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Investigation  
POI: 1/1/11 - 12/31/11  
**Public Document**  
Office 1: SS/AR/SK

DATE: February 19, 2013

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

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

Susan Kuhbach *SK*  
Office Director  
AD/CVD Operations, Office 1

FROM: Shane Subler and Austin Redington *AS*  
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SUBJECT: Issues and Decision Memorandum for the Final Determination in  
the Countervailing Duty Investigation of Drawn Stainless Steel  
Sinks from the People's Republic of China

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## I. Summary<sup>1</sup>

On August 6, 2012, the Department published the *Preliminary Determination* in this investigation. We conducted verification of the questionnaire responses submitted by the GOC, Yingao, and Superte between November 7 and November 16, 2012, and released verification reports on December 4, 2012 (for Yingao and the GOC) and December 12, 2012 (for Superte). On January 8, 2013, the Department issued its post-preliminary analyses, which described our findings regarding three programs: Land for LTAR to Companies Located in Industrial or Other Special Economic Zones, Preferential Export Financing, and Shunde Intensive Industrial Zone Administrative Fee Exemptions and Reductions.

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



The “Analysis of Programs” and “Subsidies Valuation Information” sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. We have also 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 responses to the issues raised in the briefs. We recommend that you approve the positions we have described in this memorandum. Below is a complete list of the issues in this investigation for which we received comments from the parties:

### **General Issues**

- Comment 1 Application of the CVD Law to the People’s Republic of China**
- Comment 2 Double Counting/Overlapping Remedies**

### **Policy Lending to the Stainless Steel Sinks Industry**

- Comment 3 National and Regional Policy Lending Programs**
- Comment 4 Specificity to Drawn Stainless Steel Sink Producers**

### **Preferential Export Financing**

- Comment 5 Timing of Department’s Determination**
- Comment 6 Contingency of Loans on Exports**
- Comment 7 Countervailability of One of Yingao’s Loans**

### **Provision of Stainless Steel Coil for LTAR**

- Comment 8 Specificity Under Section 771(5A)(D)(III)(i) of the Act**
- Comment 9 Benchmark Analysis**
- Comment 10 Government Authority Analysis**
- Comment 11 Superte’s Additional Stainless Steel Coil Producer Information**
- Comment 12 Stainless Steel Quality Differences Between Benchmark and Superte’s Purchases**

### **Provision of Electricity for LTAR**

- Comment 13 Application of AFA and Benchmark Analysis**

### **Provision of Land for LTAR**

- Comment 14 Policies and Incentives, Marketing of Industrial Zones, and Pricing**

## II. Subsidies Valuation Information

### A. Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the POI, is January 1, 2011, through December 31, 2011.

### B. Allocation Period

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 12 years according to the IRS Tables at Table B-2: Table of Class Lives and Recovery Periods. No party in this proceeding has disputed this allocation period.

### C. 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) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned 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 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.<sup>2</sup>

#### *Superte*

Superte responded to the Department's original and supplemental questionnaires on behalf of itself, a producer and exporter of the subject merchandise during the POI.<sup>3</sup> Superte reported that it had no affiliated companies during the POI.<sup>4</sup> Therefore, we are attributing subsidies received by Superte to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

The Department also received a questionnaire response from Zhaoshun, a trading company not affiliated with Superte, but which exported subject merchandise produced by Superte during the

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<sup>2</sup> See *Fabrique*, 166 F. Supp. 2d at 600-604.

<sup>3</sup> See SQR at 2 and 6.

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

POI.<sup>5</sup> Zhaoshun reported that it had no affiliated companies during the POI.<sup>6</sup> Therefore, we are attributing subsidies received by Zhaoshun to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

Because Zhaoshun exported subject merchandise produced by Superte during the POI, we are cumulating the benefit from Zhaoshun's subsidies with the benefit from Superte's subsidies, in accordance with 19 CFR 351.525(c).

### *Yingao*

Yingao responded to the Department's original and supplemental questionnaires on behalf of itself, a producer and exporter of the subject merchandise during the POI.<sup>7</sup> Yingao also responded on behalf of Magang, a producer of subject merchandise during the POI and holding company of Yingao during the POI.<sup>8</sup>

We determine Yingao and Magang are "cross-owned" within the meaning of 19 CFR 351.525(b)(6)(vi) because of Magang's ownership position in Yingao.<sup>9</sup> Because Yingao and Magang are producers of subject merchandise and are "cross-owned," we are attributing subsidies received by Yingao to the combined sales of Yingao and Magang (exclusive of intercompany sales), in accordance with 19 CFR 351.525(b)(6)(ii). Additionally, because Magang is a holding company of Yingao, we are attributing subsidies received by Magang to Magang's consolidated sales, in accordance with 19 CFR 351.525(b)(6)(iii).<sup>10</sup>

### **III. Loan Benchmarks**

As stated in the *Preliminary Determination*, we are investigating loans that respondents received from SOCBs, as well as non-recurring, allocable subsidies (*see* 19 CFR 351.524(b)(1)).<sup>11</sup> In the section below, we discuss the derivation of the benchmarks and discount rates for 2011 and previous years.

