ See *Preliminary Determination*, 77 at 33425-26, see also *Additional Documents Memorandum* at Attachment II.

Hetian Metal Co. v. United States, 652 F.3d 1333 (Fed. Cir. 2011), quoting *Gerber Food (Yunnan) Co. v. United States*, 387 F. Supp. 2d 1270 (CIT 2005), (“{b}ecause Commerce is empowered to use adverse inferences only in ‘selecting from among the facts otherwise available,’ it may not do so in disregard of information of record that is not missing or otherwise deficient”).

- CS Wind contends the Department cannot merely apply AFA as a broad stroke measure to punish a party for not following the Department’s direction regardless of how unnecessary or insignificant that missing information may be to the Department’s determination.²³⁷
- CS Wind argues that HRS prices are not regulated by the state, as evidenced by such pieces of legislation as the *Company Law*. CS Wind further argues that all companies are governed by the *Company Law* and are subject to the same obligations and liabilities established by that law (and related regulations), regardless of whether individuals involved in the company are members or representatives in any of the eight entities.²³⁸
- The GOC and respondents have submitted sufficient information for the Department to make a factual determination as to whether Producer X²³⁹ exercises government authority to render its sales of HRS to respondents countervailable. CS Wind concedes the GOC did not directly respond to certain questions in the Department’s input supplier index; however it avers the missing information can be supplemented by other information on the record. Any additional missing information is insufficient to transform Producer X into a government authority.²⁴⁰

Titan Companies’ Arguments

- In Titan Companies’ May 18, 2012, submission, it contends that it provided all of the necessary information to adequately prove that the GOC does not hold majority ownership in any of Titan Companies’ suppliers of HRS steel. Thus, the Department should find that Titan Companies’ HRS suppliers are not government “authorities” under section 771(5)(B) of the Act.

Petitioner’s Rebuttal Arguments

- Petitioner contends the GOC failed to substantiate the ownership structure of Producer X which prohibits the Department from conducting a proper analysis; therefore the

²³⁷ See *Shandong Huarong Mach. Co. v. United States*, 30 CIT 269, 1298 (2006).

²³⁸ See GOC’s IQR at Exhibit B-4. The eight entities are: 1) CCP Congresses, 2) CCP Committees, 3) CCP Standing Committees, 4) People’s Congresses, 5) Standing Committees of People’s Congresses, 6) other government administration entities, 7) the Chinese People’s Political Consultative Conferences (CPPCC), and 8) the Discipline Inspection Committees of the CCP.

²³⁹ The name of the producer is business proprietary information. We, therefore, refer to the company as “Producer X.”

²⁴⁰ See CS Wind Case Brief at 2 for the business proprietary name of Producer X.

Department should continue its preliminary finding of AFA and determine that HRS producers are government authorities.

- The Department has verified in past cases that the GOC can obtain from its electronic archives at the State Administration for Industry and Commerce (SAIC) up-to-date information and that another electronic system houses electronic copies of business licenses, annual reports, capital verification reports, etc. Petitioner reiterates that the GOC has not provided complete ownership structure information therefore any information on the record is unusable.
- CS Wind placed information on the record concerning the ultimate individual owners to one of Producer X's "alleged" non-state investors during the POI. Petitioner contends third party information cannot be verified at the respondent level and only a government can provide reliable and verifiable information concerning unrelated corporate entities within its territory. Even if the information CS Wind submitted is accurate, Petitioner argues that the information on the record contradicts CS Wind's assertion that Producer X is not a government authority.

Department's Position

In conducting a CVD investigation, the Department requires foreign governments to provide certain information distinct from what respondent companies are required to provide; for example, it is only the government that can provide complete information regarding a program and whether it is specific in accordance with section 771(5A) of the Act.²⁴¹ This is evidenced by the fact that the initial questionnaire issued in this investigation was divided into two sections: Section II for the Government of the People's Republic of China (GOC) and Section III for the respondent companies.²⁴² Consistent with prior PRC CVD investigations, the Department requested that the GOC provide HRS producer ownership/CCP information as outlined in the "Information Regarding Input Producers in the PRC Appendix" (Producers Appendix).²⁴³ The Department instructed the GOC to provide a complete response to the Producers Appendix on two occasions: the February 17, 2012, initial questionnaire and the April 11, 2012, supplemental questionnaire. However, the GOC submitted an inadequate response to each request for information. In its April 9, 2012, response, the GOC stated that it was unable to trace all ownership back to the ultimate individual or state owners for each and every input producer, except for one producer.²⁴⁴ Regarding individual owners, members of the board of directors, and

²⁴¹ See, e.g., *Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012), and accompanying Issues and Decision Memorandum at Comment 7.

²⁴² See Department's Initial Questionnaire (February 17, 2012).

²⁴³ See Department's Initial Questionnaire at Section II. See also *Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011), and *Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and Issues and Decision Memorandum (Steel Wheels Decision Memorandum).

²⁴⁴ See GOC's HRS Input Producer Questionnaire Response (April 9, 2012) at 2-3.

senior managers of the input producer who were government or CCP officials, the GOC did not answer the appendix questions.²⁴⁵

On May 11 and May 18, 2012, CS Wind and Titan, respectively submitted ownership information for the HRS input producer and limited CCP information on the producer's ultimate individual owners, directors, and senior managers. Specifically, the respondents provided a chart indicating that certain individuals are government or CCP officials of the "eight entities"²⁴⁶ listed in Section IV of the Producers Appendix. However, the information on government ownership and the extent to which certain individuals are CCP officials provided by the respondent firms does not constitute a complete response. For example, neither respondent provided a response to the specific questions detailed in Section IV of the Producers Appendix regarding the role, purpose, power, and function of the specific "entities."

As noted in recent CVD investigations²⁴⁷ and the *Preliminary Determination* of the instant investigation,²⁴⁸ the Department considers information regarding the CCP's involvement in the PRC's economic structure to be important because public information suggests that the CCP exerts significant control over governance and economic activities in the PRC.²⁴⁹ The Department, therefore, directed the GOC to respond to the Producers Appendix because it is the party to this investigation which has in its possession verifiable information on the CCP's structure and functions that are relevant to the Department's determination of whether the producers of HRS are "authorities" within the meaning of section 771(5)(B) of the Act.²⁵⁰ For example, the appendix asks for information such as:

- Please explain the role, purpose, power and function of the entity in question.
- How does a person become an official or representative of this entity?
 - i. What are the qualifying criteria?
 - ii. Who identifies the candidate pool?
 - iii. How is the person ultimately selected and by whom?
- What are the responsibilities of the person(s) identified above within this CCP or government entity?
- Are there any laws, regulations or governance practices, including de facto measures that require officials or representatives of this entity to implement the policies adopted by the People's Congress, CCP or other branches of the government? Please explain.

²⁴⁵ *Id.* at question 5 of Section II at 6-7; and no response to Section IV.

²⁴⁶ The "eight entities" are: 1) CCP Congresses, (2) CCP Committees, (3) CCP Standing Committees, (4) People's Congresses, (5) Standing Committees of People's Congresses, (6) other government administration entities, including village committees, (7) the Chinese People's Political Consultative Conferences (CPPCC), as well as (8) the Discipline Inspection Committees of the CCP.

²⁴⁷ *See, e.g., Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010), and accompanying Issues and Decision Memorandum at Comment 7, and Steel Wheels Decision Memorandum at Comment 11.

²⁴⁸ *See Preliminary Determination*, 77FR at 33425-33426.

