



C-570-974

Investigation

POI: 1/1/10 – 12/31/010

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March 16, 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: Certain Steel Wheels  
from the People's Republic of China

**SUBJECT:** Issues and Decision Memorandum for the Final Determination

## I. Summary

On September 6, 2011, the Department of Commerce (the Department) published the Preliminary Determination in the above-mentioned CVD investigation.<sup>1</sup> On March 2, 2012, the Department published the preliminary affirmative determination of critical circumstances.<sup>2</sup>

The respondents in this investigation are: the Centurion Companies,<sup>3</sup> the Xingmin Companies,<sup>4</sup> and the Jingu Companies.<sup>5</sup>

We conducted verification of the questionnaire responses submitted by the Xingmin Companies on December 5 and December 6, 2011, of the Centurion Companies on December 10 and 12, 2012, of the Jingu Companies on December 14 through December 16, 2012, and of the Government of the PRC (GOC) on December 20, 2012. From January 6 through January 31, 2012, we released the verification reports.<sup>6</sup>

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<sup>1</sup> See Certain Steel Wheels From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 76 FR 55012 (September 6, 2011) (Preliminary Determination).

<sup>2</sup> See Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Affirmative Determination of Critical Circumstances, 77 FR 12812 (March 2, 2012) (Preliminary Critical Circumstances Determination).

<sup>3</sup> The Centurion Companies are comprised of Jining Centurion Wheels Manufacturing Co., Ltd. (Centurion), Jining CII Wheel Manufacture Co., Ltd. (Jining CII), and Company A. The identity of the latter company is proprietary. Therefore, we have referred to it as Company A in this notice.

<sup>4</sup> The Xingmin Companies are comprised of Shandong Xingmin Wheel Co., Ltd. (Xingmin) and Sino-tex (Longkou) Wheel Manufacturers Inc. (Sino-tex).

<sup>5</sup> The Jingu Companies are comprised of Zhejiang Jingu Company Limited (Zhejiang Jingu), Chengdu Jingu Wheel Co., Ltd. (Chengdu), Zhejiang Wheel World Industrial Co., Ltd. (Zhejiang Wheel World), and Shanghai Yata Industrial Co., Ltd. (Shanghai Yata).

<sup>6</sup> See Memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office 3, "Verification Report of Xingmin Wheel Co., Ltd." (January 6, 2012) (Xingmin Verification Report), Memorandum to Eric B. Greynolds, Program Manager, AD/CVD Operations Office 3, "Verification of Jining Centurion Wheels Manufacturing Co. Ltd.



The “Analysis of Programs” and “Subsidies Valuation Information” sections below describe the subsidy programs and the methodologies used to calculate benefits for the programs under examination. Additionally, we have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s positions on the issues raised in the briefs. Based on the comments received and our verification findings, we 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:

- Comment 1:** Application of CVD Law to Non-Market Economies (NMEs)
- Comment 2:** Application of CVD Law to NMEs Results in Double-Counting
- Comment 3:** Whether the Burden of Proving Double-Counting Lies with Respondents
- Comment 4:** Proper “Cut-Off” Date to be Applied in the Investigation
- Comment 5:** Whether the Department’s Examination of Additional Subsidy Program Was Lawful
- Comment 6:** Whether It Was Appropriate for the Department to Reject the Xingmin Companies’ Factual Information
- Comment 7:** Whether It Was Appropriate for the Department to Reject Centurion Companies’ Factual Information
- Comment 8:** Whether Certain Hot-Rolled Steel (HRS) Producers Constitute Government Authorities That Provide a Financial Contribution
- Comment 9:** Whether Purchases of HRS from Domestic Trading Companies Constituted a Financial Contribution
- Comment 10:** Whether the GOC Acted to the Best of Its Ability to Provide Information Regarding the Ownership Status of HRS Producers

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(Jining Centurion) and its affiliate Jining CII Wheel Manufacture Co., Ltd. (Jining CII)” (January 30, 2012) (Centurion Verification Report), Memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office 3, “Verification of Information Submitted by the Government of the Peoples’ Republic of China,” (January 30, 2012) (GOC Verification Report), and Memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office 3, “Verification Report Regarding Information Submitted by Zhejiang Jingu Company Limited,” (January 31, 2012) (Jingu Verification Report). The public version of these verification reports and all other public versions and public documents for this investigation are available electronically via IA ACCESS located in the Department’s Central Records Unit (CRU), Room 7046 of the main Commerce building.

- Comment 11:** The Extent to Which Chinese Communist Party (CCP) Membership is Relevant in Determining Whether HRS Producers Are Government Authorities Capable of Providing a Financial Contribution
- Comment 12:** Whether the Department Applied Consistent Treatment of HRS Producers In Terms of Ownership Status
- Comment 13:** Data Source to Be Used for the Jingu Companies Under the HRS for Less Than Adequate Remuneration (LTAR) Program
- Comment 14:** Whether the Department Should Use a Tier-One, In-Country Benchmark in the Benefit Calculation of the HRS for LTAR Program
- Comment 15:** Use of HRS Benchmark Data That More Accurately Correspond to Respondents' Domestic Purchases of HRS
- Comment 16:** Whether the Department Should Reduce the HRS Benchmark to Account for the Cash Discounts that the Jingu Companies Receive from Their HRS Suppliers
- Comment 17:** Whether the HRS Benchmark Prices Should Be Adjusted Downward to Reflect the Prices the Jingu Companies Paid for Non-Pickled and Non-Oiled HRS
- Comment 18:** Whether the Provision of HRS for LTAR Is Specific Under the CVD Law
- Comment 19:** Whether It Was Appropriate to Apply AFA With Regard to the GOC Concerning the Provision of Electricity for LTAR Program
- Comment 20:** Whether the Provision of Electricity Is Not Countervailable Because the Program Provides General Infrastructure Which Does Not Constitute a Financial Contribution
- Comment 21:** Whether Banks in the PRC Are Government Authorities Capable of Providing a Financial Contribution
- Comment 22:** Whether a Causal Nexus Exists Between the GOC's Industrial Policies and Loans Received by Respondents
- Comment 23:** Whether the Department Should Use a PRC-Based Tier-One or Tier-Two Benchmark in the Benefit Calculations of the Policy Lending Program
- Comment 24:** Whether the Department's Short-Term and Long-Term Benchmark Interest Rate Calculations Are Flawed
- Comment 25:** Whether Tax Benefits Under Article 28 of the Foreign Invested Enterprise (FIE) Tax Law Are Specific

**Comment 26:** Revision to Import Duty Rate for Testing Machinery

**Comment 27:** The Sales Denominator to Be Used in the Benefit Calculations of the Jingu Companies

**Comment 28:** Use of Revised Data to Calculate Benefits Received by the Centurion Companies Under the Two Free, Three Half Program

**Comment 29:** Whether IPO Grants from the Fuyang and Hangzhou City Governments Are Countervailable

**Comment 30:** Whether the Administrative Record of this Case Supports a Finding of Critical Circumstances

**Comment 31:** Whether the Scope Should Exclude Off-Road/Non-Department of Transportation Specification Stamped Wheels

## **II. Period of Investigation**

The period of investigation (POI) for which we are measuring subsidies is January 1, 2010, through December 31, 2010, which corresponds to the PRC's and respondents' most recently completed fiscal year at the time we initiated this investigation. See 19 CFR 351.204(b)(2).

## **III. Attribution of Subsidies**

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

## The Jingu Companies

Zhejiang Jingu, established in 1986, is a producer of subject merchandise. Currently, Zhejiang Jingu is a publicly traded, domestically-owned enterprise which is listed on the Shenzhen Stock Exchange. Chengdu is a domestically and one-hundred percent owned subsidiary of Zhejiang Jingu. Chengdu produces subject merchandise for sale in the domestic market. During the POI, Zhejiang Jingu exported subject merchandise through Shanghai Yata, a wholly-owned, PRC-based trading company that has no production operations. Zhejiang Jingu also shipped a relatively small quantity of subject merchandise through Zhejiang Wheel World during the POI. Zhejiang Wheel World is a foreign-invested joint venture operation in which Zhejiang Jingu owned a 75 percent shareholding interest during the POI. The Jingu Companies state that Zhejiang Wheel World did not produce in-scope steel wheels during the POI.

In accordance with 19 CFR 351.525(b)(6)(vi), we determine that Zhejiang Jingu, Chengdu, Shanghai Yata, and Zhejiang Wheel World are cross-owned companies. Concerning Zhejiang Wheel World, we acknowledge that the Jingu Companies have stated that the firm did not produce in-scope steel wheels during the POI. However, the Court has found that the Department may examine subsidies received by cross-owned companies, including companies that did not produce subject merchandise during the POI, provided that the companies have the ability to produce subject merchandise. See Fabrique, 166 F. Supp. 2d at 602-603 (holding that actual production is not required and sustaining the attribution of subsidies where there is majority voting ownership of an entity and the entity possesses the ability to produce subject merchandise).

In their questionnaire response, the Jingu Companies stated that Zhejiang Wheel World is unable to manufacture steel wheels that fall within the dimensional specifications of the scope of the investigation due to “specification and capacity differences of certain key equipment.” See the Jingu Companies’ August 5, 2011, questionnaire response at 5-6. However, though requested, the Jingu Companies did not provide a description of the inputs and machinery used by Zhejiang Wheel World. Instead, the Jingu Companies stated that the production process of Zhejiang Wheel World is the “same as Zhejiang Jingu’s.” Id. at 3. Furthermore, the product lists of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World, indicate an overlap with regard to steel wheels whose dimensions fall within the scope of the investigation. Id. at Exhibits 2 – 4. Therefore, notwithstanding claims made by the Jingu Companies in the narrative of its questionnaire response that Zhejiang Wheel World cannot make subject merchandise, actual source documents concerning Zhejiang Wheel World’s products lines and production process lead us to determine otherwise. Therefore, we determine that subject merchandise could be produced by Zhejiang Wheel World, and consistent with Fabrique and 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by Zhejiang Wheel World to the consolidated sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World (net of intra-company sales).

Concerning Shanghai Yata, which exported subject merchandise during the POI, we note that 19 CFR 351.525(c) states that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated. Therefore, we have attributed subsidies received by Shanghai Yata to the consolidated sales of Zhejiang Jingu, Chengdu, Zhejiang Wheel World, and Shanghai Yata (net of intra-company sales).

In addition, in accordance with 19 CFR 351.525(b)(6)(ii) we have attributed subsidies received by Zhejiang Jingu and Chengdu, which are cross-owned producers of subject merchandise, to the consolidated sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World (net of intra-company sales).

### The Centurion Companies

Centurion was established on June 27, 2005. It produces a variety of steel wheels, including subject merchandise. During the POI, Centurion was owned by a Hong Kong-registered company and a private individual. Jining CII was formed on January 25, 2005, as a PRC-based foreign joint venture. In 2008, Jining CII's shares changed hands and, as a result, it became a wholly-foreign owned enterprise. Jining CII also produces a variety of steel wheels, including subject merchandise. Proprietary information contained in the Centurion Companies' initial questionnaire response indicates that Centurion and Jining CII are majority owned by the same individual, Person A.<sup>7</sup> Therefore, in accordance with 19 CFR 351.525(b)(6)(vi), we determine that Centurion and Jining CII are cross-owned.

Further, a sibling of Person A, hereinafter referred to as Person B, owns a minority share of Centurion.<sup>8</sup> See the Centurion Companies' July 15, 2011, questionnaire response at Exhibit 1. The Centurion Companies also reported that another entity, Company A, provided steel cutting services related to disk production for Centurion. Id. at Exhibits 1 and 2.<sup>9</sup> The Centurion Companies report that disk production is part of the production process for steel wheels. Id. at 5. Company A is housed within Centurion's production facility, provided its cutting services exclusively to Centurion, and was Centurion's primary provider of such services during the POI. Id.; see also the Centurion Companies' August 8, 2011, questionnaire response at 1. Information in the Centurion Companies' questionnaire response indicates that Company A is wholly-owned by Person C, who is the spouse of Person B, Centurion's minority owner.<sup>10</sup>

Section 351.525(b)(6)(vi) of the Department's regulations states that 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. While this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations, the Preamble states that "the underlying rationale for attributing subsidies between two separate corporations is that the interests of those two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same ways it can use its own assets (or subsidy benefits)." Countervailing Duty Regulations, 63 FR 65347, 65401 (November 25, 1998) (Preamble). Hence, there may be situations where, due to a combination of other factors, the standard is met even where there is no majority voting ownership interest between, or common ownership of, the corporations. In this case, the record demonstrates that (a) the owners of Centurion and Company A are closely related by primary family relations (husband/wife, siblings), and (b) Company A's operation is (1) housed entirely within the facilities of Centurion, (2) devoted exclusively toward Centurion's production of

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<sup>7</sup> The names of the individuals that own Centurion and Jining CII are business proprietary. We refer to the principal owner of Centurion and Jining CII as Person A.

<sup>8</sup> The identity of the individual is business proprietary. Therefore, we refer to the individual as Person B.

<sup>9</sup> The name of the company is proprietary. Therefore, we have referred to it as Company A in this notice.

<sup>10</sup> The identity of the individual is business proprietary. Therefore, we refer to the individual as Person C.

subject merchandise, and (3) is the primary source for an essential step in Centurion's production of subject merchandise. Taking into consideration all of these factors combined, we find that the relationship between Centurion and Company A meets the cross-ownership standard under 19 CFR 351.525(b)(6)(vi) in that Centurion is in a position to use or direct the individual assets of Company A in essentially the same ways that it can use its own assets. Accordingly, we determine that Company A is cross-owned with Centurion, and Jining CII under 19 CFR 351.525(b)(6)(vi). Further, we find that the co-production of subject merchandise between Centurion and Company A meets the attribution standard under 19 CFR 351.525(b)(6)(ii). This is consistent with the Department's finding in a similar situation in OCTG from the PRC. See Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, 74 FR 47210, 47215 (September 15, 2009) (OCTG from the PRC Preliminary Determination) (attributing subsidies received by Yuangtong to TCPO because Yuangtong had direct involvement in the production of the subject merchandise during the POI); unchanged in Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination, 74 FR 64045 (December 7, 2009) (OCTG from the PRC), and accompanying Issues and Decision Memorandum (OCTG from the PRC Decision Memorandum).

Thus, based on the above, and in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by Centurion, Jining CII, and Company A to the three companies' consolidated sales (net of intra-company sales).

### The Xingmin Companies<sup>11</sup>

Xingmin, a domestically-owned company established in December 1999, is a producer of subject merchandise and other steel wheels sold in both the PRC and overseas markets. Xingmin sells subject merchandise to the United States through its affiliated U.S. resellers. Xingmin's subsidiary, Sino-tex, an FIE established in January 2005, also produces subject merchandise, which is sold in the PRC market. Xingmin and Sino-tex are located in the Longkou Economic Development District in Shandong Province.

Tangshan Xingmin Wheel Co., Ltd. (Tangshan) is a wholly-owned subsidiary of Xingmin that was established in October 2010. Tangshan, located in Hebei Province, did not produce any products during the POI because it was still under construction at that time.

Xingmin, Sino-tex, and Tangshan are managed and controlled by the same individuals.<sup>12</sup> We, thus, determine that these firms can use each other's assets in essentially the same way they can use their own assets. Accordingly, pursuant to 19 CFR 351.525(b)(6)(vi), we determine that Xingmin, Sino-tex, and Tangshan are cross-owned companies.<sup>13</sup> Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by Xingmin and Sino-tex by the consolidated sales of Xingmin and Sino-tex (net of intra-company sales).

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<sup>11</sup> For source of information concerning the corporate structure of the Xingmin Companies, see Xingmin's Initial Questionnaire Response (July 15, 2011) at 1-4 and Exhibit 1.

<sup>12</sup> See Xingmin's Initial Questionnaire Response at 2.

<sup>13</sup> In this determination, we find that Tangshan received no subsidies and had no sales during the POI.

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

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 12 years. No interested party has claimed that the AUL of 12 years is unreasonable.

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

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

Sections 776(a)(1) and (2) of the 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.

##### GOC- Hot-Rolled Steel

In our initial questionnaire, we asked the GOC to provide information concerning the firms that produced the hot-rolled steel (HRS) that respondents purchased during the POI. See the Department's May 13, 2011, questionnaire at 17. We explained in our questionnaire that the Department normally treats producers that are majority owned by the government or a government entity as "authorities." Thus, for any producer of HRS that was majority government-owned, the GOC needed to provide the requested information only if it wished to argue that those producers were not authorities.

For any producer that the GOC claimed was directly, 100-percent owned by individual persons during the POI, we requested, among other items, translated copies of source documents that demonstrate the producer's ownership during the POI, such as capital verification reports, articles of association, share transfer agreements, or financial statements and identification of the owners, members of the board of directors, or managers of the producers who were also government or Chinese Communist Party (CCP) officials during the POI. See the Department's May 13, 2011, questionnaire at Appendix 5.

For HRS producers with direct corporate ownership or less-than-majority state ownership during the POI, we requested that the GOC provide ownership information, including among other items, the total level (percentage) of state ownership of the companies' shares; the names of all government entities that own shares, either directly or indirectly, in the company; information on whether any of the owners are considered "state-owned enterprises" by the government; and the amount of shares held by each government owner. We also asked a series of questions regarding whether the owners of the input producers were members of the CCP and the extent to which CCP officials influenced the manner in which they conducted their firms' operations. Id.

In its questionnaire response, the GOC provided various source documents (e.g., business licenses, capital verification reports, and articles of associations) for the firms that supplied HRS to the respondents during the POI. However, in most cases the GOC did not provide the information requested in the Department's initial questionnaire regarding the firms that produced the HRS that respondents purchased during the POI. Moreover, in all cases the GOC did not respond to the Department's questions concerning the CCP. See the GOC's July 15, 2011, questionnaire response at 17 – 29 and Exhibits 9 – 15.

In our supplemental questionnaire, we requested that the GOC provide the information requested in the initial questionnaire as it applied to HRS producers that respondents claimed were privately-held entities. See the Department's July 25, 2011, supplemental questionnaire at 10. The GOC failed to provide the requested information in its supplemental questionnaire response. For example, in spite of the GOC's claims in the supplemental questionnaire, the GOC continued to not provide ownership information for several of the respondents' HRS producers that the respondents identified as being private entities. Further, for purportedly privately-owned HRS producers owned by individuals, the GOC, in all instances, did not provide information regarding whether the owners of the input producers were officials of the CCP and the extent to which CCP officials influenced the manner in which they conducted their firms' operations. See the GOC's August 10, 2011, questionnaire response. On September 2, 2011, the Department issued a fourth supplemental questionnaire to the GOC inquiring of the ownership of a HRS producer and asking the GOC to complete the input supplier appendix. See the Department's September 2, 2011, supplemental questionnaire at 3. The GOC submitted its response to that questionnaire on September 23, 2011, but again did not provide information regarding whether the owners, members of the board of directors, or managers of the input producer were government or CCP officials and the extent to which those officials influenced the manner in which company conducted its operations. See the GOC's September 23, 2011, fourth questionnaire response at 1 – 26.

We, therefore, determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" in making our determination. See sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available. See section 776(b) of the Act. Therefore, because the GOC failed to provide the requested ownership information, we are applying an adverse inference that the HRS producers at issue were government authorities that provided a financial contribution as described under section 771(5)(D)(iv) of the Act. In addition, for those instances in which the GOC provided the requested ownership documents (e.g., capital verification reports, business registration forms, and articles of association) but failed to provide information on whether individual owners of the

input producers were officials of the CCP and the extent to which CCP officials influenced the manner in which they conducted their firms' operations, we are assuming, adversely, that the firms were government authorities that provided a financial contribution. Our approach in this regard is consistent with the Department's practice.<sup>14</sup>

### GOC – Electricity

The Department is also investigating the provision of electricity for LTAR to the respondents by the GOC. The GOC, however, did not provide a complete response to the Department's May 13, 2011, initial questionnaire regarding this program. In the questionnaire, the Department requested that the GOC provide the provincial price proposals for 2006 and 2008, for each province in which a mandatory respondent or any reported cross-owned company is located and to explain how electricity cost increases are reflected in retail price increases.<sup>15</sup> In its July 5, 2011, questionnaire response, the GOC responded that it was unable to provide provincial price proposals for 2006 and 2008, because they are working documents for the National Development and Reform Commission's (NDRC) review.<sup>16</sup> The GOC's response also explained theoretically how the national price increases should be formulated but did not explain the actual process that led to the price increases.<sup>17</sup>

As such, on August 2, 2011, the Department issued a supplemental questionnaire to the GOC reiterating its request for this information as well as information on the price adjustment in 2009, and the 2009 provincial price proposal for Zhejiang, Shandong, and Sichuan, the provinces in which the respondents are located.<sup>18</sup> The GOC, however, in its supplemental questionnaire response, did not provide the requested provincial price proposals asserting that the "documents are not necessary to an understanding of the electricity pricing in China."<sup>19</sup> The GOC also did not provide sufficient answers to the Department's supplemental questions. For example, we asked the GOC to explain how the NDRC developed the national price increase. In response, the GOC simply provided a copy of the "Interim Rules on Sales Price of Electricity," but failed to provide an explanation on how the NDRC developed the national price increase.<sup>20</sup> Similarly, we asked the GOC to explain the methodology used to calculate each of the cost element increases; however, in response, the GOC simply stated "the methodology used to calculate each of these cost element increases are mainly common practices of costing."<sup>21</sup> We also asked the GOC to explain how all significant cost elements are accounted for within each province's price proposal. The GOC, however, stated that "significant cost elements will normally be accounted

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<sup>14</sup> See, e.g., Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 75 FR 10774, 10778 (March 9, 2010) (Coated Paper from the PRC Preliminary Determination); unchanged in 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) (Coated Paper from the PRC Final Determination) and accompanying Issues and Decision Memorandum (Coated Paper from the PRC Decision Memorandum).

<sup>15</sup> See Department's Initial Questionnaire Issued to the GOC (May 13, 2011) at Appendix 6.

<sup>16</sup> See GOC's Initial Questionnaire Response (July 5, 2011) at 62.

<sup>17</sup> Id. at 61-66.

<sup>18</sup> See Department's Second Supplemental Questionnaire Issued to the GOC (August 2, 2011).

<sup>19</sup> See GOC's Second Supplemental Questionnaire Response (August 10, 2011) at 1, 5.

<sup>20</sup> Id. at 2.

<sup>21</sup> Id. at 5.

for within the province's price proposal in a manner consistent with the relevant rules on costing and pricing of electricity"<sup>22</sup> with no further explanation.

After reviewing the GOC's responses to the Department's electricity questions, we determine that the GOC's answers were inadequate and did not provide the necessary information required by the Department to analyze the provision of electricity in the PRC. As such, the Department must rely on the facts otherwise available in making our determination. See sections 776(a)(1), 776(a)(2)(A) and (B) of the Act. Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information as it did not adequately explain why it was unable to provide the requested information. Therefore, an adverse inference is warranted in the application of facts available. See section 776(b) of the Act. Drawing an adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act.

We also rely on an adverse inference by selecting the highest electricity rates that were in effect during the POI as our benchmarks for determining the existence and amount of any benefit under this program. See sections 776(b)(4) of the Act. The GOC reported that the provincial rate schedules of November 2009 were applicable during the POI.<sup>23</sup> As such, we have used the November 2009 provincial electricity tariff schedules as a benchmark rate source for the period January 2010 through December 2010. Specifically, we have placed on the record of this investigation the November 2009 provincial electricity rate schedules, which were submitted to the Department by the GOC in the CVD investigation on Drill Pipe from the PRC, and which reflect the highest rates that the respondents would have paid in the PRC during the POI. See Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 1971 (January 11, 2011) (Drill Pipe from the PRC), and accompanying Issues and Decision Memorandum (Drill Pipe from the PRC Decision Memorandum) at "Provision of Electricity for LTAR." See Memorandum to File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "Provincial Electricity Tariff Schedules," (August 29, 2011).

For details on the calculation of the subsidy rate for the respondents, see below at "Provision of Electricity for LTAR."

## **VI. Subsidies Valuation Information - Benchmarks and Discount Rates**

The Department is investigating loans received by the Jingu Companies, Centurion Companies, and Xingmin Companies from Chinese policy banks, state-owned commercial banks (SOCBs), and other commercial banks which are alleged to have been granted on a preferential, non-commercial basis. The Department is also investigating various grants received by the Jingu Companies. As such, the derivation of the Department's benchmark and discount rates is discussed below.

Benchmark for 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 for benchmarking purposes. See 19 CFR

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<sup>22</sup> Id.

<sup>23</sup> Id. at 6.

351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national interest rate for comparable commercial loans." See 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. However, for the reasons explained in CFS from the PRC, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) (CFS from the PRC) and accompanying Issues and Decision Memorandum (CFS from the PRC Decision Memorandum) at Comment 10. 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, because Chinese banks reflect significant government intervention in the banking sector, 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 Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in Softwood Lumber from Canada, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002) (Lumber from Canada), and accompanying Issues and Decision Memorandum (Lumber from Canada Decision Memorandum) at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

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

This methodology relies on data published by the World Bank and International Monetary Fund (see further discussion below). At the Preliminary Determination, we noted that the World Bank had not yet published all the necessary data relied on by the Department to compute a 2010 short-term benchmark interest rate for the PRC. See Preliminary Determination, 76 FR at 55018-19. Since then, the World Bank has released the 2010 World Governance Indicators; however, there has not been sufficient time for the Department to analyze that data and compute a 2010 short-term PRC benchmark interest rate for use in this final determination. Therefore, where the use of a short-term benchmark rate for 2010 is required in this final, we have continued to apply the 2009 short-term benchmark rate for the PRC, as calculated by the Department (see discussion below).

The 2009 short-term benchmark was computed following the methodology developed in CFS from the PRC. We first determined which countries were similar to the PRC in terms of

GNI, based on the World Bank's classification of countries as low income, lower-middle income, upper-middle income, and high income. For 2009, the PRC was in the lower-middle income category, a group that included 55 countries. See World Bank Country Classification, <http://econ.worldbank.org/>. As explained in CFS from the PRC, this pool of countries captures the broad inverse relationship between income and interest rates. See CFS from the PRC Decision Memorandum at "Benchmarks" and Comment 10.

Many of these countries reported lending and inflation rates to the International Monetary Fund and are included in that agency's international financial statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "low middle income" by the World Bank. First, we did not include those economies that the Department considered to be non-market economies for AD 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. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for the calculation of the inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.