#### Benchmarks 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 will rely on the actual experience of the firm in question in obtaining comparable commercial loans.<sup>12</sup> If the firm did not have any comparable commercial loans during the

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<sup>5</sup> See ZQR at 2.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> See YQR at 5-6.

<sup>8</sup> See MQR at 4; *see also* YQR at 4.

<sup>9</sup> Information on Magang's ownership of Yingao is business proprietary. See YQR at 4 for Magang's ownership share of Yingao.

<sup>10</sup> See *Seamless Pipe from the PRC* IDM at Comment 29(b) (discussion of attribution of subsidies to a company that is both a producer of subject merchandise and a holding company).

<sup>11</sup> See *Preliminary Determination*, 77 FR at 46722.

<sup>12</sup> See 19 CFR 351.505(a)(3)(i).

period, the Department's regulations provide that the Department "may use a national average interest rate for comparable commercial loans."<sup>13</sup> Section 771(5)(E)(ii) of the Act also indicates that the benchmark should be a market-based rate.

For the reasons first explained in *CFS from the PRC*,<sup>14</sup> loans provided by PRC banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a PRC benchmark for loans, the Department is selecting an external market-based benchmark interest rate. 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.<sup>15</sup>

We first developed in *CFS from the PRC*,<sup>16</sup> and more recently updated in *Thermal Paper from the PRC*,<sup>17</sup> the methodology used to calculate the external benchmark for proceedings involving imports from the PRC. Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from the PRC*, using these different groupings of countries we are able to capture the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.<sup>18</sup> Beginning with 2010, however, the PRC is in the upper-middle income category.<sup>19</sup> Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2001 – 2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010 and 2011.

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

In each year from 2001-2009, and 2011, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.<sup>20</sup> For 2010, however, the

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<sup>13</sup> See 19 CFR 351.505(a)(3)(ii).

<sup>14</sup> See *CFS from the PRC* IDM at Comment 10; see also Banking Memorandum.

<sup>15</sup> See *Softwood Lumber from Canada* IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

<sup>16</sup> See *CFS from the PRC* IDM at Comment 10.

<sup>17</sup> See *Thermal Paper from the PRC* IDM at 8-10.

<sup>18</sup> See World Bank Country Classification, <http://econ.worldbank.org/>; see also Interest Rate Benchmark Memorandum.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*; see also Preliminary Determination Additional Documents Memo at Attachment I.

regression does not yield that outcome for the PRC's income group.<sup>21</sup> As discussed in the *Preliminary Determination*, this contrary result for a single year does not lead the Department to reject the strength of governance as a determinant of interest rates.<sup>22</sup> Therefore, we have continued to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009 and 2011. For the 2010 benchmark, however, we are using an average of the interest rates of the upper-middle income countries, consistent with the *Preliminary Determination*.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's IFS. With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010 and 2011, and "lower middle income" for 2001-2009. First, we did not include those economies that the Department considered to be NMEs 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 for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments.<sup>23</sup> Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.<sup>24</sup>

See Interest Rate Benchmark Memorandum for the resulting inflation-adjusted benchmark lending rates. Because these rates are net of inflation, we adjusted the benchmark rates to include an inflation component before comparing them to the interest rates on loans issued to the company respondents by SOCBs.<sup>25</sup>

### Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.<sup>26</sup>

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

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<sup>21</sup> See Interest Rate Benchmark Memorandum.

<sup>22</sup> See *Preliminary Determination*, 77 FR at 46723.

<sup>23</sup> For example, in certain years Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L'Este reported dollar-denominated rates; therefore, such rates have been excluded.

<sup>24</sup> For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country's real interest rate was 34.95 percent and 37.25 percent, respectively. See Interest Rate Benchmark Memorandum.

<sup>25</sup> See Post-Preliminary Analysis Attachment Memo - Superte at Attachment 4; see also Post-Preliminary Analysis Attachment Memo - Yingao at Attachment 4.