²⁴⁹ *See Additional Documents Memorandum at Attachment II and III.*

²⁵⁰ *See, e.g., Pre-Stressed Concrete Steel Wire Strand From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum at Comment 8, where it is discussed that the Department requested and obtained from the GOC information, which was verified with the GOC, on the ownership of an input producer and the involvement of a shareholder in the CCP.

- Are there any laws, regulations, or governance practices, including any de facto measures that serve to separate or limit an individual’s role as an official or representative of this entity from that individual’s role as a company owner, member of the board of directors or manager?

Because the GOC was a party in possession of the information, the Department directed the GOC to provide the HRS producer ownership/CCP information outlined in the Producers Appendix. As noted above, the GOC failed to provide the requested information. By substantially failing to respond to the Department’s questions, the GOC withheld information that was requested of it regarding the CCP’s role in the ownership and management of the relevant input producers.

Though CS Wind and Titan responded to portions of the Producers Appendix, they did not provide a complete response. Specifically, they failed to fully respond to question one and did not respond at all to questions two, three, and four of Section IV of the appendix. Fundamentally, it is the role of the Department, and not respondents, to determine what information is considered relevant and necessary, and must be provided.²⁵¹ These questions requested crucial information pertaining to the CCP’s structure and functions that are relevant to the Department’s determination of whether the producers of HRS are “authorities” within the meaning of section 771(5)(B) of the Act. Moreover, the submissions respondents provided cannot be verified because they are incomplete. The Department requires complete information regarding the CCP to analyze whether input producers are government authorities.²⁵² As such, we find that the HRS producer information filed by CS Wind and Titan is incomplete and inadequate. Therefore, we determine that the incomplete and inadequate information filed by CS Wind and Titan does not provide sufficient verifiable information regarding CCP involvement for the Department to make a change to the preliminary determination.

We disagree that *Zhejiang Dunan Hetian Metal Co. v. United States* precludes the Department from determining as AFA that respondents’ HRS producers were “authorities” within the meaning of section 771(5)(B) of the Act. As explained above, we did not disregard information on the record in making our AFA determination. Rather, our AFA determination is stems from the fact that the GOC and the respondent firms failed to respond to the Department’s questions concerning HRS producer ownership/CCP information. Without this information, the Department cannot determine whether the producers of HRS are “authorities” within the meaning of section 771(5)(B) of the Act, regardless of the other information placed on the record by parties.

We further disagree with CS Wind that legislation, such as the *Company Law*, prevents HRS prices from being regulated by the state and, even if it did, would eliminate the possibility that HRS producers provided the input for LTAR. The evidence submitted by the GOC (such as the *Company Law*) to support its claim that the HRS producers are not exercising elements of government authority attempts to show that these suppliers act as commercial entities. However,

²⁵¹ See, e.g., *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986).

²⁵² See, e.g., *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010), and accompanying Issues and Decision Memorandum at “Use of Facts Otherwise Available and Adverse Facts Available” and Comment 7; and *Certain Steel Wheels From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying Issues and Decision Memorandum at “Use of Facts Otherwise Available and Adverse Inferences” and Comment 11.

the Department addressed and rejected this same argument in *Kitchen Shelving from the PRC*:

It has been argued that government-owned firms may act in a commercial manner. We do not dispute this. Indeed, the Department’s own regulations recognize this in the case of government-owned banks by stating that loans from government-owned banks may serve as benchmarks in determining whether loans given under government programs confer a benefit. However, this line of argument conflates the issues of the “financial contribution” being provided by an authority and “benefit.” If firms with majority government ownership provide loans or goods or services at commercial prices, *i.e.*, act in a commercial manner, then the borrower or purchaser of the good or service receives no benefit. Nonetheless, the loan or good or service is still being provided by an authority and, thus, constitutes a financial contribution within the meaning of the Act.²⁵³

In other word, the alleged pricing behavior of an input supplier is not dispositive of the question of whether that input supplier is an authority capable of providing a financial contribution under the Act. Therefore, we have continued to rely on adverse facts available and find that all HRS producers were “authorities” within the meaning of section 771(5)(B) of the Act.

Comment 13: Specificity Finding for HRS for LTAR

GOC and CS Wind’s Argument

- In the *Preliminary Determination*, the Department concluded the GOC did not cooperate to the best of its ability in responding to the Department’s request for information and applied AFA because the GOC “did not report the actual PRC industries that purchased HRS and the volume and value of each industry’s respective purchase for the POI and the prior two years.”²⁵⁴ The GOC indicated that it responded to the Department’s request by claiming it does not track information on that basis, and instead provided detailed statistical information based on the industrial classification scheme of China and that of the United Nations. The GOC contends the Department’s ultimate specificity finding was produced, not by what the GOC refused to provide, but in reaction to what the GOC did not possess in the first instance. The GOC argues to penalize respondents for failing to provide information they did not possess is contrary to law. It contends that the Department cannot draw an adverse inference unless there is, “a reasonable showing that the respondent, in fact could have complied.”²⁵⁵

GOC’s Arguments

- The Department’s specificity analysis incorrectly focuses on the input in question relative to the number of downstream consumers that may exist for the input. The GOC asserts that the Department must change the framework of its analysis on the basis of the source

²⁵³ See *Kitchen Shelving Decision Memorandum* at Comment 16.

²⁵⁴ See *Preliminary Determination*, 77 FR at 33426.

²⁵⁵ See *Nippon Steel Corp. v. United States*, 146 F. Supp. 2d 835, 841 (CIT 2001).

of the input, *i.e.*, alleged government authorities, and determine whether the provision of the government authority inputs generally is specific.

- To date, the Department has not made a *de jure* specificity finding with respect to the various input LTAR programs and has failed to identify a “formally-named” subsidy program.
- Congress intended the specificity test to function as a “rule of reason,” not as a mechanism to be manipulated as a matter of convenience to find countervailable programs.

Petitioner’s Rebuttal Arguments

- The Department should reject respondents’ argument that the GOC provided reliable information that demonstrates that HRS for LTAR is not specific. The Department was justified in relying upon AFA in the *Preliminary Determination* when the Department stated the GOC failed to provide the users and level of use of HRS in China.²⁵⁶
- In *OCTG from the PRC*, the Department verified the GOC databases that track a wide variety of industrial information that can be drilled down to the firm level. Petitioner contends the information collected includes basic information from firms’ annual reports, including revenues and cost; information which could be extracted and used in a manner that would allow the Department to conduct a specificity analysis.²⁵⁷

Department’s Position

The Department continues to rely on AFA to find that the GOC’s provision of HRS for LTAR is specific. The Department issued two questionnaires requesting the GOC to answer the following:²⁵⁸

- Provide a list of the industries in the PRC that purchase hot-rolled steel directly, using a consistent level of industrial classification.
- Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry.
- In identifying the industries, please use whatever resource or classification scheme your government normally relies upon to define industries and to classify companies within an industry.
- Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification.
- Please clearly identify the industry in which the companies under investigation are classified.

²⁵⁶ See *Preliminary Determination*, 77 FR at 33426.

²⁵⁷ See Petitioner’s Pre-Preliminary Comments (May 18, 2012) at Exhibit 6 and 7.

²⁵⁸ See Department’s GOC Initial Questionnaire (February 17, 2012) and Second Supplemental Questionnaire (April 11, 2012).