For the resulting inflation-adjusted benchmark lending rate, see Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "2009 Short-Term Interest Rate Benchmark" (August 29, 2011). Because these are inflation-adjusted benchmarks, it is necessary to adjust the respondents' interest payments for inflation. This was done using the PRC inflation rate as reported in the IFS.

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

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

## ANALYSIS OF PROGRAMS

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

#### **A. Policy Loans to the Steel Wheels Industry**

The Department examined whether steel wheels producers received preferential lending through SOCBs or policy banks. According to the allegation, preferential lending to the auto and steel wheels industry is supported by the GOC through the issuance of national and provincial five-year plans, industrial plans for the automotive and nonferrous metal sector, catalogues of encouraged industries, and other government laws and regulations. Based on our review of the responses and documents provided by the GOC, we determine that loans received by the steel wheels industry from SOCBs and policy banks were made pursuant to government directives.

Record evidence demonstrates that the GOC, through its directives, has highlighted and advocated the development of the automotive and steel wheels industry. At the national level, the GOC has placed an emphasis on the development of high-end, value-added automotive products through foreign investment as well as through technological research, development, and innovation. In laying out this strategy, the GOC has identified specific products selected for development. For example, the GOC implemented the Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation (No. 40 (2005)) (Decision 40) in order to achieve the objectives of the 11<sup>th</sup> Five-Year Plan. Decision 40 references the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue), which outlines the projects which the GOC deems “encouraged,” “restricted,” and “eliminated,” and describes how these projects will be considered under government policies. For the “encouraged” projects, Decision 40 outlines several support options available from the government, including financing. See Decision 40 at Articles 13 and 17, which was placed on the record of this investigation in the Department’s August 29, 2011, Memorandum to the File, from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation (No. 40 (2005)) (Decision 40).” The GOC’s Industrial Catalogue includes as “encouraged investment industries” within the auto industry the “design and development of auto, motorcycle, and their engines and key parts,” “manufacturing of such key auto parts and components as automatic transmission box, transmission box for heavy-duty cars and advanced and appropriate auto and engine with independent property rights,” and “precision forging, multiple workplace moulding and forging of key auto parts.” See Exhibit III-9 of the Petition at “(XIII) Auto.”

Other industrial plans also discuss the development and encouragement of the PRC’s automotive and auto parts industries. For example, the GOC’s “Catalogue of Industry, Product and Technology Key Supported by the State at Present” (Key Industry Catalogue) lists, as investment projects, the “development of key automotive parts,” “precision forging, ferrous casting and nonferrous casting and rough blanks of important auto components,” and “development systems for complete vehicles, complete motorcycle and engines, components and parts.” See Exhibit III-8 of the Petition at “XXI. Vehicle.”

The “Formal Policy on the Development of the Automobile Industry” (Formal Automobile Policy) similarly states that the GOC aims to make the PRC’s automobile industry a “pillar industry.” See Memorandum to the File from Eric B. Greynolds, Program Manager,

AD/CVD Operations, Office 3, regarding “Placement of Formal Policy on the Development of the Automobile Industry on Record” (July 26, 2011). The Formal Automobile Policy also states under Chapter III - Structure of the Industry, that auto parts manufacturers meeting certain production and technology development requirements shall enjoy the following benefits enumerated under Article 12:

1. Zero rate of orientation regulation tax for its investment in fixed assets;
2. Priority for it to issue and list its shares and debentures;
3. Active support in bank loans;
4. Priority for its use of overseas funds in the foreign funds use plan;
5. Policy-based loans will be arranged for projects of economic cars, auto parts and components, die sets and casting and forging mills; and
6. The financial company within an enterprise group may expand its business scale after approval of relevant State departments.

Id. Further, under Chapter V - Investment and Financial Policy for the Formal Automobile Policy - it states:

Article 22: The State guides the enterprises or enterprise groups possessing technological and management advantages to coop with localities which have a good investment environment and an ample supply of fund to develop key products of automotive industry in accordance with the overall State plan.

Article 24: The State will formulate the corresponding policy to encourage inter-regional or inter-department flow of investment and protect legal rights and interests of investors.

Article 26: Under approval of the State Council, automobile enterprises may apply for pilot capitalization of the State debts.

Id. In addition, under Chapter XII - Industrial Policies, Program and Project Management Formal Automobile Policy states:

Article 56: The State guides development of the automotive industry through the automotive industry policy and program. All the localities and departments should support development of the automotive industry in accordance with the automotive industry policy and program promulgated by the State Council.

Id.

The GOC claims that it ceased its Formal Automobile Policy in 2004. See the GOC’s July 5, 2011, questionnaire response at Exhibit 54. However, even accepting the GOC’s claim, we determine that the successor industrial policy for the PRC’s automotive industry, the Policy on the Development of the Automotive Industry of 2004 (Automotive Industry Policy), indicates the GOC’s goal of targeting the PRC’s automotive and auto parts industries for development. For example, Chapter I – Aim of Policy the Automotive Industrial Policy states:

Article 1: The principle of combining the fundamental role of market allocation of resources with the macro-control of the government shall be adhered to so as to create a market environment of fair competition and unification, and improve the administrative system of rule by law on automotive industry. The functional departments of the governments shall, in accordance with the mandatory requirements of the administrative laws and regulations and the technical specification, implement administration on the enterprises undertaking the production of automobiles, farming transportation vehicles (low speed cargo trucks and tri-cars, the same hereinafter), motorcycles and components and parts, and the products thereof, and regulate market acts of various economic bodies in the field of automotive industry.

See the GOC's July 5, 2011, questionnaire response at Exhibit 54, emphasis added.

Under Chapter VIII – Components and Parts and Relevant Industries of the policy states:

Article 31: A special development plan for the components and parts shall be made to give guidance and support to the products of automobile components and parts through classification, and to guide the public funds to invest into the field of production of automobile components and parts, and impel the enterprises of components and parts that have comparative advantages to form the ability of specialization, large batch of production and modularization goods supply. For those enterprises undertaking the production of components and parts, which can support several independent enterprises that undertake the production of the whole vehicles and which enter into the international system of procurement of automobile components and parts, the state shall support them in priority in such aspects as the introduction of technology, technological transformation, financing and merger and reorganization, etc. The enterprises undertaking the production of the whole automobiles shall stock components and parts from the society by ways of electronic commerce, or net procurement step by step.

Id., emphasis added. The Automotive Industrial Policy also states under Chapter X – Investment administration that only “approved” projects shall receive financing from state-owned banks:

Article 51: Where the investment projects subject to approval fail to obtain the notice of approval, the departments of land administration shall not handle land requisition, the state-owned banks shall not issue loans, the customs shall not handle tax exemption, the securities regulatory commission shall not approve the issuance of stocks and listing, and the administrative departments for industry and commerce shall not handle formalities for the registration of newly established enterprises. The relevant departments of the state shall not accept the admission application of the production enterprises and their products.

Id.

In addition, the Restructuring and Revitalization Plan of Auto Industry (Restructuring and Revitalization Plan) also indicates that the GOC has targeted the PRC's automotive and auto parts industries for development support. See Memorandum to the File from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, regarding “Placement of Restructuring and Revitalization Plan of Auto Industry on Record of Investigation” (August 29, 2011)

(Restructuring and Revitalization Plan Memorandum). The Restructuring and Revitalization Plan states that the “auto industry is an important pillar industry of the national economy.” See Restructuring and Revitalization Plan Memorandum at 2. Under “Main Tasks of Industrial Restructuring and Revitalization,” the plan states that “{b}ackbone auto parts enterprises will be supported to enlarge scale and raise market share in domestic and foreign markets through merger and reorganization.” Id. at 4. Under “Implement the Strategy of Proprietary Brands” the plan states:

Pertinent policies will be formulated in such aspects as technical development, government procurement and financing channels to steer auto makers to regard the development of proprietary brands as their strategic emphasis, and support them to develop proprietary brands by means of independent development, joint development, domestic and overseas M&A and so on.

Id. at 5. Under “Implement Auto Product Export Strategy” the plan states:

We will accelerate the construction of national auto and auto parts export bases and establish auto export information, product certification, generic technology development, test and detection, training and other public service platforms.

Id. at 5 – 6. Under “Intensify Investment in Technical Progress and Upgrading” the plan states:

In next three years, RMB10 billion of fund will be allocated from the increased central investment. This fund will be used as a special fund for technical progress and upgrading and mainly support auto makers to upgrade products and raise the level of the key technologies for energy conservation, environmental protection and safety; develop the key assembly products, . . . establish auto and auto parts generic technology R&D and testing platforms; and develop AEVs and the parts dedicated to them.

Id. at 7. Lastly, under “Implement the Plan,” the provinces are instructed to formulate “concrete” steps in order to carry out the goals established in the Restructuring and Revitalization Plan. Id. at 8. This section contains an annex listing the projects covered by the Restructuring and Revitalization Plan. The annex includes a listing for “High-strength steel wheels” classified under “Other key parts.” Id. at 16.

As noted in Citric Acid from the PRC, in general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support those objectives or goals. See Citric Acid from the PRC Decision Memorandum at Comment 5. Where such plans or policy directives exist, then it is the Department’s practice to determine that a policy lending program exists that is specific to the named industry (or producers that fall under that industry). See CFS from the PRC Decision Memorandum at Comment 8, and LWTP from the PRC Decision Memorandum at “Government Policy Lending Program.” Once that finding is made, the Department relies upon the analysis undertaken in CFS from the PRC to further conclude that national and local government control over the SOCBs result in the loans being a financial contribution by the GOC. See CFS from the PRC Decision Memorandum at Comment 8. Therefore, on the basis of the record information

described above, we determine that the GOC has a policy in place to encourage the development of the automobile industry, including the production of auto parts, through policy lending.

The GOC, Centurion Companies, Jingu Companies, and Xingmin Companies provided source documents concerning the largest loans they had outstanding during the POI. Information in these business proprietary documents further supports our determination that the GOC has a policy in place to encourage the development of the production of steel wheels through policy lending. See Memorandum to the File from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, regarding “Excerpts of Internal Loan Documents of the Respondent Companies” (August 29, 2011) (Internal Loan Document Memorandum).

The Centurion Companies, Jingu Companies, and Xingmin Companies reported that they had outstanding loans from PRC-based banks during the POI. Consistent with our determinations in prior proceedings, we determine that these PRC-based banks to be SOCBs. See OCTG from the PRC Decision Memorandum at Comment 20 (explaining that the Department considers banks that are owned or controlled by the government to be public authorities under the CVD law); and Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea, 67 FR 62102 (October 3, 2002), and accompanying Issues and Decision Memorandum at Comment 1 (finding that minority interest in an entity may be enough to find that it acts as a government authority).

At verification, the Xingmin Companies made a minor correction reporting notes receivables that they discounted during the POI.<sup>24</sup> Because this financing was not provided by government authorities, such as SOCBs or policy banks, we have not included them in our examination of policy lending. This approach is consistent with the Department’s practice. See Coated Paper from the PRC Decision Memorandum at Comment 38 (“Finally, the Gold companies also reported shareholder and entrusted loans. As the funds provided in these loans are not from GOC-owned or controlled institutions, we have excluded them from our analysis of this program.”).

With regard to loans to steel wheel producers from SOCBs in the PRC, we determine that the lending constitutes a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (see section 771(5)(E)(ii) of the Act). We determine that the loans are de jure specific within the meaning of section 771(5A)(D)(i) of the Act because of the GOC’s policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the automotive and auto parts industry, including producers of steel wheels.

To determine whether a benefit is conferred under section 771(5)(E)(ii) of the Act, we compared the amount of interest the respondents paid on their outstanding loans to the amount they would have paid on comparable commercial loans.<sup>25</sup> See 19 CFR 351.505(a). In conducting this comparison, we used the interest rates described in the “Benchmarks and Discount Rates” section above.

We have attributed benefits under this program to respondents’ total sales, net of intra-company sales. Thus, for the Centurion Companies, we divided the benefit by the total sales of Centurion, Jining CII, and Company A. For the Xingmin Companies, we divided the benefits by

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<sup>24</sup> See Xingmin Verification Report at 2 and 5-6.

<sup>25</sup> Consistent with 351.505(a), in making this comparison, the Department relied on effective interest rates, i.e., taking into account any other costs besides the nominal interest, such as relevant fees.

the total sales of Xingmin and Sino-tex. For the Jingu Companies, we divided the benefits by the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World.

On this basis, we determine countervailable subsidy rates of 0.11 percent ad valorem for the Centurion Companies, 1.98 percent ad valorem for the Jingu Companies, and 0.17 percent ad valorem for the Xingmin Companies.

B. Two Free, Three Half Tax Exemptions for Productive FIEs

The Foreign Invested Enterprise and Foreign Enterprise Income Tax Law (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for FIEs in the PRC. The intent of this law is to attract foreign businesses to the PRC. According to Article 8 of the FIE Tax Law, FIEs which are “productive” and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed “productive” if they qualify under Article 72 of the Detailed Implementation Rules of the Income Tax Law of the People’s Republic of China of Foreign Investment Enterprises and Foreign Enterprises. The Department has previously found this program countervailable. See, e.g., CFS from the PRC Decision Memorandum at 10-11. Sino-tex, Zhejiang Wheel World, and Jining Centurion are “productive” FIEs and received benefits under this program during the POI.

We determine that the exemption or reduction in the income tax paid by “productive” FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. See sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We further determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, “productive” FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. See CFS from the PRC Decision Memorandum at Comment 14.

For the 2009 tax year (for which tax returns were filed during the POI), Sino-tex, and Zhejiang Wheel World were eligible for a 50 percent reduction in their income tax liability. Specifically, the firms paid a preferential income tax rate of 12.5 percent instead of 25 percent. Thus, the benefit is equal to the tax savings. See 19 CFR 351.509(a)(1). We find that the Centurion Companies did not use or benefit from this program during the POI. See Comment 28. To calculate the benefit to the companies that used this program during the POI, we treated the income tax savings enjoyed by the firms as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

To calculate the net subsidy rate for the Xingmin Companies, we divided the tax savings received by Sino-tex by the consolidated sales of Xingmin and Sino-tex (exclusive of intra-company sales). For the Jingu Companies, we divided the tax savings received by Zhejiang Wheel World by the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World (net of intra-company sales). A minor error was discovered at verification with regard to the Xingmin Companies’ use of this program. See Xingmin Verification Report at 6-7. That error, however, does change, from the Preliminary Determination, the program rate calculated for the Xingmin Companies.

On this basis, we determine total net subsidy rates of 0.06 percent ad valorem for the Xingmin Companies and 0.07 percent ad valorem for the Jingu Companies.

### C. Exemption from Local Taxes for FIEs

Sino-tex, Xingmin's subsidiary, reported that for tax year 2009, the company received local tax exemptions, pursuant to the "Circular Concerning Temporary Exemption from Urban Maintenance and Construction Tax and Additional Education Fees for Foreign Investment Enterprises," dated February 25, 1994.<sup>26</sup> Specifically, Sino-tex, which is an FIE, was exempt from paying the "Urban Maintenance and Construction Tax," "Education Surcharge," and "Local Education Surcharge," hereafter, "local taxes."<sup>27</sup>

Consistent with our findings in Drill Pipe from the PRC and Kitchen Racks from the PRC, we determine that the exemption from the local taxes confers a countervailable subsidy. See Drill Pipe from the PRC Decision Memorandum at "Exemption from City Construction Tax and Education Tax for FIEs," and Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009) (Kitchen Racks from the PRC), and accompanying Issues and Decision Memorandum (Kitchen Racks from the PRC Decision Memorandum) at "Exemption from City Construction Tax and Education Tax for FIEs in Guangdong Province." The exemption is a financial contribution in the form of revenue forgone by the government and provides a benefit to the recipient in the amount of the savings. See sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemption from local taxes is limited as a matter of law to certain enterprises, i.e., FIEs, and, hence, specific under section 771(5A)(D)(i) of the Act. To calculate the benefit, we treated Sino-tex's tax exemption as a recurring benefit, consistent with 19 CFR 351.524(c)(1).

To compute the amount of local tax savings, we compared the local tax rates that Sino-tex would have paid in the absence of the program<sup>28</sup> with the rates that Sino-tex paid<sup>29</sup> because it is an FIE.

To calculate the total benefit under the program, we summed the exemption from each local tax and then divided that tax savings amount, received during the POI, by the total consolidated sales of Xingmin and Sino-tex (exclusive of intra-company sales), as discussed in the "Attribution of Subsidies" section above. On this basis, we determine the countervailable subsidy rate to be 0.01 percent ad valorem for the Xingmin Companies.

### D. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment

The Jingu Companies reported that Zhejiang Jingu and Zhejiang Wheel World received an income tax deduction during the POI under the Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies program. According to the GOC, this program was established on July 1, 1999, pursuant to "Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation Projects." See the GOC's July 5, 2011, questionnaire response at 25. The GOC states that under the program a domestically invested company may claim tax credits

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<sup>26</sup> See the Xingmin Companies' August 10, 2011, supplemental questionnaire response at 24.

<sup>27</sup> Id. at 23.

<sup>28</sup> The regular tax rates are as follows: seven percent for Urban Maintenance and Construction Tax, three percent for Education Surcharge, and two percent for Local Education Surcharge. Id. at Exhibit 14.

<sup>29</sup> The preferential tax rate that Sino-tex paid for each of the local taxes was zero percent. Id.

on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. Specifically, a tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous year.

We determine that the income tax deductions provided under the program constitute a financial contribution, in the form of revenue forgone, and a benefit, in an amount equal to the tax savings, under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We further find that this program is specific under section 771(5A)(C) of the Act because the receipt of the tax savings is contingent upon the use of domestic over imported goods. We note that the Department found this program countervailable in Line Pipe from the PRC. See 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 from the PRC Decision Memorandum) at "Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies."

The GOC states that pursuant to the "Circular on Relevant Issues with Respect to Ceasing Implementing of Income Tax Credit to Purchase of Domestically Produced Equipment by Enterprises," the program was terminated effective January 1, 2008. See the GOC's July 5, 2011, questionnaire response at Exhibit 57. Thus, the GOC implies that the Department should not include any subsidy rates calculated for the Jingu Companies under this program in the companies' cash deposit rate, as described under 19 CFR 351.526(a). However, the GOC and the Jingu Companies nonetheless have reported that Zhejiang Jingu and Zhejiang Wheel World received benefits under this program during the POI. See the Jingu Companies' July 7, 2011, questionnaire response at 16; see also the Jingu Companies' August 5, 2011, questionnaire response at 14. Under 19 CFR 351.526(d)(1), the Department will not grant a program-wide change, as described under 19 CFR 351.526(a), in instances in which residual benefits continue to be bestowed under the terminated program. Because the GOC continues to bestow benefits under the program, we determine that the conditions necessary for finding a program-wide change are not met.

We find that the benefit is equal to the tax savings received under the program, as reported on the company's tax return filed during the POI. See 19 CFR 351.509(a)(1) and (b)(1). Further, we have treated the tax savings as recurring subsidies consistent with 19 CFR 351.509(c)(1).

To calculate the net subsidy rate, we divided the benefits received by Zhejiang Jingu and Zhejiang Wheel World by the total sales of the Zhejiang Jingu, Chengdu, and Zhejiang Wheel World. On this basis, we calculated a net countervailable subsidy rate of 0.52 percent ad valorem for the Jingu Companies.

E. Import Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular 37) exempts both FIEs and certain domestic enterprises from the import tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. See the GOC's July 5, 2011, questionnaire response at 44. The NDRC and the General Administration of Customs are the government agencies responsible for administering this program. Qualified enterprises receive a

certificate either from the NDRC or one of its provincial branches. To receive the exemptions, a qualified enterprise only has to present the certificate to the customs officials upon importation of the equipment. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. The Department has previously found this program to be countervailable. See, e.g., Citric Acid from the PRC Decision Memorandum at “VAT Rebate on Purchases by FIEs of Domestically Produced Equipment,” and Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 75 FR 57444 (September 21, 2010) (Seamless Pipe from the PRC), and accompanying Issues and Decision Memorandum (Seamless Pipe from the PRC Decision Memorandum) at “Tariff and VAT Exemptions for Imported Equipment.”

Xingmin and Zhejiang Jingu, domestically-owned companies, reported receiving import tariff exemptions under this program for imported equipment. The Department verified each company’s use of this program. For the Xingmin, a minor correction to its use of the program was presented at verification. We have incorporated that correction in the final calculations for this program as discussed in Comment 26, below.

We determine that the import tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and the exemptions provide a benefit to the recipients in the amount of the tariff savings. See sections 771(5)(D)(ii) and 771(5)(E) of the Act; see also 19 CFR 351.510(a)(1). We further determine that the import tariff exemptions under this 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 with government-approved projects. See CFS from the PRC Decision Memorandum at Comment 16, and Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 40480 (July 15, 2008) (OTR Tires from the PRC), and accompanying Issues and Decision Memorandum (OTR Tires from the PRC Decision Memorandum) at “VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment on Encouraged Industries.”

Normally, we treat exemptions from import charges as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when an import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2). Since the import charge exemptions under this program are tied to production equipment, we find that they are tied to the company’s capital assets. Therefore, we are examining the import tariff exemptions that the respondents received under the program during the POI and prior years.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. For each year, we then divided the total grant amount by the corresponding total sales for the year in question. For Xingmin and Zhejiang Jingu, the companies received import tariff exemptions against equipment imported only during the POI. For each company, we performed the 0.5 percent test on the sum of the import tariff exemptions received during the POI. See 19 CFR 351.524(b)(2). In the case of the Xingmin Companies, we used the total sales of Xingmin

and Sino-tex (net of intra-company sales). In the case of the Jingu Companies, we used the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World (net of intra-company sales).

For the Xingmin Companies, the amount exempted was more than 0.5 percent of the POI total sales. Therefore, for these exemptions, we had to determine whether Xingmin's import tariff exemptions were tied to the capital structure or capital assets of the firm. Based on the description of the items imported in the POI, we find that the exemptions were for capital equipment.<sup>30</sup> As such, for these exemptions, we have allocated the benefit over the 12-year AUL using a discount rate as described under the "Benchmarks and Discount Rates" section above.

For the Jingu Companies, the amounts exempted were less than 0.5 percent of their respective total sales. Therefore, we expensed the exemptions to the year in which they were received, *i.e.*, the POI, which is consistent with 19 CFR 351.524(a).

On this basis, we determine the net countervailable subsidy rates to be 0.11 percent ad valorem for the Xingmin Companies, and 0.24 percent ad valorem for the Jingu Companies.

#### F. Provision of HRS for LTAR

The Department is investigating whether GOC authorities provided HRS to producers of steel wheels for LTAR. As instructed in the Department's questionnaires, the respondent companies identified the suppliers and producers from whom they purchased HRS during the POI. In addition to the supplier names, they reported the date of payment, quantity, unit of measure, and purchase price for the HRS purchased during the POI. None of the respondent companies reported purchases of HRS during the POI from trading companies.

In OTR Tires from the PRC, the Department determined that majority government ownership of an input producer is sufficient to qualify it as an "authority." See OTR Tires from the PRC Decision Memorandum at "Government Provision of Rubber for Less than Adequate Remuneration." Therefore, we determine that the HRS producers which are majority-owned by the government are "authorities" under section 771(5) of the Act. As a result, 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 and that the respondents received a benefit to the extent that the price they paid for HRS produced by these suppliers was for LTAR. See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act. Thus, we determine that the GOC authorities' provision of HRS constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

As explained above, we determine that the GOC has failed to act to the best of its ability in terms of providing the Department with the information it requested concerning the ownership of the firms that produced the HRS purchased by respondents during the POI. Specifically, in many instances, the GOC failed to provide any of the requested ownership information. In other instances, the GOC provided basic ownership information (*e.g.*, capital verification reports, business registration licenses, and articles of association). However, for all producers, the GOC failed to provide information concerning the extent to which the owners, members of the board of directors, or managers of the HRS producers were government or CCP officials and the extent to which those officials rendered the HRS producers government authorities. Thus, pursuant to section 776(b) of the Act, we are assuming that all HRS producers were government authorities that provided financial contributions to respondents under section 771(D)(iii) of the Act.

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<sup>30</sup> See Xingmin's initial questionnaire response at Exhibit 20.

Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.<sup>31</sup> This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on the hierarchy established above, we must first determine whether there are market prices from actual sales transactions involving Chinese buyers and sellers that can be used to determine whether the GOC authorities sold HRS to the respondents for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.<sup>32</sup>

In its initial questionnaire response, the GOC provided information, in the aggregate, on the amount of HRS produced by SOEs, collectives, and private producers in the PRC. See the GOC's July 15, 2011, questionnaire response at page II-4. Using these data, we derived the ratio of HRS produced by government entities (SOEs and collectives) during the POI (70.18 percent). Consequently, because of the government's predominant role in the HRS market, the use of private producer prices in the PRC would be akin to comparing the benchmark to itself (i.e., such a benchmark would reflect the distortions of the government presence).<sup>33</sup> As we explained in Lumber from Canada:

Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.<sup>34</sup>

For these reasons, prices stemming from private transactions within the PRC cannot give rise to a price that is sufficiently free from the effects of the GOC's actions and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration.

Given that we have determined that no tier one benchmark prices are available, we next evaluated information on the record to determine whether there is a tier two world market price

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<sup>31</sup> See also Lumber from Canada Decision Memorandum at "Market-Based Benchmark."

<sup>32</sup> See Preamble, 63 FR at 65377.

<sup>33</sup> See Lumber from Canada Decision Memorandum at "There are no market-based internal Canadian benchmarks" section.

<sup>34</sup> See Lumber from Canada Decision Memorandum at 38-39.

available to producers of subject merchandise in the PRC. We note that petitioners provided data from MEPS International Ltd. Prices, which contains monthly “world” prices for hot-rolled coil. See Exhibit 1 of petitioners’ August 2, 2011, submission titled “Benchmark Date for World Steel Prices.” Zhejiang Jingu provided data from the American Metal Market’s SteelBenchmarker, which contains monthly “world export market” prices for hot-rolled coil. See Attachment 1 of Zhejiang Jingu’s August 19, 2011, submission titled “Hot-Rolled Steel Benchmark Prices.”<sup>35</sup>

We determine that the MEPS International Ltd. Prices and SteelBenchmarker data may serve as a world market benchmark price for HRS that would be available to purchasers of HRS in the PRC. We note that the Department has relied on pricing data from MEPS International Ltd. Prices in recent CVD proceedings involving the PRC. See Kitchen Racks from the PRC Decision Memorandum at “Provision of Wire Rod from Less Than Adequate Remuneration,” see also Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 4936 (January 28, 2009) (CWASPP from the PRC), and accompanying Issues and Decision Memorandum (CWASPP from the PRC Decision Memorandum) at “Provision of SSC for LTAR.” We also note that the Department has relied on pricing data from SteelBenchmarker in recent CVD proceedings involving the PRC. See Wire Decking From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 32902 (June 10, 2010), and accompanying Issues and Decision Memorandum at “Provision of HRS Steel for LTAR,” see also 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 from the PRC Decision Memorandum) at “Hot-rolled Steel for Less Than Adequate Remuneration.”