<sup>26</sup> See, e.g., *LWRP from the PRC* IDM at 8.

or approximates the number of years of the term of the loan in question.<sup>27</sup> Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.<sup>28</sup>

### Foreign Currency-Denominated Loans

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

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.<sup>29</sup>

### Discount Rate Benchmarks

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government approved non-recurring subsidies.<sup>30</sup>

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

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or if 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. The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with

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<sup>27</sup> See *Citric Acid from the PRC* IDM at Comment 14.

<sup>28</sup> See Post-Preliminary Analysis Attachment Memo - Superte at Attachment 4; see also Post-Preliminary Analysis Attachment Memo – Yingao at Attachment 4.

<sup>29</sup> See Interest Rate Benchmark Memorandum.

<sup>30</sup> See Post-Preliminary Analysis Attachment Memo - Superte at Attachment 2; see also Post-Preliminary Analysis Attachment Memo – Yingao at Attachment 2.

complete and accurate information in a timely manner.”<sup>31</sup> The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>32</sup>

#### Application of AFA:

##### *GOC – Government Authorities Under Provision of SSC for LTAR*

As discussed below under the section “Programs Determined To Be Countervailable,” the Department is investigating the provision of SSC for LTAR by the GOC. We requested information from the GOC regarding the specific companies that produced the SSC that the mandatory respondents purchased during the POI.<sup>33</sup> Specifically, we sought information from the GOC that would allow us to determine whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.<sup>34</sup>

For each producer that the GOC claimed was privately owned by individuals or companies during the POI, we requested the following.

- 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.
- Identification of the owners, members of the board of directors, or managers of the producers who were also government or CCP officials or representatives during the POI.
- A statement regarding whether the producer had ever been an SOE, and, if so, whether any of the current owners, directors, or senior managers had been involved in the operations of the company prior to its privatization.
- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.<sup>35</sup>

For producers owned by other corporations (whether in whole or in part) or with less-than-majority state ownership during the POI, we requested information tracing the ownership of the producer back to the ultimate individual or state owners. Specifically, we requested the following information.

- The identification of any state ownership of the producer’s shares; the names of all government entities that own shares, either directly or indirectly, in the

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<sup>31</sup> See *SRAMs From Taiwan – AD*, 63 FR at 8932.

<sup>32</sup> See *SAA* at 870.

<sup>33</sup> See Original Questionnaire at Section II, “Information Regarding Input Producers in the PRC Appendix.”

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

producer; the identification of all owners considered SOEs by the GOC; and the amount of shares held by each government owner.

- For each level of ownership, identification of the owners, directors, or senior managers of the producer who were also government or CCP officials during the POI.
- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.
- A statement regarding whether any of the shares held by government entities have any special rights, priorities, or privileges with regard to voting rights or other management or decision-making powers of the company; a statement regarding whether there are restrictions on conducting, or acting through, extraordinary meetings of shareholders; a statement regarding whether there are any restrictions on the shares held by private shareholders; and a discussion of the nature of the private shareholders' interests in the company (*e.g.*, operational, strategic, or investment-related).<sup>36</sup>

In the GQR and GOC's July 20, 2012 SQR, the GOC provided no ownership information for most of the companies that produced SSC purchased by Superte, Yingao and Magang. Instead, the GOC stated that it was unable to respond to the Department's request and characterized the request as "unreasonable."<sup>37</sup> The GOC did not explain what efforts it had made, if any, to seek this information.<sup>38</sup> For one supplier of SSC which it claimed was "privately owned" by individuals, the GOC provided the business registration, but no information regarding the identification of owners, directors, or senior managers who were also CCP officials or representatives.<sup>39</sup> In addition, the GOC declined to answer questions about the CCP's structure and functions that are relevant to our determination of whether the producers of SSC are "authorities" within the meaning of section 771(5)(B) of the Act.<sup>40</sup> In its initial questionnaire response, the GOC asserted that SSC producers are not "authorities" within the meaning of applicable U.S. law or "public bodies" with the meaning of the WTO SCM.<sup>41</sup> Additionally, the GOC stated that it does not "play a role in the ordinary business operations, including pricing and marketing decisions, of the domestic Chinese SSC industry, including those in which the state holds an ownership interest."<sup>42</sup> The GOC argues that Chinese law prohibits GOC officials from taking positions in private companies.<sup>43</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> *See* GOC's July 20, 2012 SQR at 7.

<sup>38</sup> *Id.*

<sup>39</sup> *See* GQR at 77.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 70.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 73.