In its initial questionnaire response, the GOC stated that it did “not impose any limitations on the consumption of hot-rolled steel” and that “the type of consumers that may purchase hot-rolled steel sheet and plate is highly varied within the economy.”²⁵⁹ The Department again asked the GOC to provide a list of industries that purchased HRS with the associated value and volume data in a supplemental questionnaire. To that request, the GOC provided a list of various industries and sectors that may use HRS, which was produced based on the industrial classification scheme of China and that of the United Nations, *i.e.*, ISIC Scheme.²⁶⁰ As stated in the *Preliminary Determination*, that information submitted by the GOC is insufficient because it did not report the actual PRC industries that purchased HRS and the volume and value of each industry’s respective purchases for the POI.²⁶¹ Without the necessary information to conduct a specificity test, the Department had no alternative but to rely on total AFA, and we found the provision of HRS for LTAR is specific in the *Preliminary Determination*.

The GOC argues that the Department must show a party is able to comply with its request in order to find that it has not acted to the best of its ability and apply an AFA inference. In a previous investigation, the Department was able to confirm at verification that the GOC maintains a database at the SAIC.²⁶² The SAIC database for which companies are registered and show the most up-to-date information and the other system is “ARCHIVE,” which houses electronic copies of documents such as business licenses, annual reports, capital verification reports, etc. Furthermore, it is incumbent on a granting authority to maintain records of the enterprises or industries which receive subsidies.

We agree, with Petitioner, that the GOC has an electronic system available to them to gather industry specific information the Department requested. Information the GOC submitted, *i.e.*, the China Input-Output Table describing which industries used ferroalloy metal in 2002, is outdated and by the GOC’s own admission does not detail the full spectrum of industrial sectors that consume HRS, therefore the data is incomplete.²⁶³ Nevertheless, this document is another indicator that the GOC does indeed track industry consumption information and it has failed to comply with the Department’s request. Thus, the GOC’s challenge to the Department’s specificity analysis is a misrepresentation of the record evidence; the GOC has not remedied the deficiencies that exist on the record with regards to the Department’s request for industry specific information that would enable us to conduct an analysis on specificity.²⁶⁴ Further, it did not even attempt to provide data that might be a suitable alternative. Therefore, the Department

²⁵⁹ See GOC IQR at 22 and 24.

²⁶⁰ See GOC Second SQR at 4 and Exhibit S2-7.

²⁶¹ See *Preliminary Determination*, 77 FR at 33426.

²⁶² See “Countervailing Duty Investigation: Certain Oil Country Tubular Goods from the People’s Republic of China; Verification Report of the Jiangsu Province State Administration of Industry and Commerce and Tianjin Municipality State Administration of Industry and Commerce” in Petitioner’s Pre-Preliminary Comments at Exhibit 6.

²⁶³ See GOC IQR at 23 and Exhibit B-5.

²⁶⁴ As stated above, the Department requested from the GOC volume and value data of industry-specific purchases of HRS in order for the Department to conduct its specificity analysis. However, the GOC did not provide the information requested nor provide an alternative. It is necessary for the Department to have the industry-specific information to conduct a specificity analysis, pursuant to section 771(5A)(D)(iii)(I through IV) of the Act. Specifically, the Department uses this volume and value data to determine or analyze whether the government authorities provide HRS for LTAR to a limited number of certain enterprises, predominantly used by certain enterprises, or disproportionately granted to certain enterprises.

continues to rely on our AFA finding that the GOC's provision of HRS for LTAR is specific.

Second, the GOC argues that the Department incorrectly focuses on the consumer of the input for our specificity analysis but should instead conduct an analysis of based on the source of the input, *i.e.*, government authorities. We disagree. Putting aside the GOC's unwillingness to provide any relevant data, we reject on a theoretical and legal basis the GOC's argument that we must examine LTAR specificity at a more "macro" level. By the GOC's count, the Department found *de facto* specificity for input for LTAR in 20 investigations and administrative reviews since 2008. The GOC claims that the Department would not be able to find specificity on the general provision of all inputs by all government authorities. These various inputs are, however, distinct and should not and cannot be lumped together into one giant program of "inputs" for LTAR. Our specificity test must focus on separate inputs because each is distinct, provided by different authorities and each authority provides a unique financial contribution to a separate set of enterprises or industries. Again as we stated in *Solar Cells from the PRC*, by analogy, we would not lump together all tax preferences available to all enterprises and determine that, because every enterprise might be eligible for at least one tax preference, none of the tax preferences are specific. There is no indication in the Act, the Department's regulations, or the legislative history that such an analysis is intended.²⁶⁵

Third, without citation to any legal authority, the GOC argues that the Department must identify a "formally-named" subsidy program. To the contrary, the definition of a "subsidy" in section 771(5)(B)(i) of the Act does not reference or require the existence of a "program." Rather, it details that a subsidy exists when an authority provides a financial contribution. Pursuant to section 771(5)(D)(iii) of the Act, the financial contribution here is providing goods and services---specifically hot-rolled steel for LTAR. The Act does not require the Department to identify a subsidy program as the GOC proposes. Instead, it requires the agency to find that a financial contribution has been made by an authority. Here, due to the GOC's non-cooperation, the Department has found as AFA that the GOC provided HRS for LTAR respondents, and that the provision of HRS for LTAR was specific because the GOC failed to provide requested industry-specific information.

Lastly, the GOC emphasized the "absence of evidence" and "not grounded in any reasonable record fact" when it claimed Congress intended the specificity test to function as the "rule of reason." We note first that as stated above, it is incumbent upon the GOC to provide the information that would enable the Department to conduct the specificity analysis. Here, the GOC refused to provide industry-specific information that would have allowed the Department to conduct a specificity analysis as intended by Congress.²⁶⁶

Specifically, the GOC did not provide the volume and value data of HRS consumption by industry that would allow the Department to analyze whether the provision of HRS for LTAR was either a limited number of certain enterprises, predominantly used by certain enterprises, or disproportionately granted to certain enterprises.

Similarly, the GOC cites to the United States' arguments challenging the European Community's specificity findings in *U.S. -Aircraft*, and argues that the Department's specificity

²⁶⁵ See *Solar Cells Decision Memorandum* at Comment 9.

²⁶⁶ The Statement of Administrative Action notes that Commerce may consider certain factors in its specificity analysis: 1) the use of a subsidy program by a limited number of certain enterprises; 2) the predominant use by certain enterprises; 3) the grant of disproportionately large amounts to certain enterprises; and 4) the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. H.R. Rep. No. 103-316 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040 at 913-914.

findings for the provision of HRS for LTAR in this case are a “more egregious example of rigged specificity than was the focus of U.S. concerns in *US-Aircraft*.”²⁶⁷ Specifically, the GOC argues that the program in question in *US-Aircraft* was “defined by specific subdivisions or program elements,” and was therefore more amenable to being subject of a “rational framework for assessing specificity.”²⁶⁸ The GOC’s argument is unavailing. The GOC in this case refused to provide the requested industry-specific information that would have allowed the Department to conduct a detailed and thorough specificity analysis. Having refused to provide this information despite having been given numerous opportunities to do so, the GOC cannot now be heard to complain that the Department, lacking this information, did not conduct a reasoned analysis.

Comment 14: Whether HRS Purchases are Alloy or Non-alloy Steel

Petitioner’s Arguments

- Respondents purchase a specialized grade of steel plate that can be classified as both an alloy and a carbon pursuant to the chemical composition of each particular plate.

Rebuttal Arguments of Titan Companies and CS Wind

- CS Wind indicates that the company purchases grade S355 steel which CS Wind argues is made to a European specification that is classified as a non-alloy steel.
- CS Wind argues that it provided over 300 mill certificates at verification and none of the HRS plate purchases covered by the certificates can be classified as an alloy steel under the HTS provision that Petitioner cites.
- Titan Companies argue that Petitioner has not provided substantial evidence on the record of this investigation to support its assertion that respondents purchase alloy steel and thus there is no reason to include the price of alloy steel in the benchmark.