The prices for HRS in the MEPS International Ltd. Prices and SteelBenchmarker listings are expressed in U.S. dollars (USD) per metric ton (MT). The MEPS International Ltd. Prices data on the record is for hot-rolled coil and hot-rolled plate; the SteelBenchmarker data on the record is for hot-rolled coil only. When reporting HRS purchases to the Department, in some instances, respondent companies identified whether they purchased hot-rolled plate or hot-rolled coil. In other instances, however, the respondent companies either did not identify the type of HRS purchased or did not clearly define the type of HRS.

Because we have distinct pricing between hot-rolled plate and coil from a world market benchmark source, we find that hot-rolled plate and coil are distinct products for the purposes of reference pricing such that we may apply separate benchmarks where data are available. Accordingly, and consistent with the pricing data reported by the respondent companies with regard to their HRS purchases, for the final determination, we have computed the following HRS benchmark rates in order to apply a more accurate benchmark price where appropriate: hot-rolled plate, hot-rolled coil, and combined hot-rolled plate and coil. Our approach in this regard constitutes a change from the Preliminary Determination. For further discussion, see Comment 15.

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

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<sup>35</sup> On August 25, 2011, Zhejiang Jingu provided to the Department a copy of the underlying source data from the American Metal Market’s SteelBenchmarker to support the hot-rolled coil prices reported in the August 19, 2011 submission.

duties. Therefore, to determine the benchmarks, for hot-rolled plate, we used the MEPS International Ltd. Prices; for hot-rolled coil, we calculated a simple average of the MEPS International Ltd. Prices and SteelBenchmarker coil prices; and for hot-rolled plate/coil, we calculated a simple average of the MEPS International Ltd. Prices and SteelBenchmarker hot-rolled coil and plate prices (inclusive of ocean freight, import duties, and inland freight from the port in China to the steel wheels factory for all HRS benchmarks) for each month of the POI. We first converted the benchmark prices from U.S. dollars to renminbi (RMB) using USD to RMB exchange rates, as reported by the Federal Reserve Statistical Release. Because the MEPS International Ltd. Prices and SteelBenchmarker data do not include ocean freight, we added ocean freight to each of the monthly HRS prices. See Memorandum to File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “Ocean Freight Data” (August 29, 2011). We also adjusted the data from MEPS International Ltd. Prices and SteelBenchmarker to include the value added tax (VAT) and import duties that would have been levied on imports of HRS during the POI. The GOC provided the applicable tax rates in its questionnaire response. See the GOC’s July 15, 2011, questionnaire response at 9.

Concerning inland freight, we calculated company-specific inland freight rates using cost data supplied by the Centurion, Jingu, and Xingmin Companies. For further information concerning inland freight, see the respondents’ respective final calculation memoranda. Regarding the HRS prices that the respondents paid to government authorities, we included domestic VAT and inland freight. In this manner, we find the Department has conducted the comparison on an apples-to-apples basis.

To calculate the benefit, we then compared the benchmark unit prices to the unit prices the respondents paid to domestic suppliers of HRS during the POI that the Department has determined constitute government authorities. In instances in which the benchmark unit price was greater than the price paid to GOC authorities, we multiplied the difference by the quantity of HRS purchased from the GOC authorities to arrive at the benefit.

Finally, with respect to specificity, the Department rejects the GOC’s argument in its case brief that the provision of HRS to the respondents is not specific. See Comment 18 below. Based on our review of the data and consistent with our past practice, we continue to determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. See section 771(5A)(D)(iii)(I) of the Act, and Comment 18, below. See also LWRP from the PRC Decision Memorandum at Comment 7; see also Kitchen Racks from the PRC Decision Memorandum at “Provision of Wire Rod for Less Than Adequate Remuneration.”

We find that the GOC’s provision of HRS for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). To calculate the net subsidy rate, we divided the total benefit by each of the respondents’ total sales during the POI, net of intra-company sales. For the Xingmin Companies, we used the total sales of Xingmin and Sino-tex. For the Centurion Companies, we used the total sales of Centurion, Jining CII, and Company A. For the Jingu Companies, we used the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World.

On this basis, we calculated the following net subsidy rates: 31.17 percent ad valorem for the Xingmin Companies, 24.67 percent ad valorem for the Centurion Companies, and 33.56 percent ad valorem for the Jingu Companies.

## G. Provision of Electricity for LTAR

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the government’s provision of electricity in part on adverse facts available (AFA).

In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation, and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. With regards to benefit, the Department will normally rely on the responsive producer’s or exporter’s records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. The respondents provided data on the electricity they consumed and the electricity rates paid during the POI and the Department verified that data. Concerning the Xingmin Companies, at verification, the Department confirmed that they obtained electricity from more than one state-owned power supply company.<sup>36</sup> As such, for the final determination, we have incorporated into the benefit calculation, all electricity purchases of the Xingmin Companies during the POI.

Consistent with the Department’s practice, we find that the GOC’s provision of electricity confers a financial contribution, under section 771(5)(D)(iii) of the Act, and is specific, under section 771(5A) of the Act. To determine the existence and amount of any benefit from this program, we used the information provided by the respondents regarding the amounts of electricity that they purchased and the rates they paid for that electricity during the POI.

For determining the existence and amount of any benefit under this program, we have relied on an adverse inference by selecting the highest electricity rates that were in effect during the POI as our benchmarks because of the GOC’s failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation. See section 776(b)(4) of the Act. The GOC reported that the provincial rate schedules of November 2009 were applicable during the POI.<sup>37</sup> As such, we have used the November 2009 provincial electricity tariff schedules as a benchmark rate source for the period January 2010 through December 2010. Specifically, we have placed on the record of this investigation the November 2009 provincial electricity rate schedules, which were submitted to the Department by the GOC in the CVD investigation on Drill Pipe from the PRC, and which reflect the highest rates that the respondents would have paid in the PRC during the POI. See Memorandum to File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “Provincial Electricity Tariff Schedules” (August 29, 2011). From those electricity rate schedules, we selected the highest peak, normal, and valley rates for the “large industrial” user category and for the “general industry and commercial” user category, in addition to the highest provincial rate for the base rate. See Memorandum to File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “Electricity Rate Benchmark Chart” (August 29, 2011). The highest rates for all categories were sourced from the Zhejiang provincial rate schedule.

Consistent with our approach in Drill Pipe from the PRC, to measure whether the respondents received a benefit under this program, we first calculated the variable electricity cost

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<sup>36</sup> See Xingmin Verification Report at 9. See also GOC’s August 10, 2011, response to first supplemental questionnaire and addendum at 26.

<sup>37</sup> See GOC Second Supplemental Questionnaire Response at 6.

they paid by multiplying the monthly kilowatt hours (KWH) consumed at each price category (e.g., peak, normal, and valley) by the corresponding electricity rates charged at each price category by the respective province. Next, we calculated the benchmark variable electricity cost by multiplying the monthly KWH consumed at each price category (e.g., peak, normal, and valley) by the highest electricity rate charged at each price category, as reflected in the electricity rate benchmark chart. To calculate the benefit for each month, we subtracted the variable electricity cost paid by each respondent during the POI from the monthly benchmark variable electricity cost.

To measure whether the respondents received a benefit with regard to their transmitter capacity charge (aka, base charge), we first multiplied the monthly transmitter capacity charged to the companies by the corresponding consumption quantity, where appropriate. Next, we calculated the benchmark transmitter capacity cost by multiplying companies' consumption quantities by the highest transmitter capacity rate reflected in the electricity rate benchmark chart. To calculate the benefit, we subtracted the transmitter costs paid by the companies during the POI from the benchmark transmitter costs. This approach is consistent with Drill Pipe from the PRC. See Drill Pipe from the PRC Decision Memorandum at "Provision of Electricity for LTAR."

We then calculated the total benefit received during the POI under this program by summing the benefits stemming from the respondents' variable electricity payments and transmitter capacity payments.

To calculate the net subsidy rate pertaining to electricity payments made by the respondents, we divided the benefit amount by the appropriate total sales amount for the POI, as discussed in the "Attribution of Subsidies" section above. On this basis, we determine net countervailable subsidy rates of 0.18 percent ad valorem for the Jingu Companies, 0.88 percent ad valorem for Centurion Companies, and 1.10 percent ad valorem for the Xingmin Companies.

#### H. State Special Fund for Promoting Key Industries and Innovation Technologies

The Jingu Companies reported that Zhejiang Jingu applied for and received a lump-sum grant from the National Development and Reform Commission (NDRC) and the Ministry of Industry and Information Technology (MIIT) during the POI. See the Jingu Companies' July 29, 2011, questionnaire response at 15. The Jingu Companies state that the grant is a one-time grant that is intended to assist Zhejiang Jingu's development of new facilities at one of its steel wheels production facilities. In their response, the Jingu Companies included the application form it submitted under the program. See the Jingu Companies' July 29, 2011, questionnaire response at Exhibit 12. No other respondent companies reported receiving any grants under this program.

We determine that the grant received by Zhejiang Jingu constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, based on our review of the application form Zhejiang Jingu submitted to the NDRC and MIIT, we determine that the program is export-contingent.<sup>38</sup> Section 771(5A)(B) of the Act states, "an export subsidy is a subsidy that is in law or in fact, contingent upon export

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<sup>38</sup> The application form submitted by Zhejiang Jingu is business proprietary. See the Jingu Companies' July 29, 2011, questionnaire response at Exhibit 12. For further discussion of specificity and our analysis of the proprietary details of the application submitted by Zhejiang Jingu, see Memorandum to file from Robert Copyak, Senior Financial Analyst, AD/CVD Operations, Office 3, regarding "Preliminary Calculations for the Zhejiang Jingu Companies" (August 29, 2011).

performance, alone or as 1 of 2 or more conditions.” The Department’s regulations explain that we will consider a subsidy to be contingent upon export performance “if the provision of the subsidy is, in law or in fact, tied to actual or anticipated exportation or export earnings, alone or as one of two or more conditions.” See 19 CFR 351.514(a).

The application Zhejiang Jingu filed with Ministry of Commerce, Industry, and Energy (MOCIE) to receive benefits under this program indicates that data regarding the company’s estimated export revenues were among the information required by MOCIE in providing those benefits. Consequently, we find that export performance is one of the conditions for receiving grants under the program and, thus, meets the specificity criteria under section 771(5A)(B) of the Act and 19 CFR 351.514. Indeed, the Preamble further clarifies that if exportation or anticipated exportation is the sole condition or one of several conditions, the subsidy is an export subsidy “unless the firm in question can clearly demonstrate that it had been approved to receive the benefits solely under non-export-related criteria.” See Preamble, 63 FR at 65381. We determine that the Jingu Companies have not met this burden. Our approach in this regard is consistent with the Department’s practice. See, e.g., Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination, 72 FR 60639 (October 25, 2007) (CFS from Korea), and accompanying Issues and Decision Memorandum (CFS from Korea Decision Memorandum) at Comment 24.

The grant that Zhejiang Jingu received during the POI was greater than 0.5 percent of the total export sales of the Jingu Companies during the POI. Therefore, we allocated the grant benefit over the 12-year AUL used in this investigation pursuant to the grant allocation methodology set forth under 19 CFR 351.524(d)(1).

To calculate the net subsidy rate, we divided the portion of the benefit allocated to the POI by the total exports sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI. On this basis, we calculated a net subsidy rate of 0.21 percent ad valorem for the Jingu Companies.

#### I. Initial Public Offering (IPO) Grants from the Hangzhou Prefecture and the City of Fuyang

The Jingu Companies report that the Hangzhou Prefecture and the Fuyang City Government provided one-time bonus payments to Zhejiang Jingu in recognition of the company’s successful listing on the Shenzhen Stock Exchange. See the Jingu Companies’ July 29, 2011, questionnaire response at 20. The Jingu Companies report that the governments approved and issued the grants to Zhejiang Jingu in the same year. The Jingu Companies state that grants received were contingent upon the separate approval of government authority. See the Jingu Companies’ July 29, 2011, questionnaire response at Exhibit 6.

We determine that the grants received by Zhejiang Jingu constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grants were limited to firms undertaking an IPO, we find the grants to be specific under section 771(5A)(D)(i) of the Act.

The Jingu Companies state that the IPO grants were subject to separate approval processes. Therefore, for purposes of our benefit and net subsidy rate calculations, we are treating each of the grants as separate programs. For grants that were less than 0.5 percent of the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the year of approval, we expensed the grants to the year of receipt. See 19 CFR 351.524(b)(2). For grants that were

greater than 0.5 percent of the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the respective years of approval, we allocated the grant benefits over the 12-year AUL used in this investigation pursuant to the grant allocation methodology set forth under 19 CFR 351.524(d)(1).

On this basis, we calculated a net subsidy rate of 0.02 percent ad valorem for the Jingu Companies for the grant received from the Hangzhou Prefecture, and a net subsidy rate of 0.31 percent ad valorem for the Jingu Companies for the grants received from the Fuyang City Government.

J. Fuyang City Government Grant for Enterprises Paying Over RMB 10 Million in Taxes

The Jingu Companies reported that Zhejiang Jingu received a grant from the Fuyang City Government as a result of the company's tax payments exceeding RMB 10 million during the 2009 tax year. The Jingu Companies report that the Fuyang City Government approved and issued the grant to Zhejiang Jingu during the POI. See the Jingu Companies' July 29, 2011, questionnaire response at 26 – 27.

We determine that the grant received by Zhejiang Jingu constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grant was limited to firms whose tax payments exceeded RMB 10 million we determine the grant to be specific under section 771(5A)(D)(i) of the Act.

The grant that Zhejiang Jingu received during the POI was less than 0.5 percent of the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we calculated a total net subsidy rate of 0.03 percent ad valorem for the Jingu Companies.

K. Fuyang and Hangzhou City Government Grants for Enterprises Operating Technology and Research and Development Centers

The Jingu Companies report that Zhejiang Jingu received a series of grants from the Fuyang and Hangzhou City Governments during the POI solely because it operates provincial level technology and research and development centers. See the Jingu Companies' July 29, 2011, questionnaire response at 31. The Jingu Companies state that Zhejiang Jingu did not have to undertake any type of approval process in order to receive the funds. Although the Department treated these grants as a program operated by a single administering authority in the Preliminary Determination, we are now treating each of these grants as being provided under separate programs for purposes of our benefit and net subsidy rate calculation because the funds were disbursed by different administering authorities. We determine that the grants received by Zhejiang Jingu constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grants were limited to firms operating research and development centers within the province, we determine the grants to be specific under section 771(5A)(D)(i) of the Act.

The grants that Zhejiang Jingu received during the POI under these programs were less than 0.5 percent of the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI. Because there was no approval process under this program, we are using the year of receipt, the POI, for purposes of the 0.5 percent test. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI.

On this basis, we calculated a net subsidy rate of 0.04 percent ad valorem for the Jingu Companies for the grant received from the Hangzhou City Government, and a net subsidy rate of 0.07 percent ad valorem for the Jingu Companies for the grants received from the Fuyang City Government.

L. Hangzhou City Government Grants Under the Hangzhou Excellent New Products/Technology Award

The Jingu Companies reported that Zhejiang Jingu received two grants from the Hangzhou City Government in connection with a lightweight, high-strength steel wheel project as part of the Hangzhou Excellent New Products/Technology Award. See the Jingu Companies' July 29, 2011, questionnaire response at 33.

We determine that the grants received by Zhejiang Jingu constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. To receive grants under this program firms must submit an application form. The application form submitted by Zhejiang Jingu requires the company to report data regarding its export sales. See the Jingu Companies' July 29, 2011, questionnaire response at Exhibit 13. Section 771(5A)(B) of the Act states, "an export subsidy is a subsidy that is in law or in fact, contingent upon export performance, alone or as 1 of 2 or more conditions." The Department's regulations explain that we will consider a subsidy to be contingent upon export performance "if the provision of the subsidy is, in law or in fact, tied to actual or anticipated exportation or export earnings, alone or as one of two or more conditions." See 19 CFR 351.514(a).

Because the application Zhejiang Jingu filed with the Hangzhou City Government requires data regarding the company's export sales, we determine that export performance is one of the conditions considered when issuing grants under the program and, thus, meets the specificity criteria under section 771(5A)(B) of the Act and 19 CFR 351.514(a).

To calculate the benefit, we summed the grants that Zhejiang Jingu received from the Hangzhou City Governments. The grants that Zhejiang Jingu received during the POI were less than 0.5 percent of the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the year of approval. Because there was no approval process under this program, we are using the year of receipt, the POI, for purposes of the 0.5 percent test. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI using as the denominator the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI. On this basis, we calculated a total net subsidy rate of 0.01 percent ad valorem for the Jingu Companies.

M. Fuyang City Government Grants Under the Export of Sub-Contract Services Program

The Jingu Companies reported that Zhejiang Jingu received a grant from the Fuyang City Government in return for providing the city government with the total value of export sub-contract services that Zhejiang Jingu exported in 2009. The Fuyang City Government approved and disbursed the grant during the POI. See the Jingu Companies' July 29, 2011, questionnaire response at 39.

We determine that the grant received by Zhejiang Jingu constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

Because the grant was contingent upon export performance we further determine that the grant was specific under section 771(5A)(B) of the Act.

The grant that Zhejiang Jingu received during the POI was less than 0.5 percent of the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI using as the denominator the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI. On this basis, we calculated a total net subsidy rate of 0.02 percent ad valorem for the Jingu Companies.

#### N. Various Export Contingent Grants Provided by the Fuyang City Government

The Jingu Companies reported the Zhejiang Jingu received a series of grants from the Fuyang City Government during the POI. Specifically, Zhejiang Jingu received Exhibition Fee Reimbursement, Star Enterprise, Export Expansion Recognition, and Open Economic Development grants from the city government. Zhejiang Jingu also received Open Economic Development grants from the Fuyang City Government in a year prior to the POI. See the Jingu Companies' July 29, 2011, questionnaire response at 38.

We determine that the grants received by Zhejiang Jingu constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Because the grants were contingent upon export performance we further determine that the grants were specific under section 771(5A)(B) of the Act.

The Jingu Companies report that Zhejiang Jingu did not submit an application to receive these grants. Instead, the Fuyang City Government disbursed the grants based on export revenue data and information on export-related marketing activities, such as exhibitions, that it receives from Zhejiang Jingu. Information in the questionnaire response of the Jingu Companies indicates that these grants include the exhibition reimbursement grants that it reported receiving under the Export Assistance Grant Program. Specifically, the Jingu Companies reference the grant it reported under the Export Assistance Grant Program in the context of the various export-related grants offered by the Fuyang City Government. See the Jingu Companies' July 29, 2011, questionnaire response at 39. Based on this information, we are treating all of these grants as a single program when calculating the benefit. Furthermore, because Zhejiang Jingu did not submit an application to receive these grants, we are equating the date of approval with the date of receipt.

To calculate the benefit from the grants received during the POI, we summed the grants that Zhejiang Jingu received from the Hangzhou City Government. The grants that Zhejiang Jingu received during the POI were less than 0.5 percent of the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the year of approval. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI using as the denominator the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI.

The Open Economic Development grant that Zhejiang Jingu received from the Fuyang City Government prior to the POI was greater than 0.5 percent of the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the year of receipt. Therefore, we allocated the grant benefit over the 12-year AUL used in this investigation pursuant to the grant allocation methodology set forth under 19 CFR 351.524(d)(1).

On this basis, we calculated a total net subsidy rate of 0.32 percent ad valorem for the Jingu Companies.

O. Local and Provincial Government Reimbursement Grants on Export Credit Insurance Fees

The Jingu Companies reported that the Hangzhou and Fuyang City Governments and the Government of Zhejiang Province reimbursed Zhejiang Jingu and Zhejiang Wheel World during the POI for export credit insurance fees the companies paid in 2008 and 2009. The Jingu Companies report that Zhejiang Jingu and Zhejiang Wheel World did not submit an application to receive the funds. Instead, the companies reported the fees it paid for export credit insurance to local authorities. See the Jingu Companies' July 29, 2011, questionnaire response at 44 – 45. Because Zhejiang Jingu and Zhejiang Wheel World did not submit an application to receive these grants, we are equating the date of approval with the date of receipt.

We determine that the reimbursements are grants that constitute a financial contribution and confer a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Because receipt of the grants were contingent upon export performance, we determine that they are specific under section 771(5A)(B) of the Act.

To calculate the benefit, we summed all of the grants that Zhejiang Jingu and Zhejiang Wheel World received from the Hangzhou and Fuyang City Governments and Government of Zhejiang Province. The grants that Zhejiang Jingu and Zhejiang Wheel World received during the POI were less than 0.5 percent of the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI using as the denominator the total export sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI.

On this basis, we calculated a total net subsidy rate of 0.06 percent ad valorem for the Jingu Companies.

P. Investment Grants from Fuyang City Government for Key Industries

The Jingu Companies report that the Fuyang City Government designated Zhejiang Jingu as a member of a “key industry.” See the Jingu Companies' August 10, 2011, supplemental questionnaire response at 7. The Jingu Companies report that Zhejiang Jingu, as a result of this designation, received a grant from the Fuyang City Government in connection with Zhejiang Jingu's investment in one of its steel wheel plants. Id.

We determine that the grant constitutes a financial contribution and confers a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Furthermore, we determine that Zhejiang Jingu's received the grant in connection with its designation as a member of a “key industry.” As a result, we determine that access to the grant is limited as a matter of law (e.g., limited to firms that are recognized as members of a “key industry”) and therefore is specific under section 771(5A)(D)(i) of the Act.

The grant Zhejiang Jingu received was greater than 0.5 percent of the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World in 2009. Therefore, we allocated the grant benefit over the 12-year AUL used in this investigation pursuant to the grant allocation methodology set forth under 19 CFR 351.524(d)(1).

On this basis, we calculated a total net subsidy rate of 0.06 percent ad valorem for the Jingu Companies.

Q. Income Tax Reductions under Article 28 of the Enterprise Income Tax Law

Under this program, an enterprise must undergo an application, designation and certification process and, upon approval by the relevant authorities, is then issued a High and New Tech Enterprise Certificate, before it can claim the tax benefits under Article 28. See the GOC's September 9, 2011, supplemental questionnaire at 4. The Jingu Companies state that Zhejiang Jingu paid a reduced income tax rate on the tax return it filed during the POR, in accordance with Article 28 of the Law of the PRC on Enterprise Income Tax. Specifically, Zhejiang Jingu paid an income tax rate of 15 percent on the tax return it filed during the POR rather than the standard rate of 25 percent. See the Jingu Companies' July 29, 2011, questionnaire response at 10-12.

We determine that this program constitutes a financial contribution in the form of revenue forgone by the GOC and provides a benefit in the amount of the tax savings. See sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We further determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, firms designated as "important high- and new-technology enterprises that are necessary to be supported by the state," and, hence, is specific under section 771(5A)(D)(i) of the Act. See Article 28 of the Enterprise Income Tax Law contained in the GOC's July 5, 2011, questionnaire response at Exhibit 61.

We calculated the benefit as the difference between the taxes Zhejiang Jingu would have paid under the standard 25 percent tax rate and the taxes the company actually paid under the preferential 15 percent tax rate, as reflected on the tax return it filed during the POI. See 19 CFR 351.509(a)(1) and (b)(1). We treated the tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To calculate the net subsidy rate, we divided the tax savings by the total sales of Zhejiang Jingu, Chengdu, and Zhejiang Wheel World during the POI.

On this basis, we calculated a net subsidy rate of 0.62 percent ad valorem for the Jingu Companies.

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

A. Export Incentive Payments Characterized as "VAT Rebates"

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted "exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption." See 19 CFR 351.517(a); see also 19 CFR 351.102(b)(28) (for a definition of "indirect tax"). To determine whether the GOC provided a benefit under this program, we compared the VAT exemption upon export to the VAT levied with respect to the production and distribution of like products when sold for domestic consumption. The GOC reported that the VAT levied on steel wheels sales in the domestic market is 17 percent and that the VAT exemption upon the export of steel wheels is 17 percent.<sup>39</sup>

At verification, we confirmed that the Xingmin Companies paid a domestic VAT rate of 17 percent on purchases of HRS and domestic sales of steel wheels, and received a VAT refund

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<sup>39</sup> See GOC's initial questionnaire response at 57-59.

rate of 15 percent of exports of steel wheels.<sup>40</sup> We found similar information concerning the Jingu and Centurion Companies.<sup>41</sup>

Thus, we have determined that the VAT exempted upon the export of steel wheels did not confer a countervailable benefit because the amount of the VAT rebated on export is equal to or less than the amount paid in the domestic market.

#### B. Revitalization of Key Industry and Technology Renovation of 2010 Special Fund

Xingmin reported that it received a non-recurring grant under this fund for its sedan wheel project in December 2010.<sup>42</sup> Xingmin stated that it was eligible for the grant because the sedan wheel project fell into the scope of the “Central Investment Annual Work Focus of Revitalization of Key Industry and Technology Renovation of 2010” program (i.e., Work Focus 2010).<sup>43</sup> Xingmin explained that Work Focus 2010 covered nine different industries, including the automotive industry.<sup>44</sup> Xingmin stated that the Development and Reform Committee of Shandong Province approved its application in August 2010, and the Longkou Financial Bureau released the funds to the company in December 2010.<sup>45</sup>

Xingmin explained that the sedan wheel project pertains only to steel wheels sized from 10 inches to 16 inches in diameter and not to the steel wheels under investigation,<sup>46</sup> which are 18 inches to 24.5 inches in diameter. In support of its statement, Xingmin submitted a copy of the Shandong Province Engineering Consulting Institute’s evaluation report of the sedan wheel project.<sup>47</sup> The documentation indicates that the merchandise which benefitted from the grant was sedan wheels sized from 10 inches to 16 inches in diameter.<sup>48</sup> Xingmin also submitted approval documentation from the Development and Reform Committee of Shandong Province and Longkou City Financial Bureau which indicates that the funds were approved and dispersed for the company’s sedan wheel project.<sup>49</sup>

In the July 21, 2011, supplemental questionnaire issued to Xingmin, we asked the company to report the types of merchandise produced using the equipment purchased for the sedan wheel project and to state whether that equipment could be used to produce steel wheels sized from 18 inches to 24.5 inches in diameter. In its supplemental questionnaire response, Xingmin stated that the equipment imported for the sedan steel wheel project was being installed during the POI and, thus, was not used to produce any products.<sup>50</sup> Xingmin also stated that the equipment imported for the sedan steel wheel project does not have the ability to make subject merchandise, explaining that the equipment would require reconfiguration and revised mechanical connections with other machinery in order to manufacture subject wheels.<sup>51</sup>

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<sup>40</sup> See Xingmin Verification Report at 10.