We have explained our understanding of the CCP's involvement in the PRC's economic and political structure in a past proceeding.<sup>44</sup> Public information suggests that the CCP exerts significant control over activities in the PRC.<sup>45</sup> This conclusion is supported by, among other documents, a publicly available background report from the U.S. Department of State.<sup>46</sup> With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.<sup>47</sup>

Thus, consistent with the *Preliminary Determination* and past investigations, the Department finds that the information requested regarding the role of CCP officials in the management and operations of this SSC producer is necessary to our determination of whether this producer is an "authority" within the meaning of section 771(5)(B) of the Act. In addition, the GOC did not promptly notify the Department, in accordance with section 782(c) of the Act, that it was not able to submit the required information in the requested form and manner, nor did it suggest any alternative forms for submitting this information. Further, the GOC did not provide any information regarding the attempts it undertook to obtain the requested information for this SSC supplier.

Therefore, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in making our final determination. *See* sections 776(a)(1) and 776(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, we determine that the GOC has withheld information and significantly impeded the investigation, and that an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act. As AFA, we are finding that all of the producers of SSC for which the GOC failed to provide ownership information or failed to identify whether the owners were CCP officials are "authorities" within the meaning of section 771(5)(B) of the Act.

#### *Superte – Government Authorities Under Provision of SSC for LTAR*

In the Original Questionnaire at III-16, we requested that Superte provide a spreadsheet showing, among other things, the producers of the SSC it purchased. We also requested that Superte coordinate with the GOC to ensure that the GOC had the information it needed to accurately respond to the Department's questions regarding the input suppliers. For certain purchases, Superte did not provide the names of the enterprises that produced the SSC.<sup>48</sup>

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<sup>44</sup> *See* Preliminary Determination Additional Documents Memo at Attachments II and III (which include the post-preliminary analysis memorandum from *Seamless Pipe from the PRC* and a State Department report, both recognizing the significant role the CCP has in the GOC).

<sup>45</sup> *Id.* at Attachment III.

<sup>46</sup> *Id.*; *see also* *Seamless Pipe from the PRC* IDM at Comment 7.

<sup>47</sup> *See* *Seamless Pipe from the PRC* IDM at 16.

<sup>48</sup> *See* SQR at Ex-13 and Superte's July 23, 2012 SQR at 32.

Because Superte failed to report this information, the GOC was unable able to fully respond to the Department’s questions about input producers. As a result, necessary information is not on the record. Without this information, the Department was not able to analyze whether these producers of SSC are “authorities.” By failing to identify these suppliers, Superte has withheld the information and significantly impeded the proceeding. Consequently, we are resorting to “facts otherwise available” in making our determination. *See* sections 776(a)(1) and 776(a)(2)(C) of the Act.

Moreover, we determine that Superte 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. As AFA, we are finding that the unidentified producers of SSC are “authorities” within the meaning of section 771(5)(B) of the Act.<sup>49</sup>

#### *Yingao – Purchases of SSC*

In the Original Questionnaire, we requested that Yingao report its SSC purchases as follows:

Using the attached Microsoft Excel template “Input Purchases,” please report all of your purchases during the POI...As the template specifies, please report each purchase of the input during the POI. By each purchase, we are referring to each line item on a VAT invoice that corresponds to a unique price and/or quantity.<sup>50</sup>

During Yingao’s verification, we learned that Yingao did not report its SSC purchases on this basis. Instead, Yingao reported its purchases based on entries into its accounting system. Thus, each line item in Yingao’s purchase database at Exhibit 20 of the YQR may represent multiple VAT invoices and/or multiple line items on a VAT invoice.<sup>51</sup> For example, we traced three VAT invoices with multiple line items for different specifications of SSC to a single accounting entry, which corresponded with one purchase line in Yingao’s submitted purchase database.<sup>52</sup> Further, we reviewed another VAT invoice that listed four different specifications of SSC at four different unit prices.<sup>53</sup>

As we noted at page 9 of the Yingao Verification Report, we found no discrepancies between the records in Yingao’s and Magang’s accounting systems and what the companies reported in their purchase databases. However, because Yingao did not report its purchases based on each line item on its VAT invoices, we cannot determine the total benefit from each purchase of SSC (*i.e.*, each unique price, quantity, and specification) from a government authority. We are unable to determine the total benefit because any individual purchases above the benchmark price improperly offset the subsidy benefit from individual purchases below the benchmark price. By not reporting its SSC purchases in accordance with the instructions in the Original Questionnaire, Yingao failed to provide necessary information in the form and manner requested,

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<sup>49</sup> The Department treated a similar situation in this manner in the *HPSC from the PRC* IDM at 13-14.

<sup>50</sup> *See* Original Questionnaire at Section III, page 16.