Department’s Position

We disagree with Petitioner. Petitioner argues that depending on the chemical composition of each particular plate, the Department will be able to ascertain whether the HRS plate is a carbon or an alloy steel. To support their claim that respondents purchase a specialized grade of steel, petitioner submitted the mill certificates of its coalition members.²⁶⁹ This is not compelling evidence because those mill certificates are not representative of respondents’ purchases. Indeed, Petitioner did not refer to any of respondents’ mill certificates collected at verification, to identify which HRS plate purchases rise to the classification of alloy steel.

The Department has determined, upon reviewing individual chemistries of each mill certificate from respondents’ largest producer that the chemical composition of the HRS plate purchased by respondents does not rise to the level of alloy steel pursuant to the classification

²⁶⁷ See GOC Brief at 15-16.

²⁶⁸ *Id.* at 16.

²⁶⁹ See Petitioner’s June 15, 2012, submission at Attachment A.

defined by the HTS.²⁷⁰ Where possible, it is the Department's practice to compute benefit calculations for input for LTAR programs using benchmark pricing data for the particular input under examination.²⁷¹ Therefore, the Department will utilize a carbon-quality benchmark that reflects respondents' purchase of non-alloy HRS plate and Petitioner's *GTIS* alloy benchmark price will not be used in the Department's benchmark.

Comment 15: Construction of HRS Benchmark

Petitioner's Arguments

- Respondents purchase a specialized grade of steel plate. The combination of world export prices of two steel types sourced by *GTIS* is the most appropriate for use as a benchmark for the specialized grade steel plate.
- Other data on the record, *i.e.*, MEPS prices, SBB, SteelBenchmarker, Steel Orbis, and Metal Bulletin, are not appropriate sources for the benchmark. The sources contain either prices not available to domestic producers in China; or include exports prices from China.
- If the Department decides to use other sources on the record for the benchmark of HRS plate; then it must average data on a consistent basis and not overstate certain regional prices.

Titan Companies' Arguments

- The Department's *Preliminary Determination* benchmark for HRS plate contains flawed data. 1) SteelBenchmarker data includes small quantity purchases in a single size that does not represent Titan Companies' large quantity purchases in varying sizes. 2) MEPS – Nordic and MEPS- North America contain prices that would not be available to Chinese purchasers.

CS Wind's Arguments

- The Department should use the lowest benchmark price on the record as the benchmark for each month during the POI because not doing so inflates the alleged benefit.
- The averaging of numerous world prices together from different countries is not a commercially available price within the meaning of the Department's regulations but a purely hypothetical price.

²⁷⁰ See Mill certificates in Titan Companies Verification Exhibit 19i at 20 – 40; CS Wind Verification Exhibit 12 at 338-400; and Titan Wind's July 9, 2012 submission at Exhibit 9; specifically note 1.f of Chapter 72 (Iron and Steel) of the Harmonized Tariff Schedule of the United States (HTS). Note 1.f of Chapter 72 of the HTS identifies the chemical composition and the minimum weights necessary to qualify as an alloy steel. None of the 76 mill certificates we reviewed reached the minimum levels necessary to qualify as an alloy steel.

²⁷¹ See Steel Wheels Decision Memorandum at Comment 15.

- If the Department refuses to use the lowest benchmark price, then it must include benchmark prices submitted after the preliminary determination.
- Adjust SteelBenchmarker benchmark price to exclude VAT and import duties.

Petitioner's Rebuttal Arguments

- The Department should not use the lowest benchmark price on the record because it is not reflective of the specialized grade of steel purchased by respondents.
- Petitioner reiterates arguments from the case briefs, *i.e.*, prices from SteelBenchmarker, SBB, Steel Orbis, MEPS, and Metal Bulletin, should be excluded from the benchmark because either they do not reflect the specialized grade of steel purchased by respondents, include imports to China, or are not available to purchasers in China.

CS Wind's Rebuttal Arguments

- Petitioner has not provided evidence to support its claim that HRS plate purchased by CS Wind is actually at a “price premium,” therefore, the use of GTIS export prices under the HTS provision 7225.40 is not warranted.
- CS Wind contends that GTIS data should not be included into the benchmark price because the data resubmitted by Petitioner excludes purchases from China; making the price information exclusively between two non-China countries. The price information would not be available to Chinese purchasers as required by the Department’s regulations.
- Petitioner provides no explanation as to why a domestic, *i.e.*, ex-factory price, would not be available to a Chinese producer. If a Chinese producer were to source HRS plate from another country, it is completely plausible that it would be purchasing the goods on an ex-factory basis.²⁷²
- The Department should reject Petitioner’s argument to exclude Steel Orbis – Ukraine prices because they are already covered in the GTIS data. The Department’s regulations state if there are multiple prices on the record then they should all be averaged.
- The Department should reject Petitioner’s methodology of averaging because it is overly complicated and contrary to the Department’s regulations.

Rebuttal Arguments of CS Wind and Titan Companies

²⁷² See, e.g., *Certain Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 14514 (March 31, 2009), and accompanying Issues and Decision Memorandum at Comment 5.

- Petitioner advocates that all previous benchmarks be rejected except GTIS. Petitioner ignores the fact that each of the benchmarks and sources supplied by Titan Companies and CS Wind have probative value and have often been found to be appropriate sources in previous cases.

Titan Companies' Rebuttal Argument

- The Department should not average together the values of alloy and non-alloy in order to derive a surrogate value for the steel plate used by Titan. There is no evidence on the record to suggest that the steel used by Titan is alloy steel and thus there is no reason to include an alloy price in the benchmark.

Department's Position

In the *Preliminary Determination*, we used six series of price data from three sources reflecting export prices for HRS from Ukraine, the Commonwealth of Independent States, Nordic, European Union, North America regions, and a world price. Since the *Preliminary Determination*, parties have placed additional pricing data on the record.²⁷³

For the final determination, the Department is excluding alloy prices sourced from GTIS, and import prices to Turkey and East Asia from the benchmark price. As discussed above, the Department determined that respondents' HRS plate did not rise to the level of alloy steel. Petitioner claims that import prices to Turkey and East Asia should be excluded because these prices are not available to Chinese purchasers. Though we disagree with Petitioner's logic in this regard, we have nonetheless excluded these data for another reason. Because these data sets are for import prices, it is not readily apparent whether they are inclusive of freight and import taxes and duties and whether and how the Department should adjust for such costs. Given that such adjustments can be readily made on the numerous other data sets comprising our benchmark, we have determined that the exclusion of these potential data sets does not affect the robustness and accuracy of our benchmark in this particular case.

Parties have attempted to discredit the remaining prices submitted on the record, but each has failed to provide compelling evidence that merits the exclusion of the other price sources. For example, Petitioner argues that MEPS (regional prices) and SteelOrbis (Turkey ex-warehouse prices) are not available prices in the PRC. Similarly, the Titan Companies and CS Wind argue that MEPS (Nordic and North America) and revised GTIS export data prices are not available in the PRC and, therefore, such prices are not suitable for use as HRS benchmarks. In keeping with 19 CFR 351.511(a)(2)(ii), we have not used HRS prices where it is reasonable to conclude that they would not be available to purchasers of HRS in China. However, we have interpreted this provision of our regulations within the context of our goal to derive the most robust HRS benchmark possible and, thus, we have sought to include as many data points as possible. The fact that some data sources contain prices between countries that do not include

²⁷³ Specifically, revised GTIS carbon and alloy prices excluding imports to and exports from China, Steel Orbis Turkey, MEPS India, Metal Bulletin European Union, SBB Turkey import prices, SBB CIS export prices, and SBB East Asia import prices.

the PRC does not diminish the fact that they provide information concerning what an unfettered market would bear for HRS during the POI. Therefore, we have utilized the MESP (regional prices), Steel Orbis (Turkey ex-warehouse), MEPS (Nordic and North America), and revised GTIS export data prices in the derivation of our HRS Benchmark.