<sup>41</sup> See Jingu Verification Report at 12 and Centurion Verification Report at 8 and VE-5.

<sup>42</sup> See Xingmin’s July 15, 2011, questionnaire response at 35-36, 38.

<sup>43</sup> Id. at 36-37.

<sup>44</sup> Id.

<sup>45</sup> Id. at 36.

<sup>46</sup> Id. at 35-37.

<sup>47</sup> Id. at Exhibit 32.

<sup>48</sup> Id. at 35-37.

<sup>49</sup> Id. at Exhibit 32.

<sup>50</sup> See Xingmin’s August 10, 2011, supplemental questionnaire response at 33.

<sup>51</sup> Id. at 34.

At verification, we examined the approval documentation and evaluation report associated with the grant.<sup>52</sup> The information indicated that the grant was for the production of steel wheels which are outside the scope of this investigation.<sup>53</sup> Based on the verification finding and consistent with 19 CFR 351.525(b)(5), we continue to find that the grant received under this program was tied to non-subject merchandise and, thus, did not confer a benefit to the production or sales of subject merchandise of the Xingmin Companies during the POI.

C. Income Tax Reductions for Firms Located in the Shanghai Pudong New District

The Jingu Companies reported that Shanghai Yata paid a reduced income tax rate on the tax return it filed during the POI due to its location in the Shanghai Pudong New District.<sup>54</sup> We determine that the benefit from this program results in net subsidy rate that is less than 0.005 percent ad valorem. Consistent with our past practice, we therefore have not included this program in our net countervailing duty rate calculations. See, e.g., CFS from the PRC Decision Memorandum at “Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE.”

III. Programs Determined To Be Not Used<sup>55</sup>

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

- A. Treasury Bond Loans
- B. Preferential Loans for State-Owned Enterprises (SOEs)
- C. Income Tax Reductions for Export-Oriented FIEs
- D. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
- E. Provision of Land to SOEs for LTAR
- F. Provision of Land Use Rights within Donghai Economic Development Zone<sup>56</sup>
- G. State Key Technology Renovation Fund
- H. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands.

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<sup>52</sup> See Xingmin Verification Report at 9-10.

<sup>53</sup> Id.

<sup>54</sup> See the Jingu Companies’ August 5, 2011, questionnaire response at 41-45.

<sup>55</sup> There were several programs used by respondents in which the benefits were fully expensed prior to the POI. For these programs, see the respondents’ calculation memoranda.

<sup>56</sup> This program was alleged as “Provision of Land Use Rights Within Designated Geographical Areas for Less Than Adequate Remuneration” in the Petition (see page III-22).

## ANALYSIS OF COMMENTS

### **Comment 1:** Application of CVD Law to Non-Market Economies (NMEs)

#### GOC's Case Brief

The Department has no authority to conduct this CVD investigation against the PRC. The CAFC ruled on December 19, 2011, that the U.S. CVD law cannot be applied to goods from the PRC and other NME countries. See GPX Int'l Tire Corp. v. United States, 666 F.3d 732 (Fed. Cir. 2011) (GPX CAFC). Accordingly, the Department should terminate this countervailing duty investigation of steel wheels from the PRC immediately.

The case briefs of the Xingmin Companies, the Centurion Companies, and the Jingu Companies as well as other interested parties to the proceeding argue the same points as above.

**Department's Position:** The Federal Circuit's GPX decision is not final. Parties have sought rehearing of that decision and still have an opportunity to exercise additional appeal rights. Additionally, the court has yet to issue its mandate. Moreover, the President on March 13, 2012, signed into law H.R. 4105, "To apply the countervailing duty provisions of the Tariff Act of 1930 to nonmarket economy countries, and for other purposes." H.R. 4105 amended the Act, among other purposes, to confirm that, barring an exception not applicable here, the Department must apply the CVD law to subsidized imports from countries designated as NMEs for AD purposes. See section 701(f)(1) of the Act; H.R. 4105, 112th Cong. § 1(a) (2012) (enacted). The effective date provision of the amendment to section 701 of Act in the enacted legislation makes clear that new section 701(f) of the Act applies to this proceeding. See H.R. 4105, 112th Cong. § 1(b) (2012) (enacted). Accordingly, the Department continues to apply the CVD law to China.

The Department's positions on the issues raised are fully explained in multiple cases. See, e.g., Drill Pipe from the PRC Decision Memorandum) at Comment 1. Congress granted the Department the general authority to conduct CVD investigations. See, e.g., sections 701, 771(5), and 771(5A) of the Act. In none of these provisions is the granting of this authority limited only to market economies. For example, the Department is given the authority to determine whether a "government of a country or any public entity within the territory of a country is providing . . . a countervailable subsidy . . ." See section 701(a) of the Act. Similarly, the term "country," defined in section 771(3) of the Act, is not limited only to market economies, but is defined broadly to apply to a foreign country, among other entities. See section 701(b) of the Act (providing the definition of "Subsidies Agreement country").

In 1984, the Department first addressed the issue of the application of the CVD law to NMEs. In the absence of any statutory command to the contrary, the Department exercised its "broad discretion" to conclude that "a 'bounty or grant,' within the meaning of the CVD law, cannot be found in an NME." See Carbon Steel Wire Rod from Poland; Final Negative Countervailing Duty Determination, 49 FR 19374 (May 7, 1984) (Wire Rod from Poland) and Carbon Steel Wire Rod from Czechoslovakia: Final Negative Countervailing Duty Determination, 49 FR 19370 (May 7, 1984) (Wire Rod from Czechoslovakia). The Department reached this conclusion, in large part, because both output and input prices were centrally administered, thereby effectively administering profits as well. The Department explained that "{t}his is the background that does not allow us to identify specific NME government actions as bounties or grants." See, e.g., Wire Rod from Czechoslovakia, 49 FR at 19373. Thus, the

Department based its decision upon the economic realities of Soviet-bloc economies. In contrast, the Department has previously explained that, “although price controls and guidance remain on certain ‘essential’ goods and services in the PRC, the PRC Government has eliminated price controls on most products . . . .” See Memorandum from Shana Lee-Alaia and Lawrence Norton to David M. Spooner, Assistant Secretary of Commerce, regarding “Countervailing Duty Investigation of Coated Free Sheet Paper from the People’s Republic of China, “Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China’s Present-Day Economy,” (March 29, 2007) (Georgetown Steel Memorandum), a public document available at <http://ia.ita.doc.gov/download/nme-sep-rates/prc-cfsp/china-cfs-georgetown-applicability.pdf> and the Department’s Central Records Unit at room 7046 of the main Commerce building. Therefore, the primary concern about the application of the CVD law to NMEs originally articulated in the Wire Rod from Poland and Wire Rod from Czechoslovakia cases is not a significant factor with respect to the PRC’s present-day economy. Thus, the Department has concluded that it is able to determine whether subsidies benefit imports from the PRC.

The Georgetown Steel Memorandum details the Department’s reasons for applying the CVD law to the PRC and the legal authority to do so. As explained in the Georgetown Steel Memorandum, Georgetown Steel does not rest on the absence of market-determined prices, and the decision to apply the CVD law to the PRC does not rest on a finding of market-determined prices in the PRC. Id. at 4-5. In the case of the PRC’s economy today, as the Georgetown Steel Memorandum makes clear, the PRC no longer has a centrally-planned economy and, as a result, the PRC no longer administratively sets most prices. Id. at 5. As the Georgetown Steel Memorandum also makes clear, it is the absence of central planning, not market-determined prices, that makes subsidies identifiable and the CVD law applicable to the PRC. Id.

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

The CAFC recognized the Department’s broad discretion in determining whether it can apply the CVD law to imports from an NME in Georgetown Steel. See Georgetown Steel, 801 F.2d at 1318. The issue in Georgetown Steel was whether the Department could apply CVD laws (irrespective of whether any AD duties were also imposed) to potash from the USSR and the German Democratic Republic and carbon steel wire rod from Czechoslovakia and Poland. The Department determined that those economies, which operated under the same, highly rigid Soviet system, were so monolithic as to render nonsensical the very concept of a government transferring a benefit to an independent producer or exporter. The Department therefore concluded that it could not apply the U.S. CVD law to those exports, because it could not determine whether that government had bestowed a subsidy (then called a “bounty or grant”) upon them. See, e.g., Wire Rod from Czechoslovakia, 49 FR at 19373. While the Department

did not explicitly limit its decision to the specific facts of the Soviet Bloc in the mid-1980s, its conclusion was based on those facts. The CAFC accepted the Department’s logic, agreeing that, “Even if one were to label these incentives as a ‘subsidy,’ in the loosest sense of the term, the governments of those nonmarket economies would in effect be subsidizing themselves.” See Georgetown Steel, 801 F.2d at 1316. Noting the “broad discretion” due the Department in determining what constituted a subsidy, the Court then deferred to the Department’s judgment on the question. Id. at 1318. Thus, Georgetown Steel did not hold that the Department could choose not to apply the CVD law to exports from NME countries, where it was possible to do so. Instead, the CAFC simply deferred to the Department’s determination that it was unable to apply the CVD law to exports from Soviet Bloc countries in the mid-1980s.

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

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

Georgetown Steel, 801 F.2d at 1318 (emphasis added).

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

The CIT concurred, explaining that “the Georgetown Steel court only affirmed {the Department’s decision not to apply countervailing duty law to the NMEs in question in that particular case and recognized the continuing ‘broad discretion’ of the agency to determine whether to apply countervailing duty law to NMEs.” See GOC v. U.S., 483 F. Supp. 2d at 1282 (citing Georgetown Steel, 801 F.2d at 1318). Therefore, contrary to the Guang Ya Companies’ argument, the Court declined to find that the Department’s investigation of subsidies in the PRC was ultra vires.<sup>57</sup>

The notion that the intent of Congress is that the CVD law does not apply to NMEs is also flawed. Since the holding in Georgetown Steel, Congress has expressed its understanding that the Department already possesses the legal authority to apply the CVD law to NMEs on several occasions. For example, on October 10, 2000, Congress passed the PNTR Legislation. In section 413 of that law, which is now codified in 22 U.S.C. § 6943(a)(1), Congress authorized funding for the Department to monitor “compliance by the People’s Republic of China with its commitments under the World Trade Organization (WTO), assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People’s Republic of China.”<sup>58</sup> The PRC was designated as an NME at the time this bill was passed, as it is today. Thus, Congress not only contemplated that the Department possesses the authority to apply the CVD law to the

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<sup>57</sup> Id.

<sup>58</sup> See 22 U.S.C. § 6943(a)(1) (emphasis added).

PRC, but authorized funds to defend any CVD measures the Department might apply.

This statutory provision is not the only instance where Congress has expressed its understanding that the CVD law may be applied to NMEs in general and the PRC in particular. In that same trade law, Congress explained that “{o}n November 15, 1999, the United States and the People’s Republic of China concluded a bilateral agreement concerning the terms of the People’s Republic of China’s eventual accession to the World Trade Organization.”<sup>59</sup> Congress then expressed its intent that the “United States Government must effectively monitor and enforce its rights under the Agreements on the accession of the People’s Republic of China to the WTO.”<sup>60</sup> In these statutory provisions, Congress is referring, in part, to the PRC’s commitment to be bound by the Agreement on Subsidies and Countervailing Measures (SCM Agreement) as well as the specific concessions the PRC agreed to in its Accession Protocol.

The Accession Protocol allows for the application of the CVD law to the PRC, even while the PRC remains classified as an NME by the Department.<sup>61</sup> In fact, in addition to agreeing to the terms of the SCM Agreement, specific provisions were included in the Accession Protocol that involve the application of the CVD law to the PRC. For example, Article 15(b) of the Accession Protocol provides for special rules in determining benchmarks that are used to measure whether the subsidy bestowed a benefit on the company. Paragraph (d) of that same Article provides for the continuing treatment of the PRC as an NME. There is no limitation on the application of Article 15(b) with respect to Article 15(d), thus indicating it became applicable at the time the Accession Protocol entered into effect. Although WTO agreements such as the Accession Protocol do not grant direct rights under U.S. law, the Accession Protocol contemplates the application of CVD measures to the PRC as one of the possible existing trade remedies available under U.S. law. Therefore, Congress’ directive that the “United States Government must effectively monitor and enforce its rights under the agreements on the accession of the People’s Republic of China to the WTO,” contemplates the application of the CVD law to the PRC.<sup>62</sup> Neither the SCM Agreement nor the PRC’s Accession Protocol is part of U.S. domestic law. However, the Accession Protocol, to which the PRC agreed, is relevant to the PRC’s and our international rights and obligations. Further, Congress thought the provisions of the Accession Protocol important enough to direct that they be monitored and enforced, a direction codified in U.S. law.

In sum, the Department has authority to apply the CVD law to NMEs under U.S. law. Further, the Department’s decision to apply the CVD law to the PRC, as explained in the Georgetown Steel Memorandum, is within the Department’s discretion and in accordance with law. Accordingly, the Department’s application of the CVD law in this proceeding is appropriate.

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<sup>59</sup> See 22 U.S.C. § 6901(8).

<sup>60</sup> See 22 U.S.C. § 6841(5).

<sup>61</sup> See CFS from the PRC Decision Memorandum at Comment 1.

<sup>62</sup> See 22 U.S.C. § 6941(5).

**Comment 2:** Application of CVD Law to NMEs Results in Double Counting

GOC's Case Brief

In the AD Preliminary Determination the Department applied a surrogate value methodology pursuant to its application of a NME approach, thereby using data from market-economy third countries to establish surrogate values for costs of manufacturing and financial ratios in calculating the dumping margin of respondents. See Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 76 FR 67703 (November 2, 2011) (AD Preliminary Determination). So long as the Department continues to apply surrogate values to calculate respondents' dumping margins in the parallel AD investigation while imposing countervailing duties on the same steel wheels exports, it imposes an unlawful double remedy. The CIT has found that when the Department in parallel investigations imposes CVDs and, at the same time, applies a third-country surrogate value methodology in the concurrent antidumping investigation, the result is the unlawful imposition of double remedies on subject imports. See GPX Int'l Tire Corp. v. United States, 645 F. Supp. 2d 1231, 1243 (Ct. Int'l Trade 2009) (GPX I).

In the instant CVD investigation, the subsidy rates are based almost entirely on the Department's finding of claimed domestic subsidies, including for the primary input, HRS. See Preliminary Determination, 76 FR at 55023 - 55025. Yet, in the concurrent AD investigation, the Department applied, to the very same imports, unsubsidized prices and costs, taken from a third-country market economy country (Indonesia), as the surrogate values to determine normal value and the amount of dumping margins. See AD Preliminary Determination, 76 FR at 67709. The GPX I Court found that this is precisely the flawed analytical framework that creates a double remedy.

Imposing CVDs while also applying market economy surrogate values to determine normal value in the concurrent AD investigation not only violates U.S. law, but it violates international U.S. obligations. The World Trade Organization's Appellate Body (AB) has ruled conclusively that the Department's approach of simultaneously applying antidumping duties and countervailing duties on the same imported products results in the offsetting of the same subsidization twice, and that these unlawful "double remedies" are likely to occur in cases where an NME methodology is used to calculate the margin of dumping. See United States – Definitive Anti-Dumping And Countervailing Duties On Certain Products From China, WT/DS379/AB/R, AB-201003 (11 March 2011) (AB DS379) at 541.

Accordingly, the Department should immediately terminate this CVD investigation in light of the Federal Circuit's recent decision in GPX CAFC. The Department's compliance with the CAFC's decision, through termination of this CVD investigation, would address what is otherwise the illegal imposition of a double remedy. If the Department fails to comply with the GPX CAFC decision and instead persists in a determination to impose CVDs on the same steel wheels that are subject to the parallel AD investigation, the Department will run afoul of U.S. law.

The case briefs of the Xingmin Companies, the Centurion Companies, and the Jingu Companies argue the same points as above.

## Xingmin Companies' Case Brief

To avoid double counting the Department should not impose a methodology that would allow AD and CVD duties to be offset against one another. In GPX II, the CIT rejected the Department's attempt to offset CVDs against NME ADs in a remand determination because, with the offset, "the combination of the CVD margin and the NME AD cash deposit rate will always equal the unaltered NME AD margin . . . this result, therefore, renders concurrent CVD and AD investigations unnecessary" because essentially the same price adjustment can be accomplished simply by conducting the AD proceeding. See GPX Int'l Tire Corp. v. United States, 715 F. Supp. 2d 1337, 1346 (CIT 2010) (GPX II). Therefore, the Department should not adopt such a methodology in the final determination.

The most reasonable option would be for the Department to forego the imposition of CVD duties altogether in the final determination. Foregoing the imposition of CVDs would enable Xingmin and other respondents a meaningful opportunity to take specific steps to remedy any unfair trade practices in which they are allegedly engaged. A remedy that results in double counting would not permit respondents to correct their production and/or sales behaviors because it is impossible to correct the same behavior twice.

**Department's Position:** As noted above, reliance on the GPX decisions is misplaced because the Federal Circuit's GPX decision is not final. Parties have sought rehearing of that decision and still have an opportunity to exercise additional appeal rights. Additionally, the court has yet to issue its mandate. In any event, the GPX court only held that the "potential" for double remedy may exist.<sup>63</sup>

Thus, because GPX CAFC is not yet final, the Department has continued to apply its interpretation that applying the CVD law to countries designated as NMEs does not result in double remedies. Moreover, the parties have not cited to any statutory authority for not imposing CVDs so as to avoid the alleged double remedies or for making an adjustment to the CVD calculations to prevent an incidence of alleged double remedies. Finally, if any adjustment to avoid a double remedy is possible, it would only be in the context of the AD investigation. We note that this position is consistent with the Department's decisions in recent PRC CVD cases. See, e.g., Drill Pipe from the PRC Decision Memorandum at Comment 3. For additional discussion, see Comment 2 of the Issues and Decision Memorandum issued as part of the final determination in the concurrent AD investigation.

Regarding the respondents' arguments concerning AB DS379, we note that the CAFC 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. See Corus Staal BV v. Dep't of Commerce, 395 F.3d 1343 at 1347-49 (Fed. Cir. 2005) (Corus I); accord Corus Staal BV v. United States, 502 F.3d 1370 at 1375 (Fed. Cir. 2007) (Corus II); and NSK Ltd. v. United States, 510 F.3d 1375 (Fed. Cir. 2007) (NSK). As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See 19 U.S.C. § 3533(g). Specifically, with respect to AB

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<sup>63</sup> GPX International Tire Corp. v. United States, 645 F. Supp., 2d 1231, 1234 (CIT 2009)

DS379, the United States has not yet employed the statutory procedure set forth at 19 U.S.C. 3533(g) to implement the Appellate Body's finding.

**Comment 3:** Whether the Burden of Proving Double Counting Lies with Respondents

GOC's Case Brief

The Department cannot conclude in the instant investigation that the burden of proving double counting lies with respondents. Such a position, if adopted in the instant investigation, would not only be contrary to fundamental principles of administrative due process, but would also – particularly in light of the CIT's direct refutation of this conclusion in GPX I – be reversible error directly contradicting U.S. law as interpreted by the federal courts.

The imposition of a burden of proof in a CVD or AD investigation is contrary to law. Such investigations are investigative in nature, not adjudicatory. *See, e.g., Timken v. United States*, 630 F. Supp. 1327, 1333 (CIT 1986) (Timken). Respondents have no burden of proof to establish the existence of a double remedy any more than petitioners have a burden to establish the absence of a double remedy. Instead, the Department has a statutory duty to investigate the issue and gather the relevant evidence necessary to decide the issue. Any conclusion that respondents have “failed to demonstrate” that a double remedy would result from the Department's actions in these parallel investigations would reflect an unlawful abdication of the Department's responsibility as the investigative agency:

The court does not expect parties to prove in an individual NME case confirmable double counting just for the purpose of getting the Department to address the problem of the greater potential for double counting in NME cases than exists with ME calculations. . . . If there is a substantial potential for double counting, and it is too difficult for the Department to determine whether, and to what degree double counting is occurring, the Department should refrain from imposing CVDs on NME goods until it is prepared to address this problem through improved methodologies or new stator tools.

*See* GPX I, 645 F. Supp. 2d at 1242-43.

Further, the notion that there is a “burden” on parties to demonstrate the existence of double counting effectively creates an evidentiary presumption that lacks any lawful or factual basis. The Department failed to provide the parties in this investigation the lawfully required notice of such a presumption and an adequate opportunity to present relevant rebuttal evidence. *See, e.g., British Steel plc v. United States*, 879 F. Supp. 1254, 1316-17 (CIT 1995) (fundamental fairness dictates that Commerce give parties due notice of decision to adopt presumption and opportunity to submit evidence to rebut the presumption). Moreover, the presumption itself lacks any economic or legal foundation. As detailed in the arguments above, sound economic principles as well as the text and structure of the U.S. statute show plainly that application of the Department's NME third-country surrogate value methodology to determine the AD normal value benchmark will always result in a dumping margin calculation that provides a full remedy for any domestic subsidies provided in the exporting country.

The case briefs of the Jingu Companies argue the same points as above.

## Case Briefs of the Centurion Companies and Jingu Companies

If the Department ignores the rulings of the Courts and WTO, then it is the obligation of the Department and not that of respondents to ensure that dumping margins calculated for respondents are not double counting any benefit the Department determines respondents have received from countervailable subsidies. For example, if the Department decides to apply a “subsidy-free” surrogate value for respondents’ HRS production factor, then the Department should forgo in the instant CVD investigation the determination that respondents purchased HRS for LTAR. Conversely, if the Department finds that respondents purchased HRS for LTAR, the Department should not apply surrogate values for respondents’ HRS steel consumption in the concurrent AD investigation.

**Department’s Position:** As noted above, if any adjustment to avoid a double remedy is possible, it would only be in the context of the AD investigation. We note that this position is consistent with the Department’s decisions in recent PRC CVD cases. See, e.g., Drill Pipe from the PRC Decision Memorandum at Comment 3.

**Comment 4:** Proper “Cut-Off” Date to be Apply in the Investigation

### GOC’s Case Brief

The Department’s choice of December 11, 2001, the date on which China joined the WTO, as the date from which the Department will identify nonrecurring subsidies in this investigation, is unlawful. The Department’s selected date would subject Chinese exports to the CVD law with respect to alleged subsidies received prior to when China would have had a reasonable expectation that the United States would apply the CVD to China. See Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary, 67 FR 60221 (September 25, 2002) (Sulfanilic Acid from Hungary) and accompanying Issues and Decision Memorandum (Sulfanilic Acid from Hungary Decision Memorandum) at 8, 14. More importantly, this cut-off date is contrary to the Department’s precedent of refusing to examine alleged subsidy benefits received prior to when the Department determines that the CVD law applies to a particular country.

For purposes of appropriate notice to the recipients of alleged subsidies, the Department’s cut-off date should be no earlier than January 1, 2005, the start of the period of investigation in CFS from the PRC in which the Department purported to determine that economic and market conditions had changed sufficiently to permit the identification of subsidies in China. See CFS from the PRC, 72 FR at 60645.

This approach is supported by the Department’s CVD regulations. In the Preamble to those regulations, the Department stated that where it “determines that a change in status from non-market to market is warranted, subsidies bestowed by that country after the change in status would become subject to the CVD law.” See Countervailing Duty Regulations, 63 FR 65347, 65360 (November 25, 1998) (Preamble). The Department’s own practice and policy thus dictate that subsidies cannot be bestowed on a country until the Department determines that the particular country is a market economy.

Further, in GPX I the CIT found that “the Department’s adoption of a December 11, 2001, cut-off date was arbitrary and unsupported by substantial evidence.” See GPX I, 645 F.

Supp.2d at 1246. In GPX I, the Court further determined that no uniform cut-off date is appropriate in China CVD cases. Id.

The Department cannot have it both ways. If the Department uses a cut-off date for administrative convenience, that cut-off date must be consistent with its practice and policy of not countervailing subsidies until the country has graduated to market economy status. The Department effectively “graduated” China to market economy status when it made its decision to apply the CVD law to China in CFS from the PRC. In that CVD investigation the POI covered the period beginning January 1, 2005 and, thus, this date should serve as the proper “cut-off” date.

**Department’s Position:** As noted above, reliance on the GPX decisions is misplaced because the Federal Circuit’s GPX decision is not final. Parties have sought rehearing of that decision and still have an opportunity to exercise additional appeal rights. Additionally, the court has yet to issue its mandate. Thus, because GPX CAFC is not yet final, the Department has continued to apply its interpretation that the proper “cut-off” date is December 11, 2001.

Consistent with prior PRC CVD determinations,<sup>64</sup> we continue to find that it is appropriate and desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law, and have adopted December 11, 2001, the date on which the PRC became a member of the WTO, as that date.

We have selected December 11, 2001, because of the reforms in the PRC’s economy in the years leading up to that country’s WTO accession and the linkage between those reforms and the PRC’s WTO membership.<sup>65</sup> The changes in the PRC’s economy that were brought about by those reforms permit the Department to determine whether countervailable subsidies were being bestowed on Chinese producers. For example, the GOC eliminated price controls on most products; since the 1990s, the GOC has allowed the development of a private industrial sector; and in 1997, the GOC abolished the mandatory credit plan. Additionally, the PRC’s Accession Protocol contemplates application of the CVD law. While the Accession Protocol, in itself, would not preclude application of the CVD law prior to the date of accession, the Protocol’s language in Article 15(b) regarding benchmarks for measuring subsidies and the PRC’s assumption of obligations with respect to subsidies provide support for the notion that the PRC economy had reached the stage where subsidies and disciplines on subsidies (e.g., CVDs) were meaningful.