<sup>51</sup> *See* Yingao Verification Report at 9.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

and that information was unable to be verified. Consequently, necessary information on Yingao's purchases is not on the record, and we must resort to "facts otherwise available" in making our determination. *See* section 776(a)(2)(B) of the Act.

Moreover, we determine that Yingao failed to act to the best of its ability because Yingao did not follow the specific instructions in the questionnaire, as discussed above, and we were unable to verify its information on each individual purchase. Consequently, an adverse inference is warranted in accordance with section 776(b) of the Act. As AFA, we are using the lowest "bundled price" from a government authority (*i.e.*, the lowest average SSC price Yingao recorded for an accounting entry) and assigning this price to all the other purchases Yingao reported from a government authority during the POI. *See* below at "Analysis of Programs – Stainless Steel Coils for LTAR."

### *GOC – Policy Lending*

As discussed below under the section "Programs Determined To Be Countervailable," the Department investigated policy lending to the SS sinks industry. In determining whether a government has in place a policy to direct preferential lending to an industry, the Department will, *inter alia*, examine government planning documents. Petitioner provided excerpts of a GOC planning document called the *Pearl River Delta Plan*, a regional plan developed under the authority of Guangdong province, which covers Foshan and Zhongshan (the cities in which both respondents are located).<sup>54</sup> As discussed in the *Preliminary Determination*, the excerpts from the *Pearl River Delta Plan* state the GOC's intention to give priority to the development of "post processing stainless steel plates" and to build an agglomeration or cluster development layout in several cities in the region, including those in which the respondents are located, in order to focus on the manufacturing of certain products, including stainless steel products and small hardware.<sup>55</sup> After Petitioner provided excerpts of this plan in the Petition<sup>56</sup> and the Petition Supplemental,<sup>57</sup> in the Original Questionnaire, we asked the GOC the following questions:

For each of the provinces and municipalities in which the respondent companies and their cross-owned companies are registered, and in which their facilities are located if different from the registered location, provide an index and summary for each provincial and municipal 5-year plan issued by the provincial and local authorities that corresponds to the time period from December 11, 2001, through the POI.

Provide a complete copy of the DSSS industrial plan/policy for each of the provinces and municipalities in which the respondent companies and their cross-owned companies are registered, and in which their facilities are located if different from the registered location. These plans should correspond to the time period from December 11, 2001, through the POI.<sup>58</sup>

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<sup>54</sup> *See Initiation Checklist* at 22.

<sup>55</sup> *See Preliminary Determination*, 77 FR at 46726, and Petition Volume III, at Exhibit III-15.

<sup>56</sup> *See* Petition Volume III, at Exhibit III-15.

<sup>57</sup> *See* Petition Supplemental at 7 and Exhibit III-S6.

<sup>58</sup> *See* Original Questionnaire at 5-6.

The GOC did not provide the *Pearl River Delta Plan* in any of its submissions to the Department, despite our request for relevant planning documents. As a result, the complete *Pearl River Delta Plan* is not on the record.

In addition, the Department specifically stated in its verification outline for the GOC:

At page 25 of the GOC's June 29, 2012, questionnaire response, the GOC stated,

None of the loans to any of the respondents were issued pursuant to a policy loan program and none of the respondents received benefits from any policy loan program because no such program exists.

We intend to verify the GOC's statement by meeting with GOC officials responsible for the following planning documents:

- Pearl River Delta Plan
- Guidelines of Foshan City on Industrial Structure Adjustment
- 11th and 12th Five-Year Plans of Zhongshan City and Foshan City<sup>59</sup>

However, despite our specific request to meet with the GOC officials responsible for the *Pearl River Delta Plan*, no GOC officials from the Guangdong provincial government were available to review the *Pearl River Delta Plan* during verification.<sup>60</sup> As a result, we were unable to verify the GOC's statements that none of the loans to the respondents were issued pursuant to policy loan programs and that the respondents did not benefit from any policy loan program.

Because the GOC did not provide the *Pearl River Delta Plan* in response to our questionnaire (and the plan, with the exception of certain excerpts provided by Petitioner, is not on the record), we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in making our final determination. *See* sections 776(a)(1) and 776(a)(2)(A) of the Act. In this instance, the "facts otherwise available" are the excerpts of the *Pearl River Delta Plan* provided by Petitioner.<sup>61</sup>

Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request to make the GOC officials responsible for the *Pearl River Delta Plan* available at verification in order to allow the Department to verify the GOC's statement that none of the loans to the respondents were issued pursuant to policy loan programs and that the respondents did not benefit from any policy loan program. *See* section 776(a)(2)(D) of the Act. Consequently, we determine that an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act. As AFA, we are determining that policy lending is directed to the SS sinks industry through the implementation of the *Pearl River Delta Plan* and that the direction to support "stainless steel products" and "small hardware" includes stainless steel sinks. As such, we determine this program is specific within the meaning of section 771(5A)(D)(i) of the Act.