In deriving our HRS benchmark, we have, consistent with our practice, excluded data that reflects import prices into the PRC and export prices out of the PRC.²⁷⁴ Petitioner has argued that certain sources contain prices that reflect imports into the PRC and therefore should be excluded from the HRS benchmark. Specifically, Petitioner claims that that GTIS data demonstrate Chinese export prices are included in SBB's CIS data and Metal Bulletin EU data. We disagree with Petitioner's claims. Petitioner's argument in this regard hinges on the assertion that SBB's CIS data and Metal Bulletin's EU data, respectively, ultimately source their pricing information from GTIS data. However, Petitioner has not provided any evidence to support its assertion. Therefore, we find Petitioner's argument unpersuasive.

The Titan Companies contend that the Department should exclude the SteelBenchmarker price data because the data include small quantity purchases in a single size that do not represent the Titan Companies' purchases in varying sizes. We find that the Titan Companies did not submit any evidence on the record to demonstrate a correlation between plate dimensions, quantity, or production lag time to price; therefore, we will not exclude the world export prices from SteelBenchmarker.

The Department's regulation 351.511(a)(2)(ii) is clear that the Department "will average" world market prices when multiple prices are available and they are comparable. The Department finds the pricing data from MEPS, SBB CIS, Metal Bulletin, SteelBenchmarker World Export Market, Steel Orbis, and non-alloy prices from GTIS to be sufficiently reliable and representative.²⁷⁵ As the Department has found in previous investigations and administrative reviews, the best methodology is to calculate a simple average of these prices.²⁷⁶ We do not have information on the record that would allow the Department to weight-average the prices properly. Petitioner advocates an averaging methodology using GTIS data because it asserts that GTIS data is the basis for all of the benchmark prices submitted on the record. As noted above, Petitioner has not provided any evidence to support this assertion. Therefore, we find Petitioner's argument unpersuasive.²⁷⁷

Regarding CS Wind's argument, there is no basis in the regulations for selecting the lowest monthly world market price in identifying the monthly benchmark.²⁷⁸ As noted above, to derive the most robust HRS benchmark possible, we have sought to include as many data points as possible. Further, CS Wind has not provided any information to indicate that the other price data are somehow aberrational or outside the ordinary course of trade and therefore not reliable or unrepresentative. Thus, the Department will maintain its methodology from the *Preliminary Determination* and calculate a simple monthly average from pricing data on the record.

With regards to CS Wind's argument that the SteelBenchmarker price should be adjusted to exclude VAT and import duties; the Department agrees with CS Wind that the

²⁷⁴ See Steel Cylinders Decision Memorandum at 18 and 19 and Citric Acid Decision Memorandum at 17.

²⁷⁵ See *High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*Steel Cylinders from the PRC*), and accompanying Issues and Decision Memorandum (Steel Cylinders Decision Memorandum) at 18; and Citric Acid Decision Memorandum at 19.

²⁷⁶ See *Id.*, and Steel Wheels Decision Memorandum at Comment 15.

²⁷⁷ See CS Wind's May 3, and July 9, 2012, benchmark submissions, Petitioner's May 10, and June 15, 2012, benchmark submission, and Titan Companies' July 9, 2012, benchmark submission.

²⁷⁸ See Steel Cylinders Decision Memorandum at Comment 8.

SteelBenchmarker price used in the *Preliminary Determination* was adjusted and inclusive of VAT and import duties. As described above in the, “Benchmarks for LTAR Programs,” section we add VAT and import duties as reported by the GOC to the benchmark price. We have adjusted the SteelBenchmarker world export price, accordingly, to not double count VAT and import duties in the benchmark price. For more information, *see* the respondents’ final calculations memoranda.

Comment 16: Electricity Benchmarks

CS Wind’s Arguments

- A review of the Zhejiang Province schedule, which is used for benchmark electricity rates, indicates a translation error. There are four rates for 1-10kv large industrial user group (*i.e.*, electricity rate per degree, sharp price, peak price, and peak price) and not three rates (*i.e.*, peak, normal, and valley) as determined by the Department at the *Preliminary Determination*.
- The Department should modify its selection of benchmark rates from the Zhejiang schedule for the final. CS Wind states (1) because Jiangsu Province (where the company is located) does not use a “sharp price” that category should not be used; (2) “electricity rate per degree” category should be used as the normal price; and (3) the lower peak price is a mistranslation and should be used as the off-peak/valley price. As such, the rates which should be used as the three benchmarks rates in the final are: 0.899 peak, 0.633 normal, and 0.415 valley.

Petitioner’s Rebuttal Arguments

- The Department addressed this translation issue in *Steel Cylinders from PRC* and ruled that the Zhejiang Province electricity schedule contains three rates.²⁷⁹ As such, for the final determination, the Department should calculate the electricity benefit in the same manner as was done in the *Preliminary Determination*.

Department’s Position

At the *Preliminary Determination*, we sourced, from the Zhejiang schedule, provided by the GOC, electricity rates to serve as benchmarks for the peak, normal, and valley rate categories within the large industrial user group (1-10kv).²⁸⁰ We disagree with CS Wind and find that, consistent with *Steel Cylinders from PRC*, the Zhejiang schedule has three, and not four, categories. Footnote 2 of the Zhejiang schedule states the following:

²⁷⁹ See *Steel Cylinders Decision Memorandum* at Comment 11.

²⁸⁰ See *Preliminary Determination*, 77 FR at 33435-36.

Large Industrial electricity, normal industrial & commercial electricity break downs (*sic*) to six periods, critical peak (19:00-21:00), peak (8:00-11:00, 13:00-19:00; 21:00-22:00), valley (11:00-13:00, 22:00-8:00 of the following day).²⁸¹

These three categories cover all 24 hours of a day. CS Wind's assertion that the Zhejiang schedule has four categories contradicts the actual rate schedule on the record and, therefore, we have no basis to accept CS Wind's arguments or its interpretation of the rate categories. To the extent that CS Winds argues there is a discrepancy in the translation of the schedule and argues that there are four categories, we note that it is parties' responsibility to provide accurate translation of all record documents.²⁸² Lacking an alternate translation, the Department finds that the footnote explaining the various rate categories is most probative, and therefore finds that there are three price categories in this schedule.

We therefore continue to apply, for this final determination, the same benchmark rates for the peak, normal, and valley categories in the large industrial user group, as was done in the *Preliminary Determination*. Further, we note that the Department relied on the same Zhejiang electricity rate schedule in *Solar Cells from the PRC* for benchmark rates.²⁸³ In that investigation, the Department identified the same Zhejiang electricity rates to serve as benchmark rates for the peak, normal, and valley categories in the large industrial user group (1-10kv) as done in this instant case.²⁸⁴

Comment 17: *De Jure Specificity of Three Tax Programs; Whether the Tax Programs Are Limited to Certain Enterprises or Groups of Enterprises*

GOC's Arguments

- Import duty and VAT exemptions for imported equipment are not specific to certain industries as both FIEs and domestic enterprises are eligible for such exemptions. The catalogue associated with the program limits the type of equipment eligible, not the scope of the enterprises eligible.
- The “Two Free, Three Half” program is available to any enterprise that has productive foreign investment; it is not limited as a matter of law to certain enterprises.
- To receive deductions under the EITL research and deduction (R&D) tax program, a company must be engaged in R&D, which falls under one of the fields provided for in

²⁸¹ See Memorandum to the File from Kristen Johnson, International Trade Compliance Analyst, AD/CVD Operations, Office 3, regarding “PRC Electricity Benchmark Rates” (May 29, 2012) at 6.