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

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<sup>64</sup> See, e.g., Drill Pipe from the PRC Decision Memorandum at Comment 4.

<sup>65</sup> See Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001).

People’s Republic of China.”<sup>66</sup> Thus, the GOC and PRC importers were on notice that CVDs were possible well before January 1, 2005.

We further disagree that Sulfanilic Acid from Hungary is controlling in this case. The Department has revisited its original decision not to apply the CVD law to NMEs and has determined that it will reexamine the economic and reform situation of the NME on a case-by-case basis to determine whether the Department can identify subsidies in that country.

As such, for the above reasons and consistent with CWP from the PRC, as well as other recent PRC CVD cases, the Department finds that it can determine whether the GOC has bestowed countervailable subsidies on Chinese producers from the date of the PRC’s WTO accession.<sup>67</sup>

**Comment 5:** Whether the Department’s Examination of Additional Subsidy Programs Was Lawful

### GOC’s Case Brief

In its third supplemental questionnaire, the Department demanded information on thirty, new, purported “government assistance” or “programs” allegedly benefiting the Jingu Companies and subsequently deemed all of them countervailable subsidies. These additional programs were not included in the Initiation. See Certain Steel Wheels From the People’s Republic of China: Initiation of Countervailing Duty Investigation, 76 FR 23302 (April 26, 2011) (Initiation). The Department has no authority to seek information on these new, purported “programs.”

If, during the course of an investigation, the Department discovers a practice that appears to provide a countervailable subsidy that was not alleged, the Department’s regulations require it to notify the parties whether the practice will be included in the investigation. See 19 CFR 351.311. In the instant investigation, the Department required information from respondents and the GOC on purported programs that were never properly initiated in a petition or new subsidy allegation, in clear violation of U.S. CVD law and the Department’s regulations. The Department’s approach in this investigation also violated Articles 11.1 and 11.2 of the Subsidies and Counter Measures (SCM) Agreement, which require investigation of alleged subsidies to be initiated upon written application that must include sufficient evidence of a subsidy, injury, and a causal link between the subsidy and alleged injury. “Simple assertion, unsubstantiated by relevant evidence” is not sufficient to meet the requirements. See SCM Agreement at Article 11.2. The SCM Agreement’s provision for self-initiation can only be exercised on the basis of sufficient evidence of the existence of a subsidy and after an opportunity to consult has been properly offered to foreign government in question. See SCM Agreement at Articles 11.6, 13.1, and 13.2.

Because the Department failed to lawfully initiate an investigation of the additional subsidy programs at issue, it should withdraw its preliminary findings related to them and remove from the legal record any references to the programs.

**Department’s Position:** We disagree with the GOC. Section 775 of the Act and 19 CFR 351.311(b) state that if during a proceeding the Department discovers “a practice that appears to

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<sup>66</sup> See 22 U.S.C. § 6943(a)(1) (emphasis added).

<sup>67</sup> See, e.g., CWP from the PRC Decision Memorandum at Comment 2.

provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding, . . . the Department will examine the practice, subsidy or subsidy program” if the Department “concludes that sufficient time remains before the scheduled date for the final determination or review.” The financial statements of the Jingu Companies made numerous references to the receipt of various “subsidies” and preferential tax rates about which the Department issued supplemental questionnaires to the GOC and the Jingu Companies. See, e.g., the Department’s July 14, 2011, supplemental questionnaire at 4. Thus, in light of the information contained in the Jingu Companies’ financial statements and based on the guidelines established under the statute and 19 CFR 351.311(b), the Department acted well within its authority to examine the programs within this proceeding and seek additional information from the GOC and the Jingu Companies. This approach is consistent with the Department’s practice. See Citric Acid from the PRC Decision Memorandum at Comment 30.

**Comment 6:** Whether It Was Appropriate for the Department to Reject Factual Information from the Xingmin Companies

#### Xingmin Companies’ Case Brief

On November 23, 2011, the Xingmin Companies submitted relevant and timely information per the Department’s regulations regarding the submission of factual information. However, on December 2, 2011, the Department partially rejected certain information found to be untimely.

Pursuant to 19 CFR 351.301(b)(1), the deadline for parties to submit factual information in an investigation is seven days prior to the start of verification and that the November 23, 2011, submission was timely filed in accordance with that regulation.<sup>68</sup> While the Department’s initial questionnaire set forth deadlines to submit information similar to the information contained in the November 23, 2011, submission, questionnaire deadlines should not preclude the Department from accepting additional information under 19 CFR 351.301(b)(1) if such information is relevant to the proceeding. Justifying the rejection of information based on the deadlines established for questionnaire responses effectively negates the opportunity provided by 19 CFR 351.301(b)(1) to submit additional factual information seven days prior to the start of verification. The Department should reconsider its decision to reject certain information submitted in the November 23, 2011, filing and to allow interested parties time to review and comment on that information before the final determination.

**Department’s Position:** The Department acted properly and within its discretion to reject the untimely submission of factual information – information which the Department had previously requested but which the Xingmin Companies and the GOC failed to provide by the established deadline. Specifically, the May 13, 2011, initial questionnaire issued by the Department asked the Xingmin Companies and the GOC to coordinate with regard to the information requested about suppliers and producers of HRS from whom purchases were made during the POI.<sup>69</sup> In that questionnaire, the Department also asked both the Xingmin Companies and the GOC to

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<sup>68</sup> The first verification was scheduled to begin on December 5, 2011.

<sup>69</sup> See May 13, 2011, initial questionnaire at section II, “Provision of HRS for Less Than Adequate Remuneration (LTAR) at question j and Section III, “Provision of HRS for LTAR” at question 3.

provide information on HRS prices in the world markets.<sup>70</sup> The submission of information regarding an input supplier and pricing data was subject to the deadline set forth in the questionnaires.

Neither the Xingmin Companies nor the GOC provided the requested information in their questionnaire responses.<sup>71</sup> Subsequently — and long after the deadline for responding to the Department’s questionnaire — the Xingmin Companies sought to submit the new information. However, any such information submitted after the questionnaire deadline cannot be submitted under 19 CFR 351.301(b)(1) and is untimely in accordance with 19 CFR 351.302. As the Department noted in its letter of December 2, 2011,<sup>72</sup> the Xingmin Companies were attempting to provide information previously requested by the Department, for which the deadline for submitting such information had passed. Accordingly, the Department properly rejected the Xingmin Companies’ submission as untimely under the Department’s regulations. The Department, thus, has not reconsidered its decision to reject certain HRS information, which was untimely submitted by the Xingmin Companies.

**Comment 7:** Whether it Was Appropriate for the Department to Reject the Centurion Companies’ Factual Information

#### Centurion Companies’ Case Brief

The Department improperly rejected factual information that was submitted within its regulatory guidelines. The Centurion Companies’ factual submission included information that supplemented or corrected its previous submissions, specifically documentation showing details of its HRS purchase that were obtained after the Preliminary Determination. The information was presented to support the Centurion Companies’ assertion that its HRS purchases were negotiated with each supplier based on commercial considerations without any intervention by the GOC.

The Department explains that it rejected the information because it had formally requested this type of documentation earlier in the proceeding. The Department’s rejection was improper because the information contained in Centurion’s response was not the type that the Department had formally requested.

The information at issue is not subject to a separate deadline. Instead, the only applicable deadline is the date set forth pursuant to the Department’s regulations. Thus, the Department’s rejection of the additional information was improper and it should consider the information in reaching its final determination.

**Department’s Position:** We disagree with the Centurion Companies. In the Department’s initial questionnaire, we requested that the GOC and the mandatory respondents coordinate with regard to the information requested about suppliers and producers of HRS from which purchases were made during the POI.<sup>73</sup> Additionally, in the initial questionnaire, the Department asked both the

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<sup>70</sup> Id., Section II, “Provision of HRS for LTAR” at question i and Section III, “Provision of HRS for LTAR,” at question 2.

<sup>71</sup> See Xingmin Companies’ July 15, 2011, initial questionnaire response; and the GOC’s July 5, 2011, initial questionnaire response and August 20, 2011, supplemental questionnaire response.

<sup>72</sup> See Department’s December 2, 2011, letter to Xingmin Companies regarding “Rejection of Additional Factual Information.”

<sup>73</sup> See May 13, 2011, initial questionnaire at section II, “Provision of HRS for Less Than Adequate Remuneration

GOC and mandatory respondents to provide information on hot-rolled steel prices in the world markets.<sup>74</sup> Consequently, this information is subject to the deadlines set forth in the questionnaires. Any such information submitted after the questionnaire deadline cannot be submitted under 19 CFR 351.301(b)(1) and is untimely in accordance with 19 CFR 351.302. Therefore, the Department correctly rejected the untimely filed information.

**Comment 8:** Whether Certain HRS Producers Constitute Government Authorities That Provide a Financial Contribution

GOC's Case Brief

The Preliminary Determination fails to address how government-owned HRS producers in the PRC constitute “authorities” within the meaning of 19 USC 1677(5)(B), or whether the GOC entrusted or directed the producers to provide a financial contribution under 19 USC 1677(5)(B)(ii). Consistent with its approach in past CVD proceedings, the Department should examine the following five factors when determining whether HRS producers are government authorities: (1) Government ownership; (2) the government’s presence on the entity’s board of directors; (3) the government’s control over the entity’s activities; (4) the entity’s pursuit of government policies or interests; and (5) whether the entity is created by statute. See e.g., Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003) (DRAMs from Korea), and accompanying Issues and Decision Memorandum (DRAMs from Korea Decision Memorandum) at 16-17. Applying these factors in the instant investigation will demonstrate that the HRS producers whom the Department preliminarily found to be government authorities, based essentially on government ownership, do not satisfy the applicable standards.

Government ownership does not by itself establish the existence of a government “authority” under the statute. The Department has previously concluded that entities with even 100 percent majority government ownership should not be considered authorities. See DRAMs from Korea Decision Memorandum at 17. The WTO has held that majority government ownership does not alone establish that a government has bestowed the entity with “government authority,” which is required for the entity to be a “public body” within the meaning of the SCM Agreement. See AB DS379 at 318, 346. The WTO further ruled that it is the duty of the investigating authority to evaluate relevant evidence in an objective manner and not the burden of respondent to submit evidence to overcome a presumption that majority ownership alone meets the evidentiary requirement to find an entity is a government authority.

In the instant investigation the Department has ignored record evidence establishing that government ownership of enterprises in the PRC is separate and independent of government functions. Reforms in the PRC have established that SOEs have separate legal status from that of the government and manage their operations free of government control. The 1993 Company Law of China in conjunction with the establishment of the State-Owned Assets Supervision and Administration Commission (SASAC) have ensured and solidified the separation of state ownership from the operations of SOEs. Further, the 1998 Price Law establishes that business owners have the right to determine prices under market conditions.

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(LTAR) at question j and Section III, “Provision of HRS for LTAR” at question 3.

<sup>74</sup> Id., Section II, “Provision of HRS for LTAR” at question i and Section III, “Provision of HRS for LTAR,” at question 2.

The HRS producers at issue are required by their respective articles of incorporation and statutory law to achieve the best business/commercial interests of their shareholders, which can only be achieved by charging market prices for their products. The record establishes that HRS prices are not regulated by the GOC but rather are subject to market prices pursuant to the 1998 Price Law. The Department has previously reached this very conclusion: “market forces now determine the prices of more than 90 percent of products traded in China.” See Georgetown Steel Memorandum at 5. Further, it is clear that the domestic Chinese prices of HRS fluctuated in line with that of iron ore on the international market.

In the absence of supporting evidence, the Department must reverse its preliminary finding that there is a “program” to supply HRS to the steel wheels industry and that the HRS producers are government authorities.

The case briefs of the Jingu Companies and Centurion Companies argue the same points as above.

### Jingu Companies’ Case Brief

The Department has previously determined in prior AD proceedings that the producers of HRS at issue in the instant CVD investigation operate free from any interference of any level of Chinese government authority, as demonstrated by the fact that the HRS producers were entitled to their own separate dumping rates. See Certain Hot-Rolled Carbon Steel Flat Products from the People’s Republic of China, 66 FR 22183 (May 3, 2001) (HRS from the PRC AD Preliminary Determination) (“we preliminary determine that Angang, Baosteel Group, Benxi, Panzhihua, and WISCO have met the criteria for the application of a separate rate”), unchanged in Certain Hot-Rolled Carbon Steel Flat Products from the People’s Republic of China, 66 FR 49632 (September 28, 2001) (HRS from the PRC AD Final Determination), and accompanying Issues and Decision Memorandum (HRS from the PRC AD Final Decision Memorandum) at Comment 1. The Department found the HRS producers noted above had demonstrated that they (1) establish their own export prices; (2) negotiate contracts without guidance from any government entities or organizations; (3) make their own personnel decisions; and (4) retain the proceeds of their export sales, using profits according to their business needs. In the HRS from the PRC AD Final Determination, the Department also specifically noted that ownership of a company by a state-owned enterprise does not require the application of the PRC-wide rate. See HRS from the PRC AD Final Decision Memorandum at Comment 1.

Given that the Department in a prior NME AD investigation has already determined that the activities of several Chinese HRS producers were sufficiently independent of government control to warrant granting the companies their own separate rates, it is incongruous for the Department in the instant CVD investigation to conclude that the same HRS producers are government authorities.

### Centurion Companies’ Case Brief

The Centurion Companies note that producers of steel have participated in previous U.S. AD proceedings and were granted separate rate status because their activities were found to be free of government control and cites to CWP from the PRC AD Final Determination. See 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) (Line Pipe from the PRC AD Final Determination).

**Department's Position:** In Kitchen Racks from the PRC, the Department stated its policy with respect to application of the five factors test. See Racks from the PRC Decision Memorandum at Comment 4; see also OCTG from the PRC Decision Memorandum at Comment 9. In Kitchen Racks from the PRC, the Department stated that it does not analyze each of the five factors for every firm in every case, and, "in most instances, majority government ownership alone indicates that a firm is an authority." See Racks from the PRC Decision Memorandum at Comment 4; see also Coated Paper from the PRC Decision Memorandum at Comment 16, stating that there is a rebuttable presumption that majority owned government entities are authorities within section 771(5)(B) of the Act.

In this case, we have analyzed whether the evidence on the record indicates that enterprises which are majority-owned by the government are "authorities" within the meaning of section 771(5)(B) of the Act. The GOC argues that the prices of HRS inputs are not regulated by the state, as evidenced by the 1998 Price Law, 1993 Company Law of China, and the establishments of SASACs, and, thus, that the Department erred in its preliminary finding that majority state-owned firms are GOC authorities capable of providing a financial contribution. The evidence submitted by the GOC 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, the Department addressed and rejected this same argument in Kitchen Racks 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.

See Racks from the PRC Decision Memorandum at Comment 4. The Department rejected similar claims in Coated Paper from the PRC. See Coated Paper from the PRC Decision Memorandum at Comment 16.

We also disagree that the 1998 Law and the SASAC demonstrate that government ownership is separate and independent of traditional government functions. We note that no pricing information or ownership information was submitted on the record of this proceeding that would support these claims. The laws cited by the GOC suggest that SOEs should be provided some level of autonomy, but we do not find that this is sufficient evidence to demonstrate that the GOC does not control majority owned companies, because, with majority ownership, the government could control the majority of board seats and thus have the power to appoint senior managers.

Thus, following the reasons set forth in Kitchen Racks from the PRC, we have continued to treat majority state-owned input producers as GOC authorities capable of providing HRS for LTAR.

The GOC cites to DRAMs from Korea to support its statement that the Department considers 100 percent government-owned entities not to be “authorities” under the CVD law. The Department has no policy that would find a wholly-owned company not an “authority.” The cite to DRAMs from Korea is misplaced because, in CORE from Korea, the Department decided to modify our treatment of commercial banks with government ownership with respect to the finding of a financial contribution under section 771(5)(B)(i) of the Act. As we noted in CORE from Korea:

In both the DRAMs Investigation and the CFS from the PRC Investigation, we accorded different treatment under this section of the Act to government-owned banks that were commercial banks and those government-owned banks that acted as policy or specialized banks. Upon further review, we have determined that, with respect to determining whether a government-owned bank is a public entity or authority under the CVD law, it is more appropriate to focus solely on the issue of government ownership and control. This treatment of government-owned commercial banks is consistent with our treatment of all other government-owned entities, such as government-owned manufacturers, utility companies, and service providers. Furthermore, this treatment of government-owned commercial banks is also more consistent with 19 CFR 351.505(a)(2)(ii) and 351.505(a)(6)(ii). Thus, a government-owned or controlled bank, be it a commercial bank or a policy bank, is considered a public entity or authority under the Act.

See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009) (CORE from Korea), and accompanying Issues and Decision Memorandum at “GOK’s Direction of Credit.” Therefore, the Department considers HRS producers that are owned or controlled by the government to be public authorities under the CVD law.

We also disagree with the arguments of the Jingu and Centurion Companies that the Department’s decision to grant separate rates to certain HRS producers in past AD proceedings should preclude the Department from finding those same HRS producers to be government authorities capable of providing a financial contribution under the provision of HRS for LTAR program. The standards for granting separate rates in AD proceedings and finding producers to be government authorities in CVD proceedings are different standards, the former relating to government control over export prices and the latter relating to financial contributions. These standards are separate and distinct from each other. Therefore, the fact that HRS producers were granted separate rates in prior AD proceedings has no implications for the Department’s examination of government authority with regard to LTAR programs in CVD proceedings.

Regarding the respondents’ arguments concerning AB DS379, as noted above, the CAFC 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. See Corus I, 395 F.3d 1343 at 1347-49; accord Corus II, 502 F.3d 1370 at 1375; and NSK, 510 F.3d 1375. With respect to AB DS379, the United States has not employed the statutory procedure set forth at 19 U.S.C. 3533(g) to implement the Appellate Body’s finding.

**Comment 9:** Whether Purchases of HRS from Domestic Trading Companies Constituted a Financial Contribution

Jingu Companies' Case Brief

The Department should not apply countervailing duties for any of the Jingu Companies' POI purchases of HRS made through Chinese trading companies (*i.e.*, not purchased directly from Chinese steel suppliers). Even if the Department continues to incorrectly determine that certain Chinese steel producers are governmental authorities, the Department has made no showing that any of the Chinese trading companies from which the Jingu Companies sourced HRS during the POI also are governmental authorities, or that the trading companies themselves have provided a benefit within the meaning of the statute. The Department has unreasonably presumed that none of the alleged HRS LTAR benefit was conferred by the original steel producer upon the intermediate trading company, and that all of the alleged financial contribution and benefit of the original producer was conferred to the end-user (*i.e.*, the Jingu Companies) who purchased the HRS through the trading company. Absent a finding that the intermediate trading company is a governmental authority or that the trading companies from which the Jingu Companies sourced HRS during the POI have been entrusted or directed to provide a subsidy to downstream end-users, the Department should not derive any countervailing duties associated with the Jingu Companies' purchases of HRS made through Chinese trading companies.

**Department's Position:** The Department is treating as a financial contribution all purchases of HRS produced by government-owned producers. The Department has previously found that a financial contribution (*i.e.*, provision of a good or service) made by a government agency through a private trading company is countervailable. See *e.g.*, CWP Decision Memorandum at Comment 10; see also OTR Tires from the PRC Decision Memorandum at Comment D.4, and Line Pipe from the PRC Decision Memorandum at Comment 4.

As explained above in the "Use of Facts Otherwise Available and Adverse Inferences" section, the Department has determined that the application of AFA under section 776 of the Act is warranted. Specifically, we find that the GOC has failed to act to best of its ability in terms of providing the requested ownership information pertaining to respondents' HRS producers. As a result, the Department is making the adverse inference that all HRS supplied to respondents, including HRS sold via trading companies, was manufactured by state-owned or controlled enterprises and, thus, constitutes a financial contribution under section 771(D)(iii) of the Act.

For transactions in this case, the GOC's financial contribution (the provision of HRS produced by government-owned producers) is made to the trading company suppliers that purchase the HRS, while all or some portion of the benefit is conferred on the respondents who purchase the HRS from the trading company. Where the price paid by the steel wheels producers is less than the benchmark price, the steel wheels producers receive a benefit when they purchase these government-provided goods and, accordingly, receive these inputs for LTAR. Therefore, for purposes of this investigation, the Department will continue to include purchases of all HRS produced by government-owned producers in its subsidy calculations.

**Comment 10:** Whether the GOC Acted to the Best of Its Ability to Provide Information Regarding the Ownership Status of HRS Producers

GOC's Case Brief

The GOC explained to the Department, in its July 15, 2011, and September 23, 2011, initial and fourth supplemental questionnaire responses, that the CCP and political organizations are not part of the government and, as such, the GOC does not have the requested information and cannot require those entities to provide it. There is no central informational database to search for the requested information or business registration system that collects the information requested by the Department. The Department's deadline for the submission of the information constrained the GOC's ability to obtain it from any sources. However, despite those obstacles, the GOC provided information to the best of its ability by searching public sources and explained to the Department the efforts taken to obtain the information and the results of those efforts. See GOC's September 23, 2011, questionnaire response.

Therefore, the GOC cannot be held to have failed to act to the best of its ability when it did not fully respond to a question "because it was not able to obtain the requested information" (quoting Mannesmannrohren-Werke AG v. United States, 77 F. Supp. 2d 1302, 1316 (CIT 1999)). Accordingly, the Department wrongly used AFA to determine that HRS producers for whom the GOC did not provide CCP-related information are government authorities.

Centurion Companies' Case Brief

The Department erred in finding the alleged provision of steel inputs by the GOC to be countervailable in the Preliminary Determination.

**Department's Position:** The GOC failed to provide information which the Department deems necessary to fully analyze the government authority status of the HRS producers. For some producers, the GOC provided no responses at all. For others, it provided certain information to varying degrees. Crucially, the GOC did not provide a complete response for any of the HRS producers.

In its fourth supplemental questionnaire response, the GOC stated that it made an effort to provide the information requested through publicly available sources. See GOC's September 23, 2011, questionnaire response at 2. However, the GOC neither explained in detail the actions it took to collect the information, nor identified the local industrial and commercial bureaus and other public sources that it contacted, or the websites that it researched in its attempt to obtain the information. Id. at 1-26. We, therefore, determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information.

We also disagree with the GOC that this missing information is irrelevant to our government authority analysis. Ownership information is necessary to determine whether the government controls a producer and is essential to our "authority" determination. Information as to the party or other affiliations of the owners, and of the managers and boards of directors, also is necessary to determine whether there is government control over the producer.

The adverse inference that the entities are authorities within the meaning of the statute is supported in cases such as this where the ownership/control structure of an input supplier is unclear. Therefore, because the GOC did not provide full and complete information for the HRS

producers under examination, we have adversely assumed that they are government-owned or controlled and, thus, are “authorities” within the meaning of the Act.

Contrary to the GOC’s assertion that the Department’s deadlines for the submission of the information constrained its ability to obtain the requested information, the Department granted in full the GOC’s request for additional time to respond to section II.E.3 of the initial questionnaire (i.e., section regarding HRS for LTAR) and the fourth supplemental questionnaire for HRS producer information. See Memorandum to the File from Robert Copyak, Senior Financial Analyst, AD/CVD Operations, Office 3, regarding “Extension of Deadline for the GOC’s Initial Questionnaire Response” (June 10, 2011), and Letter to the GOC regarding “Extension for the GOC for Submitting a Response to the Fourth Supplemental Questionnaire” (September 14, 2011).

**Comment 11:** Extent to Which Chinese Communist Party (CCP) Membership is Relevant in Determining Whether HRS Producers Are Government Authorities Capable of Providing a Financial Contribution

#### GOC’s Case Brief

The status, as CCP officials or representatives, of owners, members of the board of directors or managers of HRS producers is irrelevant to determining whether these HRS producers can lawfully be treated as government authorities. PRC law prohibits civil servants from holding positions in private enterprises or profit-making organizations or otherwise doing business in such enterprises or organizations. Specifically, Article 53 of the Civil Servant Law provides that “[a] civil servant shall observe disciplines and shall not” undertake or participate “in an enterprise or any other profit-making organization.”

Even if the owners, members of the board of directors, or managers of a HRS producer were officials or representatives in any of the organizations like the CCP, Chinese People’s Political Consultative Conference (CPPCC), or the Chinese People’s Congress, this fact does not support the conclusion that they are carrying out governmental functions. Nor could it support any conclusion that the Chinese government is interfering in the management and operation of the input producer. PRC law prohibits such interference. The 1993 Company Law clearly specifies that shareholders, directors and managers of the company are only responsible to the organizations within the company, as established in accordance with the law, and that the operation and management of the company shall not be interfered with by any organizations outside of the company. Therefore, even if the owners, members of the board of directors, or managers were officials or representatives in any of the organizations at issue in these questions, the organizations, by law, shall not have any influence or interference in the exercise of their duty within the company.

More fundamentally, CCP-related activities are not relevant to the Department’s determination of whether the HRS producers are government authorities. The CCP is not a government organization. Similar to the Republican or Democratic parties in the United States, the CCP is a political party. The People’s Congress is the basis of the political system of the PRC whose function is similar to that of parliament members in Western nations. The main functions of the CPPCC are political consultation, democratic supervision, and participation in the discussion of state affairs. Thus, none of the functions of the CCP, People’s Congress, or CPPCC consist of interfering in the management of specific enterprises.

**Department’s Position:** As explained above, ownership information is necessary to determine whether the government controls a producer and is essential to our “authority” determination. Information as to the party or other affiliations of the owners, and of the managers and boards of directors, also is necessary to determine whether there is government control over the producer. Further, as noted above, the application of adverse inferences is warranted in situations in which the ownership/control structure of an input supplier is unclear. In the instant investigation, the GOC has chosen to contest the relevance of the Department’s questions regarding the ownership status or control of HRS rather than respond to the questions to the best of its ability. Therefore, because the GOC did not provide full and complete information for the HRS producers under examination, we have adversely assumed that they are government-owned or controlled and, thus, are “authorities” within the meaning of the Act.