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<sup>59</sup> *See* GOC Verification Outline at 6-7.

<sup>60</sup> *See* GOC Verification Report at 11.

<sup>61</sup> *See* Petition Volume III, at Exhibit III-15 and Petition Supplemental at 7 and Exhibit III-S6.

## *GOC – Provision of Electricity for LTAR*

As discussed below under the section “Programs Determined To Be Countervailable,” the Department investigated the provision of electricity for LTAR by the GOC. The GOC, however, did not provide a complete response to the Department’s requests for information regarding this program. In the Original Questionnaire, we requested that the GOC provide the provincial price proposals for each province in which a mandatory respondent and any reported cross-owned company is located for the applicable tariff schedules that were in effect during the POI, and to explain how those price proposals were created.<sup>62</sup> We also asked the GOC to explain how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the price proposals, and how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories.<sup>63</sup> The GOC responded that it was unable to provide the price proposals because they are working documents for the NDRC’s review.<sup>64</sup> Citing section 782(c)(1) of the Act and 19 CFR 351.301(c)(2)(iv), the GOC stated that it was “{notifying} the Department of difficulty in obtaining the original Provincial Price Proposals.”<sup>65</sup> To the questions regarding how electricity cost increases are reflected in retail price increases, the GOC’s response explained theoretically how price increases should be formulated and did not explain the actual process that led to the price increases.<sup>66</sup>

As such, the Department issued a supplemental questionnaire to the GOC reiterating its request for this information.<sup>67</sup> In its response to the Electricity Appendix questions, the GOC reiterated its initial response.<sup>68</sup>

After reviewing the GOC’s responses to the Department’s electricity questions from the Original Questionnaire and supplemental questionnaires, we determine that the GOC’s answers are inadequate and do not provide the necessary information required by the Department to analyze the provision of electricity in the PRC. The GOC did not provide the requested price proposal documents or explain how price increases were formulated. As a result, the Department must rely on the facts otherwise available in its analysis for this determination. *See* sections 776(a)(1) and 776(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 the Department’s requests for information. Citing section 782(c)(1) of the Act and 19 CFR 351.301(c)(2)(iv), the GOC stated it could not provide the NDRC documents because they were “working documents.”<sup>69</sup> However, while the GOC acknowledged the existence of such documents, the GOC withheld them without explaining why it could not submit such documents on the record of this proceeding, particularly as the Department permits

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<sup>62</sup> *Id.* at Section II, Electricity Appendix.

<sup>63</sup> *Id.*

<sup>64</sup> *See* GQR at 58-59.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 59-62.

<sup>67</sup> *See* First GOC Supplemental Questionnaire at 5-6.

<sup>68</sup> *See* GOC’s July 20, 2012 SQR at 4-6.

<sup>69</sup> *See* GQR at 58-59.

parties to submit information under protective order for limited disclosure if it is business proprietary. *See, e.g.*, 19 CFR 351.306. Nor did the GOC provide any other documents that would have answered the Department’s questions. Therefore, an adverse inference is warranted in the application of facts available, because the GOC withheld the necessary information and significantly impeded this proceeding. *See* section 776(b) of the Act. Without the missing information, the Department cannot make a determination with respect to financial contribution or specificity because, for example, the details required to analyze the GOC’s electricity price adjustment process are contained in the missing price proposals.<sup>70</sup> Because these details, as described in the preceding paragraphs, are contained in the provincial price proposals, the provincial price proposals are necessary for determining whether the GOC provides a financial contribution that is specific under this program. Drawing an adverse inference, we determine 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.

As explained in detail at Comment 13, below, we have continued to apply AFA with respect to the selected electricity benchmark because information that the GOC failed to provide pertains directly to evaluating whether a benefit has been conferred. We selected, as an adverse inference, the highest provincial 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* section 776(b)(4) of the Act. Specifically, the GOC provided the provincial rates schedules that were in effect during the POI,<sup>71</sup> and we have used those schedules to identify the highest provincial electricity rates in effect during POI. For details on the calculated subsidy rates for the respondents, *see* below at “Provision of Electricity for LTAR.”

*GOC - “Two New” Product Special Funds of Guangdong Province and Grant for Loan Interest (Zhongshan City)*

The Department will investigate potential subsidies it discovers during the course of an investigation, even if those subsidies were not alleged in the CVD petition. *See* section 775 of the Act.