²⁸² See 19 CFR 351.303(e).

²⁸³ See Solar Cells Decision Memorandum at “Provision of Electricity for LTAR” under “LTAR Benchmarks;” see also Memorandum to the File from Jun Jack Zhao, International Trade Compliance Analyst, AD/CVD Operations, Office 6, regarding “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China Post-Preliminary Benchmark Memorandum” (June 22, 2012), which was placed on the record of the wind towers CVD investigation via Memorandum to the File through Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 8, from Kristen Johnson, International Trade Compliance Analyst, AD/CVD Operations, Office 8, regarding “Placement on the Record of this Investigation – Post-Preliminary Benchmark Memorandum from *Solar Cells from the PRC*” (December 17, 2012).

²⁸⁴ *Id.*

two associated lists. Far from limiting the program to only certain enterprises, the catalogues encompass a wide scope of industries.

Petitioner's Rebuttal Arguments

- Each of the subsidy programs found countervailable in the *Preliminary Determination* is specific under at least one of the statutory criteria for specificity under section 771(5A)(D) of the Act.

Department's Position

The Department has addressed the interpretation of section 771(5A)(D) of the Act in several prior investigations within the context of the “Two Free, Three Half” program.²⁸⁵ We continue to find that FIE tax programs, such as the “Two Free, Three Half” program, are *de jure* specific pursuant to section 771(5A)(D) of the Act because the FIE tax benefits are, by definition, explicitly limited to the group of enterprises, *i.e.*, productive enterprises, with foreign investment. Further, in the steel wheels investigation, we found the program specific, despite the GOC's arguments, because section 771(5A)(D) of the Act “anticipates groupings of enterprises that may otherwise belong to different industries.”²⁸⁶ The GOC has not provided new evidence that warrants the Department to reevaluate our finding.

Regarding the “Import Tariff and Value Added Tax Exemptions for FIES and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries” program, we acknowledge that the pool of companies eligible for benefits is larger than FIEs because some domestic companies may also qualify for the exemptions. However, as explained in past CVD proceedings, the domestic enterprises must have government-approved projects which are in line with the current “Catalog of Key Industries, Products, and Technologies the Development of Which Is Encouraged by the State,” and must be approved by the State Council, NDRC, or another agency to which authority has been delegated.²⁸⁷ Therefore, we determine that the addition of certain domestic enterprises as eligible users does not broaden the reach or variety of users sufficiently to render the program non-specific. On this basis, we continue to find the program is specific under section 771(5A)(D)(iii)(I) of the Act.

Regarding the EITL R&D tax program, information on the record indicates that tax offsets are only provided for enterprises engaged in specific sets of projects. Article 6 “New Energy and Energy Conservation Technology” of the *Circular of the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation on Printing and*

²⁸⁵ See, e.g., CFS Decision Memorandum at Comment 14 and 16; and, more recently, Solar Cells Decision Memorandum at Comment 25.

²⁸⁶ See *Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 Fed. Reg. 17017 (March 23, 2012) (*Steel Wheels from the PRC*), and accompanying Issues and Decision Memorandum (*Steel Wheels Decision Memorandum*) at Comment 25.

²⁸⁷ 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), and accompanying Issues and Decision Memorandum at “Import Tariff and Value Added Tax Exemptions for FIES and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries.”

Distributing the Administrative Measures for Certification of New and High Technology Enterprise (HNTE), lists the wind energy projects, which are:

- “general design, assembling technology of wind (above 1.5MW) generating set and design and manufacturing of major components...”
- “technologies as evaluation and analysis of wind resource, design and optimization of wind power station, monitoring and control of wind power station,”²⁸⁸

To be eligible, an enterprise must be conducting research into one of the projects listed in the HNTE or one of the projects provided for in the *Guideline of the Latest Key Priority Developmental Areas in the High Technology Industry* (Circular No. 6), which includes wind energy.²⁸⁹ Thus, only certain enterprises (*i.e.*, those with R&D in new technologies, products, and processes) can qualify for these deductions. Therefore, the Department continues to find the R&D tax program *de jure* specific in accordance within the meaning of section 771(5A)(D) of the Act. This determination is consistent with the Department’s finding in *Solar Cells from the PRC*.²⁹⁰

Comment 18: Allocation of CS Wind’s Grants

CS Wind’s Arguments

- The land grants were rebates related to the purchase of land within the LETDZ.
- The Department should therefore allocate the benefit from the land grants over 50 years, the length of CS Wind’s land-use rights, and not a 12-year AUL as was done in the *Preliminary Determination*.

Petitioner’s Rebuttal Arguments

- CS Wind received the grants to construct a factory in the zone and, therefore, the benefit from the grants remains with the productive assets.
- The Department allocates benefits from non-recurring subsidies over the AUL.

Department’s Position

We disagree with CS Wind. The record demonstrates that CSWC received cash payments from the LETDZ’s Administration Committee because of its investment in the zone. CS Wind, itself, reported that to receive the grants CSWC had to establish its wind tower and flange plate construction factory in the LETDZ.²⁹¹ The GOC confirmed that CSWC received assistance under the “Support Funds for Construction of Project Infrastructure Provided by

²⁸⁸ See Additional Documents for Post-Prelim Analysis at Attachment 1.

²⁸⁹ See GOC Verification Report at Exhibit 1. (The GOC submitted Circular No. 6 on July 16, 2012.)

²⁹⁰ See Solar Cells Decision Memorandum at “EITL R&D Program” and Comment 25.

²⁹¹ See CS Wind Second SQR at 3 - 4.

Administration Commission of LETDZ.”²⁹² The grant amounts may have been derived based on the company’s purchase of land; however, the fact is that cash payments were made from the government to CSWC for investment in the zone.

It is the Department’s practice to allocate the benefit from the provision of land over the length of the land-use rights.²⁹³ However, in this instance, we are not countervailing the provision of land for LTAR. Rather, the countervailable subsidy is the transfer of money from the government to CSWC. As stated under 19 CFR 351.524(d)(2), the Department allocates the benefit from non-recurring subsidies over the AUL for renewable physical assets as listed in the IRS Tables. As discussed in “Allocation Period” above, for the subject merchandise, the IRS Tables prescribe an AUL of 12 years. Therefore, for this final determination, we continue to allocate the benefits of CSWC’s grants over a 12-year AUL.

Further, as noted above, we have changed the name of this program to match the program name that was provided to the Department by the GOC, *i.e.*, “Support Funds for Construction of Project Infrastructure Provided by Administration Commission of LETDZ.”

Comment 19: VAT and Import Duties in the Benchmark Used to Calculate CS Wind’s Benefit Under the HRS for LTAR Program

CS Wind’s Arguments

- The Department should not add VAT to the benchmark applied to CS Wind because, as an exporter, the company would not pay VAT upon the entry of imported HRS plate as long as the product that incorporated that steel was ultimately exported.
- Section 351.511(a)(2)(iv) of the regulations require the use of a delivered benchmark price and contains two additional requirements for the selection of the benchmark: (1) the Department “will adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product;” and (2) “{t}his adjustment will include delivery charges and import duties.”
- The goal is to derive an adjusted price to reflect a price the company actually paid or would pay. There is no absolute requirement on what items to include in the adjustment to reach such a price, which is consistent with the statute that requires that the “prevailing market conditions” be considered.
- Since the addition of VAT is not a required adjustment to reflect the delivered price a firm would pay, in circumstances where record evidence demonstrates that a company would not pay VAT as part of its delivered price of an imported product, the Department must not make this adjustment.
- Similarly, the Department should consider import duties to be a non-mandatory adjustment in accordance with the “prevailing market conditions” requirement. Though

²⁹² See GOC Second SQR at 12.