**Comment 12:** Whether the Department Applied Consistent Treatment of HRS Producers In Terms of Ownership Status

#### Jingu Companies’ Case Brief

As required by the Department’s CVD questionnaire, the Jingu Companies reported in their initial and revised HRS purchase listings the basic ownership structure (i.e., privately held or state-owned) of each HRS producer from which the Jingu Companies purchased HRS during the POI. For purchases made through trading companies, the basic ownership structure of the original steel producer was reported. For certain HRS suppliers that the Jingu Companies reported as privately owned, the Department in the preliminary determination-without explanation or factual justification-determined instead that the producers were state-owned. As a result, the Department, with no further explanation, included in the Jingu Companies’ HRS-related subsidy calculation certain POI purchases from privately-owned producers that the Jingu Companies expected would be excluded from the calculation of the company’s HRS subsidy rate. Given the lack of explanation for the re-designation of certain privately-owned producers reported by the Jingu Companies as state-owned companies, and given that the Department has examined the ownership structure of many of these privately-held Chinese steel producers in prior CVD proceedings, the Department should ensure in the final determination that any re-designations of privately-owned producers as state-owned companies were intentional, based on sufficient record evidence, and do not conflict with ownership determinations made for the same producers in prior CVD investigations.

#### GOC’s Case Brief

The record in this investigation establishes that Producer A is a private entity.<sup>75</sup> In its July 15, 2011 questionnaire response, the GOC included ownership information, capital verification report, articles of incorporation, and business registration for Producer A, one of the Jingu Companies’ HRS suppliers. Despite this dispositive evidence that Producer A is privately-owned, the Department treated the producer as a government authority in the Preliminary Determination.

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<sup>75</sup> For the identity of Producer A, which is proprietary, see the March 16, 2012, Memorandum to the File from Robert Copyak, Senior Financial Analyst, titled “Proprietary Company Names Referenced in the Issues and Decision Memorandum.”

The GOC believes that in the preliminary analysis, the Department inadvertently overlooked the ownership information that the GOC previously submitted concerning Producer A because the company was identified in the GOC's questionnaire response under a slightly different name, heretofore referred to as Producer B<sup>76</sup>, while the same supplier company was identified in the response of the Jingu Companies as Producer A. It is clear from evidence on the record, however, that these are the same company. The GOC has attempted to remedy what it believes is the Department's mere mistake in company identity by supplying additional factual information to corroborate and support the record evidence regarding the ownership of Producer A. On November 28, 2011, the GOC timely submitted additional factual information that corroborated and clarified that Producer A is a privately-owned company and, further, that the Department has specifically determined so in prior investigations. The Department improperly rejected these exhibits on December 2, 2011. In response, the GOC asked the Department to reverse the rejection, explaining, as it does here, that Producer A is a privately-owned company, that the record evidence establishes this, and that the Department's preliminary analysis to the contrary is likely based on an oversight, which the proffered exhibits address. The Department has not responded to the GOC's December 2, 2011 request to reverse the rejection. The GOC respectfully submits that the Department should admit Exhibits FA-7 through FA-10 as corroboration of the private ownership of Producer A.

Regardless of the Department's decision on these exhibits, the record evidence is that Producer A is privately-owned. Accordingly, the Department must reverse its preliminary finding and treat Producer A as a private entity in its final determination.

**Department's Position:** Information on the record indicates that the identity of Producer A and Producer B is the same. See the Jingu Companies' November 28, 2011, submission at Exhibit 3; see also the GOC's July 15, 2011, submission at Exhibit HR-12. In PC Strand from the PRC, we explained the following with regard to the HRS producer at issue:

{T}he information on the record indicates that certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies. However, we find that the record lacks the necessary broader information regarding, e.g., the role that these organs play in China in forming and implementing such things as government industrial policies, or CCP initiatives or priorities. The record likewise lacks the information necessary to fully understand the extent of the ability of individual government or CCP officials to further such policies and initiatives within companies that they may own or manage. Accordingly, we find that this record information provides an insufficient basis on which to conclude that the relationships between individual owners and the GOC or CCP evince government control . . . .

See Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010) (PC Strand from the PRC), and accompanying Issues and Decision Memorandum (PC Strand from the PRC Decision Memorandum) at Comment 8. The Department further explained that it would continue to explore this issue in future segments of this proceeding and future CVD proceedings involving the PRC.

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<sup>76</sup> For the identity of Producer B, see *id.*

In the instant investigation, we instructed the GOC to provide information regarding the CCP and other GOC bodies, as discussed in Comment 8 of PC Strand from the PRC. The GOC provided information indicating that the HRS producer at issue is majority-owned by individuals. However, the GOC failed to fully respond to the Department's questions concerning the individual owners' status as CCP officials. As explained above in the "Use of Facts Otherwise Available and Adverse Inferences" section above, due to the GOC's failure to act to the best of its ability with regard to this issue, we are assuming as AFA that all HRS producers acted as government authorities.

With regard to Exhibits FA-7 through FA-10 of the GOC's November 28, 2011, submission, the Department rejected this information on December 2, 2011, because it is the type of information that the Department had formally requested earlier in this proceeding. Specifically, in the Department's May 13, 2011, initial questionnaire and in the July 25, 2011, first supplemental questionnaire, we requested that the GOC submit information regarding the input suppliers and producers from which the mandatory respondents purchased HRS during the period of investigation.<sup>77</sup> Consequently, information responsive to the input supplier questions in these two questionnaires is subject to the deadlines set forth in those questionnaires, and any such information submitted after the questionnaire deadline cannot be submitted under 19 CFR 351.301(b)(1) and is untimely in accordance with 19 CFR 351.302. Again, although the GOC provided some of the requested information regarding the input supplier at issue, the GOC failed to provide timely answers in this proceeding to the Department's questions concerning the individuals that are owners of the company and their status as CCP officials.

With regard to input suppliers that the Jingu Companies' did not expect would be treated as SOEs, again, the Department continues to determine that the GOC failed to fully answer the questions regarding the owners of input suppliers and the CCP. As a result, as AFA, we are assuming that all HRS producers acted as government authorities.

**Comment 13:** Data Source To Be Used for the Jingu Companies Under the HRS for LTAR Program

Jingu Companies' Case Brief

In calculating a program rate for the final determination with regard to the Jingu Companies' purchases of HRS, the Department should use the updated HRS listings that the Jingu Companies submitted to the Department on November 28, 2011, and include the minor corrections that were presented at the beginning of verification.

In its November 28 submission, the Jingu Companies provided updated POI HRS purchase listings for Zhejiang Jingu and its affiliated producer Zhejiang Wheel World Industrial Co., Ltd. (Zhejiang Wheel World). The two companies' initial HRS purchase listings were based on warehouse records. In advance of verification, the companies reconciled the POI warehouse records and accounting systems of Zhejiang Jingu and Zhejiang Wheel World. Zhejiang Wheel World corrected two HRS supplier names in the revised purchase listing and added two HRS purchase transactions that were inadvertently omitted from the initial listing. The Department accepted the minor corrections after confirming the accuracy of each revision. Accordingly, any countervailing duties calculated for the POI HRS purchases of Zhejiang Jingu

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<sup>77</sup> See May 13, 2011, initial questionnaire at section II, "Provision of HRS for Less Than Adequate Remuneration (LTAR) at question j and Section III, "Provision of HRS for LTAR" at question 3.

and Zhejiang Wheel World should be based on the revised purchase listings submitted on November 28 and the additional minor corrections presented during the Department's on-site verification.

**Department's Position:** We agree with the Jingu Companies. The revised HRS purchase data provided by the Jingu Companies on November 28, 2011, were accepted by the Department. In addition, the minor corrections to these data that were presented at verification were accepted by the verification team. Accordingly, we have incorporated these revised data into the final calculations of the Jingu Companies.

**Comment 14:** Whether the Department Should Use a Tier One, In-Country Benchmark in the Benefit Calculation of the HRS for LTAR Program

#### Centurion Companies' Case Brief

The Department erred in not using a tier one benchmark because there is no evidence on the record indicating that prices from actual sales transactions involving Chinese buyers and sellers of steel are distorted.

**Department's Position:** The Department has addressed the arguments of the Centurion Companies in this regard in prior CVD investigations involving the PRC. See, e.g., Kitchen Racks from the PRC Decision Memorandum at Comment 8; Line Pipe from the PRC Decision Memorandum at Comment 5, and CWP from the PRC Decision Memorandum at Comment 7. The Department's long-standing practice is to utilize a benchmark outside of the country of provision when the government's sales constitute a significant portion of the sales of the good in question. See, e.g., Line Pipe from the PRC Decision Memorandum at Comment 5. Out-of-country benchmarks are required in such instances because the use of in-country private producer prices would be akin to comparing the benchmark to itself (i.e., such a benchmark would reflect the distortions of the government presence). See CWP from the PRC Decision Memorandum at Comment 7. The Department reached a similar conclusion in Softwood Lumber from Canada:

Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.

See Softwood Lumber from Canada Decision Memorandum at Comment 34.

As explained above in the "Provision of HRS for LTAR" section, data from the GOC indicate that the ratio of HRS produced by government entities (SOEs and collectives) during the POI was 70.18 percent. Consequently, because of the government's predominant role in the HRS market, the use of private producer prices in the PRC would be akin to comparing the benchmark to itself (i.e., such a benchmark would reflect the distortions of the government

presence). Thus, in keeping with the Department's practice, HRS prices charged within the PRC are not viable for purposes of the HRS benchmark.

**Comment 15:** Use of HRS Benchmark Data That More Accurately Correspond to Xingmin's Domestic Purchases of HRS

Xingmin Companies' Case Brief

In the Preliminary Determination, the Department based its benchmark values for the provision of HRS for LTAR on a combined valuation of HRS plate and HRS coils. At that time, the Xingmin Companies had submitted data on their HRS purchases that did not distinguish between plate and coils. However, in its December 2, 2011, submission the Xingmin Companies provided a transaction-specific listing of all purchases of HRS in plate and HRS in coils during the POI. Therefore, the Department should use benchmark data that are specific and separate for plate and coils for the final determination to enhance the accuracy of the Department's benefit calculation.

Centurion Companies' Case Brief

Virtually all of the Centurion Companies' steel wheels are made from HRS coil, rather than HRS plate. See, e.g., Centurion Companies Verification Report at VE-10. Thus, the Department should revise the HRS benchmark for the Centurion Companies to include only the price for HRS coil.

**Department's Position:** 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 product under examination. See, e.g., Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 4936 (January 28, 2009), and accompanying Issues and Decision Memorandum at "Provision of SSC for LTAR" (where the Department matched steel grade); Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008), and Issues and Decision Memorandum at "Sale of High-Grade Iron Ore for LTAR" (where the Department conducted the benefit analysis on a lump to lump and fine to fine basis); and Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 73448 (December 12, 2005), and accompanying Issues and Decision Memorandum at "Calculation of Provincial Benefit" and "Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the GOBC" (where the Department computed species-specific benefits). For the Preliminary Determination, we computed monthly HRS benchmark prices that were a simple average of HRS plate and HRS coil prices sourced from the SteelBenchmarker and MEPS International Ltd. See Preliminary Determination, 76 FR at 55024-55025. We preliminarily used that combined HRS plate and coil benchmark pricing data to compute the unit benefits for the respondent companies' HRS purchases. For the final determination, however, in instances where a respondent's HRS purchase data permits such a "plate to plate" or "coils to coils" price comparison, we applied a input product specific benchmark, i.e., HRS plate benchmark price compared to HRS plate purchase price and HRS coils benchmark price compared to HRS coils purchase price, for computation of the benefit calculations. In other instances, where it is not clear whether a

respondent purchased HRS plate or HRS coils, we applied a combined HRS coil/plate benchmark price. For more information, see the respondents' final calculations memoranda.

**Comment 16:** Whether the Department Should Reduce the HRS Benchmark to Account for the Cash Discounts that the Jingu Companies Receive from Their HRS Suppliers

#### Jingu Companies' Case Brief

Pursuant to 19 CFR 351.511(a)(2)(iv), the Department is required in "adequate remuneration" determinations to adjust any benchmark prices to "reflect the price that a firm actually paid or would pay if it imported the product." In the Preliminary Determination, the Department compared the Jingu Companies' HRS purchase prices to monthly average HRS benchmark prices derived from MEPS and AMM's SteelBenchmarker, adjusted to reflect ocean freight charges, import duties, and inland freight. In its November 28, 2011 submission of post-preliminary determination factual information, the Jingu Companies confirmed that, during the POI, they received for their HRS purchases an average cash discount of 3.22 percent. The MEPS pricing data already reflect "cash (mean) prices" similar to the cash-discount prices that the Jingu Companies' suppliers offer the companies. However, the steel benchmark pricing data derived from AMM's SteelBenchmarker are not similarly adjusted to reflect discounted pricing for cash payments. Accordingly, the AMM SteelBenchmarker prices must be adjusted downward 3.22 percent in the final determination to ensure consistency with the MEPS data and to ensure that the benchmark prices for HRS "reflect the price" that the Jingu Companies "actually paid or would pay."

**Department's Position:** In their November 28, 2011, submission, the Jingu Companies provided a breakdown of the monthly percentage of "Non-cash Surcharge" charged by one of its HRS suppliers during the POI. The Jingu Companies have not demonstrated whether it paid cash with regard to its purchases of HRS during the POI or paid such surcharges. Further, we find that limited information concerning the terms of sale of a single HRS supplier does not constitute a sufficient basis to revise the HRS benchmark, especially given that in the benefit calculation the HRS benchmark is compared to the prices charged by all of the Jingu Companies' HRS suppliers.

**Comment 17:** Whether the HRS Benchmark Prices Should Be Adjusted Downward to Reflect the Prices the Jingu Companies Paid for Non-Pickled and Non-Oiled HRS

#### Jingu Companies' Case Brief

Under 19 CFR 351.511(a)(2)(iv) the Department is required in "adequate remuneration" determinations to adjust any benchmark prices to "reflect the price that a firm actually paid or would pay if it imported the product." In addition, 19 CFR 351.511(a)(2)(ii) requires the Department in using world market prices as benchmarks to "average such prices to the extent practicable, {while} making due allowance for factors affecting comparability."

During the POI, the Jingu Companies consumed only non-pickled and non-oiled HRS in the production of subject steel wheels. The MEPS and AMM steel benchmark pricing data the Department used in the Preliminary Determination reflect HRS that is both pickled and oiled,

which are standard surface treatments used for commodity steel that is transported by ocean and between countries. During the POI, all of the Jingu Companies HRS was sourced domestically within China and thus, by sourcing HRS that was not pickled and not oiled, the Jingu Companies were able to reduce its steel costs. By applying benchmark prices for pickled and oiled HRS in the Preliminary Determination, the Department significantly overstated the difference between the Jingu Companies' actual steel costs and the monthly average HRS benchmark prices derived from MEPS and AMM's SteelBenchmarker. Therefore, in the final determination, the Department should make "due allowance for factors affecting comparability" between the Jingu Companies' actual HRS purchases and the benchmarks used (*i.e.*, the cost differential between pickled and oiled and non-pickled and non-oiled steel) to ensure that the HRS for LTAR subsidy rate for the Jingu Companies is not overstated.

**Department's Position:** The assertion made by the Jingu Companies in their case brief that the HRS used by the Jingu Companies in the production of steel wheels is not pickled or oiled is not corroborated by information on the record. In fact, there is nothing on the record, other than the assertion in the case briefs of the Jingu Companies, regarding whether the HRS purchased by the Jingu Companies is pickled and/or oiled or not. In addition, there is nothing on the record indicating that the benchmark prices pertain to pickled and/or oiled HRS. Accordingly, the adjustment requested by the Jingu Companies to account for pickling and oiling of HRS has not been demonstrated.

**Comment 18:** Whether the Provision of HRS for LTAR Is Specific Under the CVD Law

#### GOC's Case Brief

The Department preliminarily found the provision of HRS to be specific because "the industries named by the GOC are limited in number." See Preliminary Determination, 76 FR at 55025. The GOC, however, argues that the evidence on the record of a wide range of industries utilizing HRS does not meet the statutory requirement of "specificity." The GOC submitted evidence that the end uses of HRS relate to the type of industry involved as a direct purchaser of the input and documented that a broad range of industries consume HRS. See GOC's July 15, 2011, questionnaire response to section II.E.3 at 10. The evidence demonstrates that HRS sales are not directed to a specific group of industries or enterprises, but that sales are made to a wide variety of industries. The record shows that the GOC does not restrict the prices charged to HRS consumers. *Id.* at 7-10. Thus, the Department must reverse its finding that the provision of HRS is specific to steel wheel producers for the final determination.

**Department's Position:** In its response, the GOC claimed that varied producers and industries may purchase HRS and provided a 2002 Chinese input-output table for ferroalloy metal. *Id.* at 10 and Exhibit HR-3. Section 771(5A)(D)(iii)(I) of the Act directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of that data, which identifies a limited number of industries, and consistent with our past practice, we preliminarily determined that the provision of HRS for LTAR program is *de facto* specific. See section 771(5A)(D)(iii)(I) of the Act; see also LWRP from the PRC Decision Memorandum at Comment 7; see also Kitchen Racks from the PRC Decision Memorandum at "Provision of Wire Rod for Less Than

Adequate Remuneration.” The GOC’s argument does not warrant the Department to change its preliminary finding of specificity for the HRS for LTAR program in the final determination.

**Comment 19:** Whether It Was Appropriate to Apply AFA With Regard to the GOC Concerning the Provision of Electricity for LTAR Program

In the Preliminary Determination the Department found that the GOC’s responses concerning electricity were inadequate. The Department concluded that the GOC has failed to cooperate by not acting to the best of its ability to comply with its request for information. As adverse facts available, the Department selected as the benchmark the highest electricity rate in all of China, which was in the Zhejiang province.

The record does not support the Department’s reasoning for applying AFA with respect to electricity. The rates paid by the Centurion Companies were consistent with published applicable electricity rates for the Shandong province where the Centurion Companies are located. Thus, there is no evidence that the Centurion Companies benefitted from this program.

**Department’s Position:** As explained in detail in the “Use of Facts Otherwise Available and Adverse Inferences” section above, the GOC failed to provide the requested information regarding the provision of electricity for LTAR. As a result, the Department is applying AFA and assuming that the provision of electricity by GOC authorities constitutes a financial contribution and is specific under the Act. We note the Department faced the same issue in OCTG from the PRC and reached the same conclusion. See OCTG from the PRC Decision Memorandum at Comment 30.

**Comment 20:** Whether the Provision of Electricity Is Not Countervailable Because the Program Provides General Infrastructure Which Does Not Constitute a Financial Contribution

GOC’s Case Brief

The Department may not lawfully countervail the provision of electricity because the alleged program constitutes general infrastructure and, therefore, is not a financial contribution under the CVD law or the SCM Agreement. The statute defines financial contribution as “providing goods or services, other than general infrastructure.” See section 771(5)(D)(iii) of the Act; see also SCM Agreement, Art. 1.1(a)(1)(iii). The record shows that the provision of electricity by the GOC in this case was not specific to the steel wheels industry, as would be required in order to find any program countervailable. See section 771(5A) of the Act. In Racks from the PRC, the Department concluded in a detailed preliminary analysis that the provision of electricity in China does not confer countervailable subsidies.

The Department should follow its long-standing precedent of rejecting petitioners’ attempts to claim infrastructure subsidies, arguing that the GOC’s provision of electricity to steel wheel producers is general infrastructure and not a financial contribution, and in any event is not specific to the steel wheels industry and therefore not a countervailable benefit. See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From Saudi Arabia, 51 FR 4206, 4211 (February 3, 1986) (Wire Rod from Saudi Arabia).

In the Preliminary Determination, the Department did not find that the GOC has placed restrictions on who may use the power grid and did not specifically find that the power grid was built solely for use by the steel wheels industry; rather, the grid was constructed for use by all companies as well as by the general population, much like the electrical industry which was found not to provide a countervailable benefit in Bethlehem Steel Corporation v. United States, 223 F. Supp. 2d at 132, 1379-80 (CIT 2002). In its questionnaire responses related to the provision of electricity, the GOC informed the Department that “electricity prices are classified by end user categories such as residential use prices, agricultural use prices, large industries and industrial and commercial use prices. Within each category, for each province in question respectively, the electricity prices are equally applied to all end users. No specificity exists with regard to the electricity prices.” See GOC’s July 5, 2011, questionnaire response at 61. The GOC has cooperated to the best of its ability to respond to the questions regarding electricity and, therefore, the Department has no basis to apply AFA.

Lastly, the record evidence also fails to demonstrate that the GOC has given steel wheel producers preferential rates or greater access to the power grids. The only benefits that the steel wheel industry has received from the power grid are those related to the inherent nature and location of the facilities and not from any activity or action of the government.

**Department’s Position:** As explained above in the “Adverse Facts Available” section, the GOC failed to provide the requested information regarding the provision of electricity. As a result, the Department is applying AFA and assuming that the provision of electricity by the GOC authorities constitutes a financial contribution and is specific under the Act.

The Department disagrees with the GOC’s position that electricity is categorized as “general infrastructure.” The Department has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure.<sup>78</sup> Moreover, the Department’s regulations explicitly categorize electricity within the provision of goods and services.<sup>79</sup>

**Comment 21:** Whether Banks in the PRC Are Government Authorities Capable of Providing a Financial Contribution

#### GOC’s Case Brief

The Department fails to support its Preliminary Determination with regard to loans provided by Chinese commercial banks to the respondent companies with evidence that the GOC directed the banks to provide the loans at issue. The record is devoid of the required evidence that the Chinese commercial banks had their conduct meaningfully controlled by the GOC, have

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<sup>78</sup> See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at Comment 10. (“Furthermore, the electricity at issue here is not general infrastructure, but a good that is bought and sold in the marketplace. In the Department’s view, the term infrastructure refers to the types of goods and services described in the Preamble to the regulations, including schools, interstate highways, health care facilities, and police protection. According to our regulations, if we find that these types of infrastructure were provided for the broad societal welfare, they would be considered general infrastructure.”); see also Bricks from the PRC Decision Memorandum at Comment 9.

<sup>79</sup> See CVD Preamble, at 65377. (“We also received several comments in response to our stated intention of continuing to employ a preferentiality type analysis where the government is the sole provider of goods or services such as electricity, water, or natural gas.”)

or exercised governmental authority or functions, or otherwise have a relationship with the GOC that could meet the definition of a government “authority” within the meaning of 19 U.S.C. § 1677(5)(B) or “public body” in the SCM Agreement. The Department has previously determined that state ownership alone is insufficient to establish that Chinese commercial banks are authorities and has found entities with majority government ownership not to be government authorities for purposes of CVD law. See CFS from the PRC Decision Memorandum at 55; see also DRAMs from Korea Decision Memorandum at 17, 61. The issue is not ownership but whether the banks are acting on a commercial basis or as government “authorities.” For these reasons, the Department’s preliminary findings are unlawful and must be corrected in the final determination.

### Jingu Companies’ Case Brief

The Department should not calculate any countervailing duties on loans that the Jingu Companies had outstanding during the POI because banks in the PRC are not “authorities” or “public entities” within the meaning of the statute. As with HRS producers, the Department cannot continue to focus on government ownership as the dispositive factor for determining whether a banking entity is an “authority.” Instead, the Department should base its analysis on the extent to which Chinese banks possess or exercise “governmental authority.”

Given that WTO DS379 has been adopted and given also that the Department is now in the process of implementing the WTO Appellate Body’s decision, the Department must conclude definitively-and consistent with the Appellate Body’s determination - that banks in the PRC are not “authorities” or “public bodies.” Accordingly, the Department’s “authority” analysis with respect to Chinese banks from which the Jingu Companies sourced commercial loans during the POI must be consistent with the public body analysis set forth by the WTO’s Appellate Body.

### Centurions Companies’ Case Brief

The Department erred in finding a financial contribution with respect to loans provided to the Centurion Companies by commercial banks. Ownership by the GOC alone does not establish that entity as a government authority within the meaning of the statute. See DRAMs from Korea Decision Memorandum at 17 (finding an entity that is 100 percent government-owned not to be a government authority). Without any affirmative evidence of government control, the commercial banks cannot be deemed to be government authorities. Furthermore, there is no evidence that the GOC “entrusted or directed” the commercial banks to provide a financial contribution. None of the so-called government directives contain any language that specifically entrusts or directs any commercial banks to provide preferential loans to Centurion or the steel wheel industry.

**Department’s Position:** The Department has previously determined that government-owned banks are a public entity or authority under the CVD law. See, e.g., OCTG from the PRC Decision Memorandum at Comment 20. This treatment of government-owned commercial banks as authorities is consistent with our treatment of all other government-owned entities, such as government-owned manufacturers, utility companies, and service providers. In CORE from Korea, the Department decided to modify our treatment of commercial banks with government ownership with respect to the finding of a financial contribution under section 771(5)(B)(i) of the

Act. See CORE from Korea Decision Memorandum at “Programs Determined to Confer Subsidies.” As we found in CORE from Korea, we continue to find that the treatment of government-owned commercial banks as authorities is also consistent with 19 CFR 351.505(a)(2)(ii) and 351.505(a)(6)(ii). Thus, a government owned or controlled bank, be it a commercial bank or a policy bank, is considered a public entity or authority under the Act. Therefore, the Department considers banks that are owned or controlled by the government to be public authorities under the CVD law.

In light of the Department’s findings in CORE from Korea, we do not find the GOC’s arguments concerning CFS from the PRC (e.g., that the Department purportedly found that state ownership alone is not sufficient to establish that PRC commercial banks are authorities and even found entities with majority government ownership not to be government authorities) to be persuasive. Further, as noted above, in OCTG from the PRC, an investigation issued after CFS from the PRC, the Department explicitly rejected the notion that state ownership alone is not sufficient to establish that Chinese commercial banks act as GOC authorities. See OCTG from the PRC Decision Memorandum at Comment 20.

Regarding the respondents’ arguments concerning AB DS379, as noted above, the CAFC 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. See Corus I, 395 F.3d 1343 at 1347-49; accord Corus II, 502 F.3d 1370 at 1375; and NSK, 510 F.3d 1375. With respect to AB DS379, the United States has not yet employed the statutory procedure set forth at 19 U.S.C. 3533(g) to implement the Appellate Body’s finding.

**Comment 22:** Whether a Causal Nexus Exists Between the GOC’s Industrial Policies and Loans Received by Respondents

GOC’s Case Brief

The Department’s standard, on its face and as applied in this investigation, reaches beyond the lawful limits. U.S. law provides that a subsidy is specific as a matter of law when “the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limit access to the subsidy to an enterprise or industry.” See section 771(5A)(D)(i) of the Act. In making a determination of whether the respondents received countervailable loans, the Department may not lawfully rely on general statements of broad economic goals for the auto industry, such as making the auto industry a “pillar industry.” Nor may the Department lawfully rely on broad planning documents to make this determination. The references to the development and encouragement of the automotive and automotive parts industry from various plans cited by the Department falls far short of requiring preferential lending to the steel wheels industry. The documents relied upon by the Department to make its determination do not direct “policy lending” to steel wheels industry. These documents neither provide nor expressly limit a subsidy to the steel wheels industry.