Yingao indicated that it received a grant under an unknown program during the POI.<sup>72</sup> Also, Superte reported that it received a grant under the “Grant for Loan Interest” program during the POI.<sup>73</sup> The Department requested that the GOC provide information about “other subsidies” in the Original Questionnaire.<sup>74</sup> In the GQR, the GOC did not provide the requested information. Instead, the GOC asserted that, “... In the absence of sufficient allegations and evidence respecting other programs, consistent with Article 11.2 and other relevant articles of the WTO

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<sup>70</sup> *See Wood Flooring from the PRC* IDM at “Use of Facts Otherwise Available and Adverse Inferences – GOC Electricity,” citing *Bricks from the PRC* IDM at Comment 8 (where the Department quoted the GOC as reporting that these price proposals are part of the price setting process within the PRC for electricity).

<sup>71</sup> *See* GQR at Exhibits E3-APP6-3 and E3-APP6-4.

<sup>72</sup> *See* YQR at 43-44.

<sup>73</sup> *See* SQR at 34.

<sup>74</sup> *See* Original Questionnaire at Section II, page 13.

Agreement on Subsidies and Countervailing Measures, no reply to this question is warranted or required.”<sup>75</sup>

In the First GOC Supplemental Questionnaire, we again asked the GOC to provide information concerning Yingao’s unknown subsidy and Superte’s subsidy, referring to information provided in Yingao’s and Superte’s questionnaire responses.<sup>76</sup> Although the GOC provided the names of these two programs and amounts disbursed, it did not provide a response to any of the required appendices (*i.e.*, Standard Questions Appendix, Allocation Appendix, and Grant Appendix) and, as such, did not provide any information on the specificity of the programs.<sup>77</sup>

The Department normally relies on information from the government to assess program specificity.<sup>78</sup> Because the GOC did not provide the necessary information that would allow us to determine the specificity of these programs, we determine that necessary information is not on the record. Accordingly, the use of facts otherwise available is appropriate. *See* sections 776(a)(1) and (2)(A),(B), and (C) of the Act.

Further, the GOC has not cooperated to the best of its ability in responding to the Department’s requests for information. Consequently, an adverse inference is warranted in the applicable of facts available. *See* section 776(b) of the Act. As a result, we find the programs to be specific under section 771(5A) of the Act.

## **ANALYSIS OF PROGRAMS**

Based upon our analysis of the petition, the responses to our questionnaires, and all other evidence on the record, we determine the following:

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

#### **A. Two Free, Three Half Program for FIEs**

Under Article 8 of the FIE Tax Law, an FIE that is “productive” and scheduled to operate more than ten years is exempt from income tax in the first two years of profitability and pays income taxes at half the standard rate for the next three to five years.<sup>79</sup> According to the GOC, the program was terminated effective January 1, 2008, by the “Enterprise Income Tax Law,” but companies already enjoying the preference were permitted to continue paying taxes at reduced rates.<sup>80</sup> Yingao benefited from tax savings provided under this program during the POI.<sup>81</sup>

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<sup>75</sup> *See* GQR at 78-79.

<sup>76</sup> *See* First GOC Supplemental Questionnaire at 4 and 7.

<sup>77</sup> *See* the GOC’s July 20, 2012 SQR at 1; *see also* the GOC’s July 26, 2012 SQR at 4.

<sup>78</sup> *See Citric Acid from the PRC – First Administrative Review* IDM at Comment 8.

<sup>79</sup> *See* GQR at 37.

<sup>80</sup> *Id.* at 37.

<sup>81</sup> *Id.* at 38; *see also* YQR at 28.

The Department has previously found the “Two Free, Three Half” program to confer a countervailable subsidy.<sup>82</sup> Consistent with the earlier cases, we determine that the “Two Free, Three Half” income tax exemption/reduction confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemption/reduction afforded by the program is limited as a matter of law to certain enterprises, *i.e.*, productive FIEs, and hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax savings received by Yingao as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We compared the income tax rate that the company should have paid (25 percent) with the reduced income tax rate of (12.5 percent), which Yingao paid during the POI, to calculate the tax savings. To calculate the net subsidy rate, we divided the benefit by Yingao’s total POI sales, as described above in the “Subsidies Valuation Information” section.

On this basis, we determine a countervailable subsidy rate of 0.29 *ad valorem* for Yingao.

#### B. 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 GOC’s provision of electricity for LTAR in part on AFA. Therefore, we determine that the GOC’s provision of electricity confers a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act, and is specific under section 771(5A)(D)(iii) of the Act.