²⁹³ See, e.g., *Wire Decking from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32902 (June 10, 2010) (*Wire Decking from the PRC*), and accompanying Issues and Decision Memorandum (*Wire Decking Decision Memorandum*) at “Provision of Land for LTAR.”

the regulation states that the Department will adjust for duties, it also requires that the adjustment reflect what a company would pay, and that adjustment must comport with the prevailing market conditions for that product (reference to Seamless Pipe Decision Memorandum at “Provision of Coking Coal for LTAR,” footnote 113 (where the Department did not add import duties to the benchmark because import duties for coking coal were zero).

- CS Wind argues that it provided documentation on imports during the POI establishing that no VAT or import duties were paid on those products.²⁹⁴ Additionally, at verification, CS Wind provided documentation with regard to an importation of HRS prior to the POI, which showed that the company did not pay VAT or import duties upon entry.²⁹⁵
- Further, CS Wind asserts that the regulations require the Department to make case specific adjustments to reflect the price a firm actually paid or would pay, and not to develop generic benchmarks. CS Wind notes that the Department does not apply a generic inland freight charge to all respondents in a case, but makes company specific adjustments to benchmarks for the inland freight that a company would pay.

Petitioner’s Rebuttal Arguments

- In *Steel Cylinders from the PRC*, the Department rejected the exact argument and explained that leaving VAT out of the calculated world price, but including it in the domestic purchase price would be an “apples-to-oranges” comparison.²⁹⁶
- The Department does not take each individual respondent’s situation into account when it constructs the benchmark. The Department constructs a benchmark for “a firm” in the country in question.

Department’s Position

In prior CVD proceedings, and most recently in the *Preliminary Determination* in response to CS Wind’s pre-preliminary comments, the Department has concluded that both import duties and VAT should be included in the benchmark prices to order to make an appropriate level of price comparability between domestic purchase prices and benchmark prices.²⁹⁷ CS Wind has not presented any new arguments in its case brief to lead the Department to reconsider the derivation of the HRS plate benchmark prices used to in the company’s benefit calculations for the “Provision of HRS for LTAR.”

²⁹⁴ See CS Wind IQR at Exhibit 10-C.

²⁹⁵ See CS Wind Verification Report at 9.

²⁹⁶ See *Steel Cylinders Decision Memorandum* at Comment 9.

²⁹⁷ *Id.*; *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*) at Comment 8; *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) (*HRC Steel from India*), and accompanying Issues and Decision Memorandum (*HRC Steel Decision Memorandum*) at Comment 4 and 5; and *Preliminary Determination*, 77 FR at 33435.

The Department has determined that section 351.511(a)(2)(iv) of the regulations is clear in its requirement to use delivered prices which includes all delivery charges and import duties when determining whether the provision of a good provides a benefit. In *HRS Steel from India*, the Department explained that, in keeping with the regulation, “delivery charges and import duties would include all shipping, handling and related charges (*e.g.*, foreign inland freight, local inland freight, and ocean freight) that would be incurred in delivering the product to the respondents’ factor gate, as well as all duties and taxes (*e.g.*, VAT, normal customs duties, antidumping and countervailing duties) applicable to that product.”²⁹⁸ As such, CS Wind’s assertions that VAT and import duties are not required adjustments to the benchmark prices to reflect the delivered price a firm would pay are baseless.

In *Steel Cylinders from the PRC*, the Department discussed that domestic inputs purchased by a firm are delivered prices which include all delivery charges and VAT. Therefore, in order to ensure an appropriate “apples-to-apples” comparison between domestic input purchases and the world-market benchmark, the regulations require the use of delivered prices for the benchmark, which include import duties and VAT.²⁹⁹

CS Wind argues that the facts of this case are different than those in *Steel Cylinders from the PRC*. The Department disagrees. To support its argument, CS Wind cites to a purchase of HRS imported prior to the POI to demonstrate that it would not have to pay VAT in the POI.³⁰⁰ However, CS Wind did not import any HRS during the POI and, therefore, the Department cannot conclude that VAT would not have been paid by CS Wind during the POI.

Further, to suggest, as CS Wind does, that the Department should compare a domestic delivered input price inclusive of VAT to a non-delivered, VAT-exclusive benchmark price results in a distorted benefit calculation and is inconsistent with the requirements of 19 CFR 351.511(a)(2)(iv). The domestically-produced steel inputs would compete with world-market inputs based on delivered prices that would include all delivery charges, taxes and duties required for sale within the PRC market, *i.e.*, prevailing market conditions.

The Department has also previously addressed and rejected CS Wind’s argument that case specific adjustments should be made to reflect the price a firm actually paid or would pay. In *OCTG from the PRC*, we explained the Department’s position on this issue when addressing the derivation of benchmark prices with regard to freight:

Although Jianli contends that the benchmark should reflect prices Jianli itself would have paid, 19 CFR 351.511(a)(2)(iv) directs the Department to adjust the price for freight “to reflect the price *a firm* actually paid or would pay if it imported the product” (emphasis added). Thus, so long as the ocean freight costs are reflective of market rates for ocean freight, and representative of the rates an importer – and not necessarily the respondent specifically – would have paid, then the prices are appropriate to include in our benchmark. Additionally, these prices are for shipping steel articles from the locations included in our benchmark to the PRC, thus these pricing series are appropriate to include in our benchmark.³⁰¹

²⁹⁸ See HRC Steel Decision Memorandum at Comment 4.

²⁹⁹ See Steel Cylinders Decision Memorandum at Comment 9.

³⁰⁰ See CS Wind Case Brief at 23.

³⁰¹ See OCTG Decision Memorandum at Comment 13 “Benchmark Issues: D. Benchmarks for Steel Rounds – Freight Charges.”

We agree with Petitioner that the claims of CS Wind that it would not pay VAT or import duties do not mean “a firm” would not have paid those charges. The GOC submitted to the Department the VAT and import duties that “a firm” paid for importing HRS plate during the POI.³⁰² Nowhere in its response did the GOC report that there were any exceptions to the payment of the VAT and import duties under any law, such as the “Measures of the Customs of the People’s Republic of China for the Supervision and Administration of Processing Trade Goods,” which was submitted by CS Wind.³⁰³ The fact is a PRC firm importing HRS would pay both VAT and import duties.

Further, CS Wind’s reference to *Seamless Pipe from the PRC* is misplaced. In that investigation, the Department acknowledged that under 19 CFR 351.511(a)(2)(iv) import duties are added to the benchmark, but that it was not adding such duties to the coking coal benchmark because the GOC reported that import duties were zero for the POI.³⁰⁴ In contrast, as reported by the GOC in this investigation, there was an import duty of 6.0 percent on HRS plate during the POI.³⁰⁵

For the reasons stated above, we continue to include the applicable VAT and import duties in the HRS plate benchmark prices, which are delivered prices as required by 19 CFR 351.511(a)(2)(iv), used to calculate CS Wind’s benefit under the program “Provision of HRS for LTAR.”