Decision 40 does not support the Department’s conclusion that the GOC directs lending to steel wheel producers at preferential rates. Decision 40 applies to hundreds of projects and is not limited to a single enterprise or industry as required by section 771(5A)(D)(i) of the Act. In addition, Article 17 of Decision 40 specifically provides that “{a}ll financial institutions shall provide credit in accordance with lending principles.” See Decision 40 at 10. Thus, there is no directive in Decision 40 for preferential lending specifically to the steel wheels industry.

Fundamentally, there is no record evidence that any policy related to the automotive or automotive parts industry had any connection to or effect upon the decision of any bank to issue loans to any respondent. The GOC provided information establishing that loans are made by banks organized and operating under Chinese company law and in accordance with Chinese law and regulations governing commercial banks. In this regard, the GOC provided ample evidence of how the banks made their lending decisions based on well-accepted commercial considerations and how loans to the steel wheels industry compared to loans for comparable industries other than steel wheels. See GOC Initial CVD Response (July 5, 2011); GOC 1st Supplemental and Addendum Response (August 10, 2011).

### Centurion Companies' Case Brief

The Department erred when it determined in the Preliminary Determination that all of its loans from Chinese banks were countervailable. The Department cites to various government “directives,” such as the GOC’s 11<sup>th</sup> Five Year Plan, Interim Provisions on Promoting Industrial Structure Adjustment, and other similar documents. While these documents express general support for such “investment industries” as the auto industry, there is nothing in those documents that refers to loans by commercial banks or directs any of the banks to provide any preferential loans to such industries. Mere expressions of support cannot constitute de facto specificity.

Additionally, as evidenced in the relevant loan contracts that the Department has examined, the Centurion Companies applied for and received the loans based purely on commercial considerations. See Centurion Companies’ Verification Report at VE-14. There is no evidence that Centurion received any preferential treatment by virtue of being a steel wheel producer. Thus, the loans received by the Centurion Companies were not provided pursuant to any “program” or were de facto specific.

Moreover, in virtually every CVD proceeding involving the PRC, loans made by state-owned commercial banks have been alleged to be a countervailable subsidy. And in all such cases, the Department has found such loans to be specific to the industry concerned, and, thus, countervailable. The industries concerned cover virtually all sectors of manufacturing, such as steel, aluminum, automobiles, paper, and chemicals. Thus, the body of the previous Department cases showing that the so-called “policy” loans have been granted to such a wide range of industries is prima facie evidence that the loans are generally available and not specific to any one industry.

**Department’s Position:** We continue to find that loans received by the steel wheels industry from SOCBs were made pursuant to government directives. We disagree with the GOC’s contention that the Department erred in countervailing policy lending in the Preliminary Determination. 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. See, e.g., Drill Pipe from the PRC Decision Memorandum at Comment 8. We find this standard has been met in the instant investigation.

We disagree with the GOC’s claim that the Department’s preliminary decision is flawed because it is based on isolated references and general statements of broad economic goals. The Department has previously determined that Article 34 of Law of the People’s Republic of China on Commercial Banks (Banking Law) states that banks should carry out their loan business “under the guidance of the state industrial policies.” See OCTG Decision Memorandum at

Comment 21. The Department therefore found that the Banking Law, in some measure, stipulates that lending procedures be based on the guidance of government industrial policy. Id.

We also disagree with the GOC's claim that Decision 40 fails to support the Department's preliminary decision. In Decision 40, Article 3 states:

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

See the GOC's August 4, 2010, questionnaire response, Exhibit 6 at 2. Thus, Decision 40 indicates the GOC's intent to continue to "guide" the market. Id.

In addition to these GOC documents, as discussed in detail in the "Policy Loans to the Steel Wheels Industry," section of this memorandum, several GOC policies designate the automobile and steel industries as "encouraged" and "pillar" industries (e.g., the Key Industry Catalogue, Formal Automobile Policy, Automotive Industry Policy, and Restructuring and Revitalization Plan). Furthermore, business proprietary source documents concerning the largest loans respondents had outstanding during the POI further supports our determination that the GOC has a policy in place to encourage the development of the production of steel wheels through policy lending. See Internal Loan Document Memorandum.

Thus, taking into account all of the evidence, we determine that the GOC's industrial plans clearly indicate state support and, specifically, credit or financing support for the producers of aluminum extrusions.

We disagree with the Centurion Companies' arguments that the Department's findings in prior CVD proceedings involving the PRC concerning policy lending programs precludes us from determining that the policy lending programs in the instant proceeding are specific under Section 771(5A)(D)(i) of the Act. Aside from assertions, the Centurion Companies provide no data to support its claims that policy loans are distributed across industries in the PRC in a manner that are not de jure or de facto specific. Further, the GOC, the ultimate source of such information, has not provided any data to substantiate the claims made in the case brief filed by the Centurion Companies.

Lastly, as noted above in the "Policy Loans to the Steel Wheels Industry," section of this memorandum, our decision to find the policy lending program countervailable does not extend to the notes receivable that the Centurion Companies discounted with other firms during the POI. Because the financing was not provided by government-owned/controlled entities, such as SOCBs or policy banks, we have not included them in our examination of policy lending. This approach is consistent with the Department's practice. See Coated Paper from the PRC Decision Memorandum at Comment 38.

**Comment 23:** Whether the Department Should Use a PRC-Based Tier One or Tier Two Benchmark in the Benefit Calculations of the Policy Lending Program

Centurion Companies' Case Brief

If the Department continues to find the loans countervailable it should use a tier one or tier two benchmark to determine the benefit. The Department should base the loan benchmark on a rate that Centurion can actually obtain on the market or rely on a Chinese national average rate for comparable commercial loans.

**Department's Position:** In the Preliminary Determination, the Department made the finding that the GOC's predominant role in the banking sector results in significant distortions that render the lending rates in the PRC unsuitable as market benchmarks. See Preliminary Determination, 76 FR at 55018; see also CFS from the PRC Decision Memorandum at Comment 10 and Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008) (LWS from the PRC), and accompanying Issues and Decision Memorandum (LWS from the PRC Decision Memorandum) at Comment 20.

As a result, the Department preliminarily determined that interest rates in the domestic Chinese banking sector do not provide a suitable basis for benchmarking the loans provided to respondents in this investigation and, thus, determined to use an external benchmark to measure the benefit of countervailable loans. See Preliminary Determination, 76 FR at 55018. The Department finds that no new information has been submitted on the record of this proceeding that warrants a reconsideration of the Department's previous findings regarding its rejection of internal benchmarks and its use of out-of-country benchmarks.

For loan valuation purposes, the Department's regulations stipulate that benchmarks must be comparable commercial loans, i.e., they must be from a commercial lending institution, and they must be similar in structure to government loans with respect to whether they are fixed or variable, the date of maturity, and the currency in which they are granted. See 19 CFR 351.505 (a)(2)(i). Because we find that the GOC's intervention has created distortions in the PRC's banking sector, we find that there are no domestic interest rates suitable as benchmarks for our purposes. See 19 CFR 351.505(a)(3). Where we have determined that interest rates in a country are distorted, the Department is directed to find that such interest rates are unusable to measure the benefit from government loans. Id. Furthermore, in CFS from the PRC, the Department noted that it is not possible to adjust for these market distortions, stating that any such endeavor would be a "highly complex, speculative, and impracticable exercise," and that for these reasons, it is appropriate to resort to an external benchmark with regard to GOC lending programs. See CFS from the PRC Decision Memorandum at Comment 10. Therefore, the Department continues to find that it is appropriate to use an external benchmark to calculate the benefits provided under this program.

Further, the use of external benchmarks is consistent with the Department's practice in such situations where government intervention in a sector prevents us from applying an internal benchmark. See, e.g., Lumber from Canada Decision Memorandum at "Provincial Stumpage Programs Determined to Confer Subsidies;" see also CFS Decision Memorandum, at Comment 10, CWP from the PRC Decision Memorandum at "Benchmarks for Short-Term RMB Denominated Loans," and LWS from the PRC Decision Memorandum at Comment 20.

**Comment 24:** Whether the Department’s Short-Term and Long-Term Benchmark Interest Rate Calculations Are Flawed

GOC’s Case Brief

The Department’s regression-based methodology to determine the short-term benchmark interest rate that relies on IMF and World Bank data is fundamentally flawed, because the Department relies on a collection of IMF published rates, which are not actually short-term rates, and may not reflect business loans. The the Department arbitrarily excluded negative inflation-adjusted rates from its benchmark calculation.

Further, in deriving the long-term benchmark interest rate, the Department arbitrarily calculated an adjustment spread between short-term and long-term rates using U.S. dollar “BB” bond rates. The Department uses its improperly derived short-term benchmark as the starting point for its long-term benchmark and then adds a “bump-up” to arrive at the long-term benchmark. The Department erroneously adds the “bump-up” not only to the short-term interest rate but also to the PRC’s inflation rate. There is no justification “bumping-up” an inflation rate.

For these reasons, the GOC argues that the Department should use actual interest rates on comparable bank loans in the PRC.

**Department’s Position:** We disagree that the Department’s regression-based methodology is arbitrary and that the assumptions underlying the benchmark calculation are flawed. The benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes similar to that of the PRC, as well as variables that take into account the quality of a country’s institutions (as reflected by World Bank governance indicators, which are not directly tied to state-imposed distortions in the banking sector). Thus, we continue to rely on the calculated regression-based benchmark first developed in CFS from the PRC.

Regarding the GOC’s objection to the Department excluding inflation adjusted, negative interest rates from the short-term benchmark, as previously explained, the Department finds that negative-adjusted rates are not common, tend to be anomalous, and, moreover, are not sustainable commercially. See, e.g., OCTG from the PRC Decision Memorandum at Comment 25. Therefore, we continue to exclude negative real interest rates in calculating our regression-based benchmark rates.

The GOC has raised the argument that many of the IFS-reported lending rates are not rates for short-term loans. See Line Pipe from the PRC Decision Memorandum at Comment 12. We agree that certain of the interest rates used in our regression analysis may reflect maturities of longer than one year. Indeed, the notes to the IFS state that these rates apply to loans that meet short- and medium-term financing needs. Therefore, we find that these rates should not be treated as exclusively short-term in nature. See 19 CFR 351.102, where a short-term loan is defined as having repayment terms of one year or less. To address this concern, we will continue to use the same interest rate data from the IMF and regression-based benchmark rate methodology, but will apply it to loans with terms of two years or less. This approach is consistent with the Department’s approach in prior investigations. See LWTP from the PRC Decision Memorandum at “Benchmark and Discount Rates” section; see also Line Pipe from the PRC Decision Memorandum at Comment 12.

We also disagree with the GOC's objection to the Department's derivation of the long-term benchmark, which consists of the short-term benchmark plus a spread that is a function of U.S. dollar "BB" bond rates. The Department has fully addressed the arguments raised by the GOC in prior cases. See, e.g., OCTG from the PRC Decision Memorandum at Comment 27. The Department explained that 19 CFR 351.505(a)(3)(iii) requires the Department to use ratings of AAA to BAA and CAA to C- in deriving a probability of default in the stated formula. However, there is no statutory or regulatory language requiring that these rates apply to the calculation of long-term rates under 19 CFR 351.505(a)(3)(i) or (ii). Moreover, the transitional nature of PRC financial accounting standards and practices, as well as the PRC's underdeveloped credit rating capacity, suggests that a company-specific mark-up (to account for investment risk) should not be the general rule. The Department determined that a uniform rate would be appropriate, which would reflect average investment risk in the PRC associated with companies not found uncreditworthy by the Department. As we have received no other objective basis upon which to determine this average investment risk or a basis to presume it is only for companies with an investment grade rating, we are choosing the highest non-investment rate. See OCTG from the PRC Decision Memorandum at Comment 27.

When the Department began to apply this mark-up using the BB corporate bond rate, we solicited comments from parties and none were filed. See Citric Acid from the PRC Decision Memorandum at Comment 13. In this instant case, we have also not received any suggested alternatives. As no new arguments have been presented, we will continue to use the BB corporate bond rate for the final determination in any long-term loan calculations or discount rate calculations. This mark-up accounts for the time value of money and credit risk over the long term, i.e., over and above that which is already reflected in the short-term benchmark rate. Since the mark-up is the difference in nominal rates for an n-year bond and a 2-year bond, the mark-up also implicitly reflects, in theory, expected inflation for the n-2 year time period. Under this approach we find there is no overlap, as the GOC suggests, between this inflation factor and the inflation factor added to the short-term benchmark because that factor represents only inflation in year one and not beyond. We further note our approach in this regard is consistent with the Department's practice. See, e.g., Citric Acid from the PRC Decision Memorandum at Comment 15.

Lastly, we disagree with the GOC's argument that the Department should have used interest rates from PRC-based lending institutions as the basis for the short-term benchmark. In the Preliminary Determination, the Department made the finding that the "GOC's predominant role in the banking sector results in significant distortions that render the lending rates in the PRC unsuitable as market benchmarks." See Preliminary Determination, 76 FR at 55018; see also CFS from the PRC Decision Memorandum at Comment 10, and LWTP from the PRC Decision Memorandum at Comment 20. As a result, the Department preliminarily determined that interest rates in the domestic Chinese banking sector do not provide a suitable basis for benchmarking the loans provided to the respondents in this investigation and, thus, determined to use an external benchmark to measure the benefit of countervailable loans. See Preliminary Determination, 76 FR at 55018. The Department finds that no new information has been submitted on the record to give it reason to revisit its preliminary finding regarding the use of an external benchmark to measure the benefit of loans found to be countervailable.

For all these reasons, we determine that it is appropriate to use the external benchmark methodology as used in the Preliminary Determination. Since the publication of the Preliminary Determination, the Department has made minor revisions to the external benchmark used to

calculate the benefit conferred to recipients of policy loans through this program. See the above section regarding Loan Benchmarks and Discount Rate.

**Comment 25:** Whether Tax Benefits Under Article 28 of the Enterprise Income Tax Law (EITL) Are Specific

#### GOC's Case Brief

The Department cites no evidence in either its preliminary determination or verification report that supports a preliminary finding that this program is specific. The Preliminary Determination does not meet the requirement of “specificity” set forth in section 771(5A) of the Act. The law at issue provides the reduced tax rate to all “high and new technology enterprises.” Nothing in the language of the law nor otherwise in the record suggests that this law is directed to or applied preferentially to the steel wheels industry. The high and new technology industries encompassed by this tax provision are far-ranging, diverse, and span eight general high and new technology subject areas, which further include 39 sub-areas and more than 200 specific areas. Virtually all the traditional industrial sectors, such as agriculture, transportation, energy, chemicals, pharmaceuticals, textiles, light industry and manufacturing are included. For example, “Resources and Environmental Technology,” one of the eight general high and new technology areas identified, can apply to the electroplating, leather, brewing, chemical, metallurgy, paper-making, iron and steel, electronics and many other industry sectors. While those who seek Article 28 tax treatment must fall within the broad scope of the high and new technology areas identified, within these areas there is no limit to any specific industry or sector or product or service.

The Department verified this program, providing it ample opportunity to explore the circumstances under which this tax provision is offered and the diverse range of eligible companies. For all of these reasons, the Department’s preliminary findings with regard to this program should be reversed.

**Department’s Position:** Where a program is limited to a group of enterprises, specifically defined by law, the program is specific within the meaning of section 771(5A)(D) of the Act, which refers to “an enterprise or industry” or “a group of enterprises or industries.” (Emphasis added.) Thus, the law anticipates groupings of enterprises that may otherwise belong to different industries. Moreover, under section 771(5A)(D)(ii), among the conditions that must be met for a program to be found not specific as a matter of law is that eligibility is automatic. Article 28 of the EITL expressly limits the benefits to enterprises with a specific designation, “important high-tech enterprises to be supported by the State,” as defined under Article 93 of the Regulation on the Implementation of the Enterprise Income Tax Law, which specifies additional conditions such as the proportions of R&D expense, revenue and staffing relating to high and new technology production. See the GOC’s September 9, 2011, supplemental questionnaire at Exhibit S3-1. In addition, eligibility for the Article 28 tax benefits is not automatic; the enterprise must undergo an application, designation and certification process and, upon approval by the relevant authorities, is then issued a High and New Tech Enterprise Certificate, before it can claim those tax benefits. See the GOC’s September 9, 2011, supplemental questionnaire at 4. Thus, notwithstanding the GOC’s claim that such enterprises come from a variety of

industries, the benefits under Article 28 are clearly limited to a well-defined and specific group of enterprises within the meaning of section 771(5A)(D)(i) of the Act.

Finally, with regard to the GOC's claim that during verification the Department failed to adequately examine the manner in which the GOC administers the program, we note that, while the manner in which the program is administered would be relevant to a de facto specificity analysis, it is generally not essential to the de jure specificity determination that the Department is making in this case. Nevertheless, at verification the Department's verifiers did inquire as to how a company applies for the designation of "High and New Technology Enterprise" under Article 28 of the EITL, to which the GOC officials responded by stating that:

they are not able to describe the application process or show us Zhejiang Jingu's application. They explained that Bureau of Science and Technology officials may be able to describe the process, but no Bureau of Science and Technology officials were in attendance of our meeting.

See GOC Verification Report at 2. Hence, we disagree that the GOC provided the Department an "ample opportunity to explore the circumstances under which this tax provision is offered." Therefore, the Department affirms its finding from the Preliminary Determination that this program is limited as a matter of law to certain enterprises and, therefore, specific under section 771(5A)(D)(i) of the Act.

**Comment 26:** Revision to Import Duty Rate for Testing Machinery

#### Xingmin Companies' Case Brief

During verification the Department found that the import duty rate for a purchase of testing equipment had been erroneously reported in the company's July 15, 2011, questionnaire response. As such, the Department should use the correct import duty rate in the final.

**Department's Position:** We agree and have used the correct import rate, as verified, in the final calculations for the purchase of testing equipment under the program "Import Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries."

**Comment 27:** The Sales Denominator To Be Used in the Benefit Calculations of the Jingu Companies

#### The Jingu Companies' Case Brief

The Department's Preliminary Determination contained certain clerical errors with respect to the sales revenue denominators applied to the Jingu Companies' program-specific ad valorem subsidy rate calculations. In the Preliminary Determination, the Department applied sales revenue denominators to the calculation of Zhejiang Jingu's domestic and export subsidy rates that, inexplicably, did not include the total sales revenue of Shanghai Yata Industrial Co., Ltd. ("Shanghai Yata").

As the Department confirmed during its on-site verification, Shanghai Yata is a wholly-owned subsidiary of Zhejiang Jingu. In the Preliminary Determination, the Department properly

concluded that “Zhejiang Jingu, Chengdu {Jingu}, Shanghai Yata, and Zhejiang Wheel World are cross-owned companies.” Pursuant to 19 CFR 351.525(b)(6)(iii), “[i]f the firm that received a subsidy is a holding company, including a parent company with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries.” The Jingu Companies established and the Department verified that Zhejiang Jingu is a parent company with its own production operations. The Department also confirmed that Zhejiang Jingu is the one-hundred percent owner of Chengdu Jingu and Shanghai Yata, and the seventy-five percent owner of Zhejiang Wheel World. Accordingly, the Department in deriving the ad valorem CVD rates for Zhejiang Jingu’s various subsidy programs—including policy loans, income tax credits, two-free-three-half benefits, import tariff exemptions, the provision of HRS for LTAR, the provision of electricity for LTAR, domestic grants, IPO bonuses, tax exemptions, and various export subsidies—should have divided the total benefit calculated for each program by the consolidated sales of Zhejiang Jingu and all of its subsidiaries, including the total sales revenue of Shanghai Yata, which is one of Zhejiang Jingu’s wholly-owned subsidiaries.

With regard to domestic subsidy programs, including the policy loan and HRS for LTAR program, 19 CFR 351.525(b)(3) requires the Department to “attribute a domestic subsidy to all products sold by a firm, including products that are exported.” Shanghai Yata exported subject steel wheels during the POI and, thus, any domestic subsidies calculated—including subsidies for policy loans and HRS provided for LTAR—must be attributed to the sales of Zhejiang Jingu and its subsidiaries, including Shanghai Yata.

With regard to export subsidies, 19 CFR 351.525(b)(2) requires the Department to “attribute an export subsidy only to products exported by a firm.” Given that Zhejiang Jingu, Shanghai Yata, and Zhejiang Wheel World all exported subject products during the POI, Zhejiang Jingu’s export subsidies must be attributed to the sales of all three cross-owned companies.

In the final determination, the Department must ensure that all domestic and export subsidies are properly attributed by adding Shanghai Yata’s total sales revenue to the denominator of the calculations used to derive each of the Jingu Companies’ ad valorem domestic and export subsidy rates.

In the Preliminary Determination the Department also noted that Shanghai Yata was an affiliated trading company that Zhejiang Jingu used to export subject merchandise during the POI. Pursuant to 19 CFR 351.525(c), the Department cumulated the benefits from subsidies that were provided to Shanghai Yata (a trading company) with the benefits from subsidies that were provided to Zhejiang Jingu and other affiliated producers. The Department should have also cumulated the sales values of Shanghai Yata with the sales value of Zhejiang Jingu and other affiliates in order to calculate the correct denominator for the program-specific subsidy rates. Since the Department netted out intra-company sales (*i.e.*, Zhejiang Jingu sales to Shanghai Yata), and the Department did not include Shanghai Yata’s sales revenue (including Shanghai Yata’s re-sales to U.S. customers of subject merchandise purchased from Zhejiang Jingu), the Department’s calculation failed to capture a significant portion of the subject merchandise export sales.

By excluding Shanghai Yata’s sales revenue, the Department incorrectly understated the total sales denominator of the cross-owned Jingu Companies. The Department should correct its calculation of the program-specific subsidy rates by including the sales revenue of Shanghai Yata together with the sales revenue of Zhejiang Jingu, Chengdu Jingu and Zhejiang Wheel World in the total sales revenue subsidy calculation denominator (net of intra-company sales).

**Department's Position:** In the Preliminary Determination we inadvertently failed to include all of the sales revenue attributable to the production of Zhejiang Jingu in the total sales denominator used to calculate the net subsidy rate on programs used by Zhejiang Jingu, Chengdu, and Zhejiang Wheel World. In the calculations of the final determination we have corrected this inadvertent error. Specifically, for subsidies attributable to Zhejiang Jingu, Chengdu, and Zhejiang Wheel World, we included in the total sales denominator merchandise that was produced by Zhejiang Jingu and sold by Shanghai Yata, net of intra-company sales. For more information, see the final determination calculation memorandum for the Jingu Companies.

**Comment 28:** Use of Revised Data to Calculate Benefits Received by Centurion Under the Two Free, Three Half Program

#### Centurion Companies' Case Brief

In its questionnaire response the Centurion Companies inadvertently reported that it had benefitted from this program during the POI. As demonstrated in the pre-verification corrections and verified by the Department, the Centurion Companies did not receive any benefits. The Department should use the revised information supplied by the Centurion Companies to determine that they did not use the program during the POI.

**DOC Position:** At verification we confirmed that the Centurion Companies misreported receiving a benefit from this program during the POI. We have changed our calculations for the Final Determination to reflect the fact that the Centurion Companies did not use or benefit from the program during the POI. See Centurion Companies' Verification Report at 8.

**Comment 29:** Whether IPO Grants from the Fuyang And Hangzhou City Governments Are Countervailable

#### GOC's Case Brief

The Department's preliminary determination and verification report does not identify any evidence of specificity. The record demonstrates that each of these programs is broadly offered to any company making initial public offerings. There are no eligibility requirements specific to an industry or enterprise. Any enterprise in any market sector located within the geographical territory and jurisdiction of these cities is eligible for the grants. At verification, the Department had ample opportunity to explore the circumstances under which these grants are offered and the diverse range of eligible companies. For these reasons, the Department's preliminary findings with regard to these programs should be reversed.

**Department's Position:** We disagree with the GOC. The evidence on the record indicates that the Jingu Companies received grants under these programs because it underwent an initial public offering. In its September 9, 2011, supplemental questionnaire response at page 11, the GOC reported that enterprises located in Hangzhou and making initial public offerings are eligible for a grant from the Hangzhou government. At verification, the GOC officials confirmed that only a

company that underwent an IPO may receive a grant from the Hangzhou government. See GOC Verification Report at 3–4.

With regard to IPO grants from the Fuyang government, the GOC reported in its September 9, 2011, supplemental questionnaire response at page 17 that enterprises located in Fuyang that undergo initial public offerings and invest the capital from the IPO in Fuyang are eligible for a grant from the Fuyang government. At verification, the GOC officials confirmed that these are the criteria for receiving an IPO grant from the Fuyang government.

The receipt of grants under these programs is limited to companies that undergo IPOs, and, for one program, is also limited to companies that also invest the proceeds of their IPOs in Fuyang. Therefore, each of these IPO grant programs is specific within the meaning of section 751(5A)(D)(i) of the Act because the funds are dispersed to a limited number of enterprises.

**Comment 30:** Whether the Administrative Record of this Case Supports a Finding of Critical Circumstances

Case Brief of Blackstone/OTR LLC, and OTR Wheel Engineering, Inc. (collectively Blackstone/OTR)

In considering whether there was a “massive increase” in shipments in its Preliminary Critical Circumstance Determination, the Department limited its review to the following Harmonized Tariff Schedule (HTS) numbers: 8708.70.05.00, 8708.70.25.00, 8708.70.45.30 and 8708.70.30 noting that other HTS numbers were not considered as they were basket categories. Despite the fact that the Department failed to evaluate all Chinese imports of the subject merchandise, Commerce conducted its “massive import” analysis and issued its affirmative critical circumstance findings based upon this incomplete review.

The Department's methodology is flawed because, importantly, the Department considered the same data in the AD portion of this case and concluded that the data were unreliable for its “massive import” determination. Specifically, the Department noted:

In this case, according to the Petitioners, the HTSUS numbers listed in the scope of the investigation include both subject merchandise and non-subject merchandise. Thus, we cannot rely on these data in making our “massive imports” determination. Lacking information on whether there was a massive import surge for the PRC entity, we are unable to determine whether there have been massive imports of steel wheels from the producers included in the PRC entity.

See Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Determination of Sales at Less than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination, 76 FR 67703, 67707 (November 2, 2011) (AD Preliminary Critical Circumstances Determination).

Because the Department has already found during the companion AD investigation that the import data under consideration are not reliable for its critical circumstance determination, the Department may not inconsistently use that data for the same purpose in the countervailing duty investigation.

Based upon the lack of information on the record of this review supporting an affirmative critical circumstances finding, and the Department's negative determination in the AD

investigation, the Department should find that critical circumstances does not apply to the “all other” entities in its final determination.

**Department’s Position:** We continue to find that critical circumstances exist with respect to imports from “all other” exporters of steel wheels from the PRC. Although we acknowledge inconsistencies in the characterization and use of the four HTS categories between the AD and CVD preliminary critical circumstances determinations, our CVD critical circumstances final determination is not inconsistent with the concurrent AD critical circumstances final determination. In the final determination of the AD investigation the Department has determined that the NME entity was uncooperative because it failed to respond the Department’s quantity and value questionnaires. As a result, in the final critical circumstances determination of the AD investigation, the Department is not using import data to conduct a “massive imports” analysis with regard to the PRC entity but instead is assuming, as AFA, that critical circumstances exist with regard to the PRC-entity. Consequently, the Department’s treatment and characterization of the HTS categories in the AD Preliminary Critical Circumstances Determination are no longer relevant to the final CVD critical circumstances determination. Therefore, for the purposes of the final CVD determination, we continue to find that four HTS numbers utilized in the Preliminary Critical Circumstance Determination are reliable and appropriate for determining whether critical circumstances exist with respect to imports from “all other” exporters of steel wheels from the PRC.

**Comment 31:** Whether the Scope Should Exclude Off-Road/Non-Department of Transportation Specification Stamped Wheels

Blackstone/OTR’s Case Brief

Prior to the Preliminary Determination and in response to the Department’s request for information regarding potential Department of Transportation (DOT) requirements for on-the-road wheels, Blackstone/OTR requested the Department include the following exclusion language in the scope of the investigation: “Specifically excluded from the scope are steel wheels which are not stamped with the symbol ‘DOT’ certifying that the rim complies with all applicable Federal motor vehicle safety standards.”

Blackstone/OTR asserts that it only imports wheels designated “Not for Highway Service” (NHS), which are wholly different from on-the-road wheels produced by Petitioners. Blackstone/OTR argues that, because Petitioners only produce on-the-road wheels compliant with DOT certification standards, the scope of this investigation should only apply to such wheels. Moreover, Blackstone/OTR argues that the Petition only addresses commercial wheels for on-road usage and the definition of steel wheels, as used by the ITC, does not include NHS wheels.<sup>80</sup>

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<sup>80</sup> Blackstone/OTR cites the following in support of its argument: Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order, 73 FR 51624 (September 4, 2008) (OTR Tires/PRC Amended Final and AD Order (September 4, 2008)); Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Countervailing Duty Order, 73 FR 51627 (September 4, 2008) (OTR Tires/PRC CVD Order (September 4, 2008)); *Mitsubishi Elec. Corp. v. United States*, 898 F.2d 1577 (Fed. Cir. 1990) (*Mitsubishi* (Fed. Cir. March 15, 1990)); U.S. Department of Commerce, Import Administration, *Antidumping Manual* (2009), available at <http://ia.ita.doc.gov/admanual/index.html> (*AD Manual* (2009)), chapter 2

Blackstone/OTR also objects to the addition of the HTSUS numbers claiming that the scope, as redrafted, would include products in which the domestic industry has no interest.

### Zhejiang Jingu's Case Brief

Zhejiang Jingu supports Blackstone/OTR's contention that non-DOT certified wheels should be excluded from the scope of the investigation and argues that the on-the-road wheel industry is distinct from the off-the-road industry. Zhejiang Jingu avers that the Department is able to clearly delineate between on- and off-the-road wheels based on the DOT vs. NHS designations, and cites to Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) (OTR Tires/PRC (July 15, 2008)), as an example to support its contention that the Department should narrow the focus of the scope of this investigation. Furthermore, Zhejiang Jingu concludes that Petitioners distinguish between on- and off-the-road wheels, as Petitioners provide different warranties based on the usage of the wheels.<sup>81</sup>

### Petitioners' Rebuttal Case Brief

Petitioners object to limiting the scope to on-the-road wheels. Petitioners assert that the DOT certification required for operation on public roads is immaterial to whether a wheel can physically be used off-the-road. Additionally, Petitioners have stated that they do in fact produce a variety of off-the-road wheels, which are also stamped with the DOT certification for on-the-road use. Petitioners argue that, unlike in OTR Tires/PRC (July 15, 2008), wherein the petitioner clearly distinguished differences between on-road and off-road tires in the written scope of the petition, in this case, Petitioners did not request such a distinction.

Furthermore, Petitioners assert there are no technical descriptions in the scope of the Petition, or on the record of this investigation, to distinguish between the on- and off-the-road wheels in question. Finally, Petitioners contend that the exclusion language proposed by Blackstone/OTR would provide an opportunity to circumvent the ensuing order by allowing importers to import on-road wheels without the DOT certification as non-subject merchandise and subsequently place the "DOT" symbol on the wheels after they have entered the United States.<sup>82</sup>

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at 12; Memorandum from the Department entitled, "Preliminary Determinations: Comments on the Scope of the Investigations," dated October 27, 2010 (issued in reference to the AD Investigation of Aluminum Extrusions from the PRC) (Aluminum Extrusions LTFV Investigation Scope Memo); Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China, 71 FR 53079 (September 8, 2006) (Lined Paper/PRC Final (September 8, 2006)); Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30326 (June 14, 1996) (Pasta/Italy (June 14, 1996)); Petition; 49 CFR 383.5; 19 CFR 351.225(k)(1); 49 CFR 571.110 S4.4.2(c)(d) and 571.120 S5.2(c)(d); *Valkia Ltd. v. United States*, 28 CIT 907 (CIT 2004) (*Valkia* (CIT June 18, 2004)); and OTR Tires/PRC (July 15, 2008) and accompanying Issues and Decision Memorandum (IDM) at Comment 20.

<sup>81</sup> Zhejiang Jingu cites the following in support of its argument: OTR Tires/PRC (July 15, 2008) and accompanying IDM at Comment 20.

<sup>82</sup> Petitioners cite the following in support of their argument: OTR Tires/PRC (July 15, 2008) and accompanying IDM at Comment 20; 49 CFR 571.120; and Certain Steel Wheels from the People's Republic of China: Initiation of Antidumping Duty Investigation, 76 FR 23294 (April 26, 2011) (AD Initiation Notice (April 26, 2011)).

**Department's Position:** For the final determination, we have not amended the scope of the investigation to exclude off-the-road wheels. Petitioners did not differentiate between on- and off-road usage in the Petition and have stated their intent was to cover both in this investigation because they produce a wide range of wheels which are suitable for both on- and off-road usage. As such, the scope of the investigation covers all steel wheels with a wheel diameter of 18 to 24.5 inches, regardless of their intended usage.

Sections 701 and 731 of the Act require the Department to define the scope of merchandise subject to each AD and CVD investigation. The Department's legal authority to determine the scope of its AD and CVD proceedings is well-established.<sup>83</sup> Nevertheless, although the Department has the authority to define or clarify the scope of an investigation, it must exercise that authority in a manner which reflects the intent of the petition and does not thwart the statutory mandate to provide the relief requested in the petition.<sup>84</sup> Thus, "absent an overarching reason to modify the scope in the petition, the Department accepts it."<sup>85</sup>

We agree with Blackstone/OTR that the Department attempts to define the scope of an investigation as accurately as possible, and that products in which the affected domestic industry has no interest should not be included in the scope of the investigation.<sup>86</sup> Blackstone/OTR cites to Aluminum Extrusions LTFV Investigation Scope Memo, Lined Paper/PRC Final (September 8, 2006), and Pasta/Italy (June 14, 1996), as cases where the Department narrowed the scope of an investigation, arguing that the Department should do the same herein. However, we find those cases to be inapposite to the facts herein. In Aluminum Extrusions from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 18524 (April 4, 2011) (Aluminum Extrusions/PRC (April 4, 2011)), the domestic industry specifically agreed to the exclusion from the scope as requested by another party, explicitly stating that it was not interested in covering that particular product.<sup>87</sup> In Pasta/Italy (June 14, 1996), the domestic industry also went on record in support of the exclusion as requested by an importer in that case.<sup>88</sup> In the lined paper investigation, the exclusions from the scope were all either requested, or agreed to, by the domestic industry. Moreover, in that case, the Department specifically declined to draft an exclusion for a particular set of products within the covered class or kind of merchandise once the domestic industry expressed its opposition to the proposed exclusion.<sup>89</sup> In contrast to those cases, we find that Blackstone/OTR's contention that the domestic industry in this case has no interest in covering off-the-road wheels is unsupported by record evidence. In the instant investigation, Petitioners have specifically objected to the requested exclusion and the record demonstrates that they produce steel wheels for all manner of applications, including off-

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<sup>83</sup> See e.g., *Mitsubishi* (Fed. Cir. March 15, 1990).

<sup>84</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (April 2, 2002) (Softwood Lumber/Canada AD Final (April 2, 2002)) and accompanying IDM at "Scope Issues."

<sup>85</sup> *Id.* (quotations omitted).

<sup>86</sup> See AD/CVD Final Rule, (May 19, 1997) 62 FR at 27323, stating that "{the Department intends to avoid} situations where products in which the domestic industry has no interest are included in the scope of an order."

<sup>87</sup> See Aluminum Extrusions LTFV Investigation Scope Memo (unchanged in Aluminum Extrusions/PRC (April 4, 2011)).

<sup>88</sup> See Pasta/Italy (June 14, 1996), 61 FR at 30330.

<sup>89</sup> See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China, 71 FR 19695, 19699 (April 17, 2006) (Lined Paper/PRC Prelim (April 17, 2006)) (unchanged in Lined Paper/PRC Final (September 8, 2006)).

road use and, thus, we find no cause to narrow the scope of this investigation.<sup>90</sup> For the same reasons, we find that Blackstone/OTR has provided no evidence to support its general assertion that the scope of the investigation is overly broad.

Both Zhejiang Jingu and Blackstone/OTR cite to OTR Tires/PRC (July 15, 2008), where the Department was able to differentiate between tires designed for off-the-road use and tires designed for on-the-road use. However, unlike the instant case, petitioner in the off-the-road tires case specifically requested that the scope only cover pneumatic tires designed for off-the-road and off-highway use.<sup>91</sup> Furthermore, the scope for OTR Tires/PRC (July 15, 2008) provides detailed lists of vehicles for which the off-the-road tires are designed and includes specific designations used by the Tire and Rim Association. Conversely, the scope of the instant investigation provides no such detail because Petitioners produce all manner of steel wheels and have requested that all steel wheels, regardless of their end-use, be covered. The fact that the scope of one investigation is defined in a particular manner is not controlling with regard to the scope of a subsequent investigation, even if for a related product. Thus, while the tire industry was only seeking relief from off-the road tires in that proceeding, in this case, the domestic wheels industry is seeking relief with regard to a class or kind of merchandise that encompasses both on-road and off-road wheels.

First, the record supports Petitioners' contention that it produces both on-road and off-road wheels and that they are seeking relief from imports of both types of products. Because Accuride's catalogue makes no mention of end usage for its wheels (*i.e.*, does not reference on-road, off-road, on-highway, or off-highway), there is no record information indicating that its wheels are limited to either off- or on-road use.<sup>92</sup> Hayes Lemmerz's catalogue, however, explicitly lists "Heavy Duty On / Off-Highway Type M Rims" in addition to "On-Highway" rims and many other wheel entries that do not specify or otherwise limit usage.<sup>93</sup> Additionally, the fact that Hayes Lemmerz provides a distinct warranty for wheels other than for highway use again supports Petitioners' contention that it makes off-road wheels. Thus, contrary to respondents' assertions that Petitioners do not produce the off-highway products in question, the record demonstrates that, in fact, Petitioners' do produce these types of products.<sup>94</sup>

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<sup>90</sup> See Letter from Petitioners to the Department entitled, "Response to Supplemental Questionnaire: Steel Wheels from the People's Republic of China," dated December 13, 2011 (Petitioners' Scope Comments) at 4. In response to the Department's query as to "whether steel wheels produced by Petitioners are suitable for use in applications other than as steel wheels for highway service," Petitioners stated that they: "manufacture wheels for a vast variety of non-highway service. The wheels produced by petitioners can and are used for a multitude of off-the-road applications. For example, steel wheels produced by petitioners are used in oil field rig transport equipment, mobile cranes, logging and mining equipment, agricultural equipment, as well as in innumerable other off-the-road applications. In many instances petitioners have specifically designed and produced steel wheels with off-the-road applications in mind. For example, petitioners have designed, produced, and sold especially heavy steel wheels for use off-the-road by the logging industry. Indeed, for nearly every vehicle that uses wheels of a size covered by the scope that is used in off-the-road applications petitioners produce a steel wheel that can be used on the vehicle. To provide safe operational performance by ensuring that vehicles are equipped with tires of adequate size and load rating and with rims of appropriate size, type, and designation petitioners identify the rim size, the "DOT" symbol and all other information listed by 49 C.F.R § 571.120 on all of their steel wheels."

<sup>91</sup> See Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China, 72 FR 43591 (August 6, 2007) (OTR Tires/PRC Initiation (August 6, 2007)).

<sup>92</sup> See Letter from Zhejiang Jingu to the Department entitled, "AD Investigation of Steel Wheels from China: Post-Verification Submission of Revised U.S. Sales and Factors of Production Databases," December 23, 2011 (Zhejiang Jingu's Rebuttal to Petitioners Scope Comments) at Exhibit 1.

<sup>93</sup> See Zhejiang Jingu's Rebuttal to Petitioners Scope Comments at Exhibit 2.

<sup>94</sup> See Zhejiang Jingu's Rebuttal to Petitioners Scope Comments at Exhibit 2.

Blackstone/OTR notes that Petitioners' catalogues do not advertise seven specific wheel sizes (i.e., 24.5x11.75, 24.5x13, 24.5x15, 20x9, 20x10.5, 20x11, and 20x15) which Blackstone/OTR claims are commonly used in the aerial work platform, telehandler, and underground mining industries.<sup>95</sup> However, Petitioners' catalogues show wheels with diameters ranging from 16 to 24.5 inches and widths from 4 to 14 inches, with many of their wheels being close to (i.e., within a half inch of) the size range Blackstone/OTR claims that Petitioners do not produce.<sup>96</sup> Thus, the Department concludes that Petitioners have the ability to produce wheels in that size range. Moreover, Petitioners' catalogues do not claim to be all-inclusive of Petitioners' production capabilities and provide direct contact information for ordering wheels specific to individual customer needs.<sup>97</sup> Though a specific wheel may not be listed in the Petitioners' catalogue, it does not necessarily follow that Petitioners cannot produce it or do not have an interest in that product.<sup>98</sup> Additionally, the fact that Petitioners do not produce these specific wheel sizes does not constitute adequate reason to exclude such wheels from the scope of the investigation when Petitioners expressly intended such products to be included.<sup>99</sup>

We are also not persuaded by Zhejiang Jingu's inference that, because Titan, a significant U.S. producer of off-the-road tires and wheels, does not list Petitioners as "major competitors in the off-highway wheel market," that Petitioners do not produce wheels for off-road use.<sup>100</sup> The ITC Preliminary Report notes that "Titan's major business is in steel wheels larger than 24.5 inches in diameter" and that "the small-size end of Titan's production range is the very largest of the range of the scope."<sup>101</sup> As such, we find that Zhejiang Jingu's aforementioned argument is based on an inappropriate comparison between manufacturers of different sized products. Furthermore, Zhejiang Jingu provides no evidence to demonstrate that Petitioners cannot, or do not, produce wheels that are 18 to 24.5 inches in diameter for use off-the-road.

The Department further disagrees with Blackstone/OTR's contention that the Petition and ITC questionnaires only contemplate DOT-certified, on-the-road, wheels. While both the Petition and the ITC questionnaires discuss steel wheels for use on "commercial vehicles, i.e., trucks, tractors, buses, trailers, fire trucks, ambulances, tow trucks, etc.," neither distinguishes between on- and off-the-road usage. Furthermore, the Petition, the ITC questionnaire (i.e., ITC Instruction Booklet), and the ITC Preliminary Report, all specifically note that the scope is "not

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<sup>95</sup> See Letter from Blackstone/OTR to the Department entitled, "Response to Post-Preliminary Supplemental Questionnaire Certain Steel Wheels from the People's Republic of China," dated December 13, 2011 (Blackstone/OTR's Scope Comments) at 8.

<sup>96</sup> See Zhejiang Jingu's Rebuttal to Petitioners Scope Comments at Exhibits 1 and 2.

<sup>97</sup> Id.

<sup>98</sup> See Letter from Petitioners to the Department entitled, "Response to Supplemental Questionnaire Response of Blackstone/OTR - Steel Wheels from the People's Republic of China," dated December 23, 2011 (Petitioner's Rebuttal to Blackstone/OTR's Scope Comments) at 4 ("The particular models identified... by Blackstone/OTR are not identified in their {Petitioners'} catalogues because these are not commonly sold, but there is nothing about these sizes that prevent petitioners from producing these sizes.").

<sup>99</sup> See Aluminum Extrusions from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 18524 (April 4, 2011) (Aluminum Extrusions/PRC (April 4, 2011)) and accompanying IDM at Comment 3F, where the Department similarly declined to exclude certain products because the petitioner opposed the proposed exclusion and stated that it was capable of manufacturing products that were competitive with the products within the proposed exclusions.

<sup>100</sup> See Zhejiang Jingu's Rebuttal to Petitioners Scope Comments at Exhibit 3.

<sup>101</sup> See U.S. ITC Publication 4233, Certain Steel Wheels from China: Investigation Nos. 701-TA-478 and 731-TA-1182(Preliminary), May 2011 (ITC Preliminary Report) at III-2.

based on use.”<sup>102</sup> Blackstone/OTR also alleges that, even as recent as their November 22, 2011, comments to the ITC, Petitioners made no effort to clarify that the scope includes non-DOT stamped wheels.<sup>103</sup> At that time, Petitioners did suggest new questions to specifically address whether respondents’ wheels meet DOT standards.<sup>104</sup> However, the questions are related to information gathering regarding U.S. purchasers of steel wheels, not PRC manufacturers and, as such, we do not find that the questions Petitioners submitted are in any way intended to exclude non-DOT stamped wheels from the scope.<sup>105</sup> Moreover, as stated above, the scope is not based on use, hence non-DOT stamped steel wheels are included within the scope and there was no reason for Petitioners to further clarify which merchandise was covered in its comments to the ITC. Furthermore, to date, the Department has not requested that respondents differentiate between DOT stamped wheels and NHS wheels when collecting factors of production (in the companion AD investigation on steel wheels) and sales information, nor did the Department instruct parties to report only DOT stamped wheels. Thus, the Department has fully accounted for all wheels produced by respondents that fall within the description of merchandise covered by this investigation, regardless of their intended end-use. Accordingly, for all of the reasons discussed above, we have not excluded off-road wheels from the scope of this investigation.

Additionally, as noted in the Certain Steel Wheels from the People’s Republic of China: Initiation of Antidumping Duty Investigation, 76 FR 23294 (April 26, 2011) (AD Initiation Notice (April 26, 2011)), the Department uses physical characteristics of the merchandise under investigation for product matching and to help in tracking of relevant factors and costs of production. The Department prefers to define the scope with physical characteristics because reliance on an end-use application often results in ambiguity with respect to product coverage at the time merchandise enters the country, which is when U.S. Customs and Border Protection (CBP) must determine whether the importer has properly classified the merchandise as subject or non-subject merchandise.<sup>106</sup> Neither Blackstone/OTR nor Zhejiang Jingu put any defining physical characteristics on the record of this investigation to distinguish between on- and off-road wheels. Thus, the record does not contain sufficient evidence to demonstrate the existence of an actual physical or technical distinction between on-road and off-road products that would allow us to distinguish them from each other.

Finally, we do not agree with Blackstone/OTR’s allegation that the DOT stamp on a wheel signifies that the wheel is only for on-road usage. According to DOT regulations, this stamp only certifies that “the rim complies with all applicable motor vehicle safety standards” and does not pertain to any technical specifications which would preclude the wheel from being

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<sup>102</sup> See Petition at I-4; Blackstone/OTR’s Case Brief at Exhibit 1 (ITC Instruction Booklet at page 5); and ITC Preliminary Report at I-7.

<sup>103</sup> See Letter from Blackstone/OTR to the Department entitled, “Case Brief of Blackstone/OTR LLC and OTR Wheel Engineering, Inc: Certain Steel Wheels from the People’s Republic of China,” dated January 20, 2012 (Blackstone/OTR’s Case Brief) at 6 and Exhibit 2.

<sup>104</sup> See Blackstone/OTR’s Case Brief at Exhibit 2, pages 4-5.

<sup>105</sup> Id.

<sup>106</sup> See e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China, 73 FR 31970 (June 5, 2008) (Welded Steel Pipe/PRC (June 5, 2008)) and accompanying IDM at Comment 1 and OTR Tires/PRC (July 15, 2008) and accompanying IDM at Comment 1.

used off-the-road.<sup>107</sup> Similarly, in response to Blackstone/OTR's assertions, Petitioners noted that they put the DOT stamp on all of their steel wheels, regardless of potential end use.<sup>108</sup> Moreover, while Zhejiang Jingu's assertion that Petitioners' warranties distinguish between off-road and on-road wheels may indeed speak to the intended end usage of the wheels, this warranty language does not identify or impart any further information that could be used to differentiate between on- and off-road wheels based on the Department's aforementioned criteria. Hayes Lemmerz specifically warrants all "on-highway disc wheel, demountable rim, or wide base wheel" for five years from date of manufacture and "all other wheel and rim products... for one year."<sup>109</sup> Though this description may help to distinguish between warranties applied based on the actual use of the wheel, it does not provide any technical or physical distinctions that identify whether a wheel can or cannot be used for either or both applications. In any event, the existence of the second warranty confirms that Petitioners operate in the off-road wheel market.

In response to the Department's request for scope comments, Jiaying Stone, a Chinese wheel manufacturer, stated that it produces steel wheels based on the requirements of its customers, without regard to DOT regulations.<sup>110</sup> Blackstone/OTR claims that DOT regulations "require that in order to be imported into the United States, the wheel rims must be marked with... '(c) The symbol DOT... {and} (d) A designation that identifies the manufacturer of the rim...'" implying that there are regulatory measures in place to ensure that the imported wheels are certified for highway use by the original manufacturer.<sup>111</sup> However, the DOT regulations say nothing about the stamp being a requirement for importation of the wheels; only that "each vehicle equipped with pneumatic tires for highway service shall be equipped with... rims that are listed by the manufacturer of the tires as suitable for use with those tires" and that "{e}ach rim or... wheel disc shall be marked with the information listed...".<sup>112</sup> Petitioners claim that importers could simply import wheels without the DOT stamp free of AD duties, only then to place the DOT stamp on the rim.<sup>113</sup> Although the regulation does not appear to impose any marking requirements for importation,<sup>114</sup> we find that this analysis in any event is not dispositive when considering the scope of the investigation. Specifically, as explained above, Petitioners have indicated that they manufacture steel wheels for on-road and off-road use and we find that

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<sup>107</sup> See Blackstone/OTR's Scope Comments at Attachment 1, 49 CFR § 571.120:

S2. *Purpose.* The purpose of this standard is to provide safe operational performance by ensuring that vehicles to which it applies are equipped with tires of adequate size and load rating and with rims of appropriate size and type designation, and by ensuring that consumers are informed of motor home/recreation vehicle trailer load carrying capacity.

S3. *Application.* This standard applies to motor vehicles with a gross vehicle weight rating (GVWR) of more than 4,536 kilograms (10,000 pounds) and motorcycles, to rims for use on those vehicles, and to non-pneumatic spare tire assemblies for use on those vehicles.

<sup>108</sup> See Petitioner's Scope Comments at 4.

<sup>109</sup> See Zhejiang Jingu's Rebuttal to Petitioners Scope Comments at Exhibit 2.

<sup>110</sup> See Letter from Jiaying Stone to the Department entitled, "Jiaying Stone Wheel Co., Ltd. Post Preliminary Supplemental Questionnaire Response in the Antidumping Duty Investigation of Certain Steel Wheels from the People's Republic of China," dated December 13, 2011 (Jiaying Stone's Scope Comments).

<sup>111</sup> See Blackstone/OTR's Case Brief at 7 and Blackstone/OTR's Scope Comments at Attachment 1 (49 CFR 571.120 at S5.2)

<sup>112</sup> See Blackstone/OTR's Scope Comments at Attachment 1 (49 CFR 571.120 at S5.1.1 and S5.2)

<sup>113</sup> See Petitioners' Rebuttal to Blackstone/OTR Scope Comments at 3 and Petitioners' Case Brief at 32.

<sup>114</sup> See Petitioners' Scope Comments at 2 and Exhibit 1, Zhejiang Jingu's Scope Comments at 2 and Exhibit 2, and Blackstone/OTR's Scope Comments at 2 and Attachment 1.

the scope of the investigation, as contemplated by Petitioners, clearly intends to cover steel wheels regardless of use or DOT markings.

Finally, in Blackstone/OTR's Scope Comments, Blackstone/OTR disagreed with the Department's preliminary decision to add new HTSUS categories to the scope, claiming that it would inappropriately cover products which were not contemplated at the outset of the investigation.<sup>115</sup> We disagree with Blackstone/OTR's assertion that the addition of the HTSUS categories is inappropriate, for several reasons. First, as we state in the scope of all AD and CVD proceedings, the written description of the scope of the proceeding is dispositive of the merchandise covered by the respective investigation or order. The Department includes HTSUS numbers in the scope language as a convenience to CBP and the importing public. It is not unusual during the course of an investigation, or even after an order is put in place, for CBP to identify HTSUS numbers that may reflect merchandise covered by the narrative scope of the proceeding and to request that the Department add these numbers to its scope language. Thus, the additional HTSUS numbers do not affect, or increase, what merchandise is covered by the scope of the investigation, but rather are intended to reflect what is already covered based on the narrative description.

**RECOMMENDATION**

We recommend that you accept the positions described above.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date

<sup>115</sup> See Blackstone/OTR's Case Brief at 2 and Blackstone/OTR's Scope Comments at 5.