Comment 20: Whether the Department Should Apply Total AFA for HRS for LTAR with Respect to Titan Companies

Petitioner’s Arguments

- Application of total AFA is warranted when calculating the benefit because Titan Companies failed to report all HRS plate purchases and it failed to tie its HRS plate purchases to its books and records due to irregular bookkeeping practices.
- Titan Companies failed to identify the source of its hot-rolled steel plate purchases.
- The Department should assign the highest rate calculated for this program in other countervailing duty investigations.

Titan Companies’ Rebuttal Arguments

- The Department’s verification report states that all of the reported purchases reconciled except with respect to certain minor adjustments common to verification. The discrepancies noted in the verification are insignificant and do not warrant the application of AFA to Titan Companies’ purchases of hot-rolled steel plate.

Department’s Position

³⁰² See GOC IQR at 21.

³⁰³ See CS Wind IQR at Exhibit 10c.

³⁰⁴ See Seamless Pipe Decision Memorandum at “Provision of Coking Coal for LTAR,” footnote 113.

³⁰⁵ See GOC IQR at 21.

As indicated in the *Preliminary Determination*, when examining whether the GOC has provided inputs for LTAR, the Department instructs respondents to identify the firms that produced the inputs respondents purchased during the POI. The Department then requests ownership information from the GOC regarding the producers identified by the respondents.³⁰⁶ Petitioner argues that Titan Companies' inability to identify some of the sources of its HRS purchases warrants the application of AFA for all of Titan Companies' HRS purchases when determining the benefit under section 771(5)(E)(iv) of the Act. As explained above under "Use of Fact Otherwise Available and Adverse Inferences," we discuss the Department's determination to rely on AFA and to find that the HRS produced by firms first identified at verification were produced by a government authority, within the meaning of section 771(5)(B) of the Act that provided a financial contribution under section 771(5)(D)(iv) of the Act.

The Department, however, does not find that the Titan Companies' inability to provide mill certificates for a small number of HRS purchases warrants the application of AFA with regard to all of the Titan Companies' HRS purchases when calculating the benefit under section 771(5)(E)(iv) of the act. The verifiers were able to collect and verify a significant number of the mill certificates requested, and therefore we find that the mill certificates not supplied are not representative of total HRS by Titan Companies.³⁰⁷ Moreover, contrary to Petitioner's arguments, the inability to provide mill certificates goes to the issue of financial contribution, not benefit. As indicated above, the Department finds that all of the HRS plate purchased by the Titan Companies during the POI were from government authorities and, thus, constitute a financial contribution under section 771(5)(D)(iv) of the Act. However, despite the lack of mill certificates for certain HRS plate purchases, record evidence exists regarding the price and quantities of these purchases, thereby allowing the Department to perform the benefit calculation without resorting to the use of facts available or AFA.

The Department disagrees with Petitioner's assertion that Titan Companies should have reported other categories of HRS when it reported its HRS plate purchases. The Department initiated an investigation into the "Government Provision of Hot-Rolled Steel for LTAR," but specifically identified HRS plate in the *Initiation Checklist* based on the information submitted on the record by Petitioner. If Petitioner intended to include a broader spectrum of HRS products, it should have done so during the petition stage and provided evidence to support its allegation, rather than raising the issue for the first time in case briefs at the end of the Department's investigation. As a result, the Department disagrees with Petitioner's assertion that Titan Companies should have reported other steel products.

Lastly, the record evidence does not support Petitioner's claim that Titan Companies failed to report additional HRS plate purchases made by Titan Baotou and the other producers. As the Department verified, Titan Wind and Titan Suzhou purchased the predominant amount of HRS plate from its suppliers and Titan Wind tolled the production of wind towers to its affiliates such as Titan Baotou.³⁰⁸ The company explained at verification, on rare occasions, its affiliates purchased small quantities of HRS plate usually for internal consumption. The Department was able to trace the purchases through each affiliates' accounting system.³⁰⁹ Thus, the evidence on the record indicates that Titan Baotou correctly reported its HRS purchases and these purchases tied to its books and records. Accordingly, the application of total AFA to Titan Companies'

³⁰⁶ See *Preliminary Determination*, 77 FR at 33425.

³⁰⁷ See Titan Companies Verification Report at 4 – 12.

³⁰⁸ *Id.*

³⁰⁹ *Id.*

HRS purchases is not warranted.

Comment 21: Titan Wind's Sales Denominator

Titan Companies' Arguments

- Titan Companies contend the Department should use the consolidated sales denominator of Titan Wind and its affiliates because Titan Wind is a parent company “with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company.” The Department should not attribute subsidies to just the producing companies as it did in the *Preliminary Determination*.

Petitioner's Rebuttal Arguments

- Petitioner counters that Shanghai Tianshen is the parent company and Titan Wind is an intermediary owner of the three other producers of subject merchandise and an input supplier. Thus, the Department has attributed subsidies to the proper sales denominator.

Department's Position

In the *Preliminary Determination*, for subsidies received by Titan Wind, we used as the denominator the total consolidated sales of Titan Wind, Titan Lianyungang, Titan Baotou, and Titan Shenyang during the POI, exclusive of sales among affiliated companies for subsidies received by Titan Wind, Titan Lianyungang, Titan Baotou, or Titan Shenyang.³¹⁰ Based on comments from interested parties, we have revised our approach.

The Department verified the organizational and corporate structure of Shanghai Tianshen, Titan Wind, and its affiliates and based on this information we have revised the sales denominator for subsidies attributable to Shanghai Tianshen, Titan Wind, Titan Lianyungang, Titan Baotou, Titan Shenyang, and Titan Suzhou.³¹¹ Specifically, for the calculations for the final determination, for subsidies received by Titan Wind, we have used as the denominator the total consolidated sales of the above stated companies, exclusive of inter-company sales, for 2011. In the *Preliminary Determination*, we attributed subsidies to the sales of only wind tower producers. However, the Department's regulations 19 CFR 351.525(b)(6)(iii) instructs the Department to attribute subsidies received by a holding company, including a parent company with its own operations, to the consolidated sales of the holding company and its subsidiaries. As confirmed at verification, Shanghai Tianshen is a holding company with significant ownership in Titan Wind.³¹² Titan Wind, in turn, is the majority owner of Titan Baotou, Titan Lianyungang, Titan Shenyang, and Titan Suzhou, its input supplier.³¹³ Titan Wind has its own operation of wind tower production and its consolidated financial statements incorporate all producers (Titan Baotou, Titan Lianyungang, Titan Shenyang), and its input supplier (Titan Suzhou).³¹⁴ Petitioner's argument misinterprets the Department's regulations, when the plain

³¹⁰ See *Preliminary Determination*, 77 FR at 33429.

³¹¹ See Titan Companies Verification Report at 2.

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Id.*

language instructs the Department to attribute subsidies to the consolidated sales of the holding company and its subsidiaries. As stated above, Shanghai Tianshen is the holding company; Titan Wind is the parent company with its own operations; and Titan Baotou, Titan Lianyungang, Titan Shenyang, and Titan Suzhou are its subsidiaries. Thus, for the final determination, for subsidies received by Titan Wind, we are including Titan Suzhou into the sales denominator as described above. Unchanged from the *Preliminary Determination*, for subsidies received by the affiliated producers, Titan Lianyungang, Titan Baotou, and Titan Shenyang, we used as the denominator the total consolidated sales of Titan Wind, Titan Lianyungang, Titan Baotou, and Titan Shenyang pursuant to 19 CFR 351.525(b)(6)(ii). For more information, *see* the final determination calculation memorandum for Titan Wind.

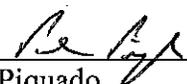
VIII. Recommendation

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

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Import Administration

17 DECEMBER 2012

Date