For determining the existence and amount of any benefit under this program, we selected the highest non-seasonal provincial rates in the PRC, as provided by the GOC for each electricity category (*e.g.*, “large industry,” “general industry and commerce”) and “base charge” (either maximum demand or transformer capacity) used by the respondents. Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a category.

Consistent with our approach in *Wind Towers from the PRC*, we first calculated the respondents’ variable electricity costs by multiplying the monthly kWh consumed at each price category (*e.g.*, peak, normal, and valley, where appropriate) by the corresponding electricity rates paid by the respondents during each month of the POI.<sup>83</sup> Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by each respondent during the POI from the monthly benchmark variable electricity costs.

To measure whether the respondents received a benefit with regard to their base rate (*i.e.*, either maximum demand or transformer capacity charge), we first multiplied the monthly base rate

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<sup>82</sup> See, *e.g.*, *Seamless Pipe from the PRC* IDM at 25.

<sup>83</sup> See *Wind Towers from the PRC* IDM at 21-22.

charged to the companies by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the companies' consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by the companies during the POI from the benchmark base rate costs. 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 base rate payments.<sup>84</sup>

To calculate the net subsidy rates attributable to Superte, Zhaoshun, and Yingao, we divided the benefit by each company's respective sales as described in the "Subsidies Valuation Information" section above. On this basis, we determine countervailable subsidy rates of 0.58 percent *ad valorem* for Superte and 1.19 percent *ad valorem* for Yingao. We calculated no benefit for Zhaoshun's purchases of electricity. Therefore, Superte and Zhaoshun's cumulated rate for this program is the rate calculated for Superte.

We address parties' comments on this program in Comment 13, below.

### C. Stainless Steel Coils for LTAR

The Department investigated whether GOC authorities provided SSC to producers of SS sinks for LTAR. Except as noted above under "*Superte – Government Authorities Under Provision of SSC for LTAR*," the respondent companies identified the suppliers and producers from whom they purchased SSC during the POI. Further, except as noted under "Use of Facts Otherwise Available and Adverse Inferences - *Yingao – Purchases of SSC*," above, the respondent companies reported the date of payment, quantity, unit of measure, and purchase price for the SSC purchased during the POI.

As discussed above under "Use of Facts Otherwise Available and Adverse Inferences," we are finding, as AFA, that certain producers of SSC purchased by the respondents during the POI are "authorities" within the meaning of section 771(5)(B) of the Act. Also as discussed under "Use of Facts Otherwise Available and Adverse Inferences," we are finding, as AFA, that Superte's unidentified SSC producers are "authorities" within the meaning of section 771(5)(B) of the Act. Therefore, we determine that the SSC supplied by these enterprises is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act and that the respondents received a benefit to the extent that the price they paid for SSC produced by these producers was for LTAR. *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

Of the remaining SSC producers, the GOC reported that one was an SOE, but did not provide the further information the Department requested in order to determine whether this SOE was an "authority." Therefore, consistent with our practice of finding SOEs to be authorities,<sup>85</sup> we determine that the SSC supplied by this SOE is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act and that the

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<sup>84</sup> For more information on the respondents' electricity usage categories and the benchmark rates we have used in the benefit calculations, *see* Electricity Benchmark Memo. For the calculations, *see* Yingao Preliminary Calculation Memo and Superte Preliminary Calculation Memo.

<sup>85</sup> *See, e.g., OTR Tires from the PRC* IDM at 10.

respondents received a benefit to the extent that the price they paid for SSC produced by this suppliers was for LTAR. *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

Finally, the GOC identified four SSC producers located in the PRC but entirely or substantially owned and controlled by foreign companies that are not owned or controlled by the GOC. This is supported by record information (*e.g.*, these companies' ownership structure, articles of association, and the membership and operation of their boards of directors and their senior management).<sup>86</sup> Therefore, we determine that these SSC producers, in this instance, are not "authorities," and that the SSC purchased from them does not give rise to a countervailable subsidy.

Regarding the specificity of SSC provided for LTAR, the GOC has stated that it does "not impose any limitations on the consumption of stainless steel coil by law or by policy" and that "there is a vast number of uses for stainless steel coil, and that the type of consumers that may purchase stainless steel coil is highly varied within the economy."<sup>87</sup> In support, the GOC provided a list of industries that invited bids to supply stainless steel products.<sup>88</sup> According to the GOC's classification, these potential users of stainless steel products fall into 20 or 32 different industry classifications using ISIC and Chinese national economy industry classifications, respectively. On this basis, we determine that the GOC is providing SSC to a limited number of industries or enterprises and, hence, that the subsidy is specific pursuant to section 771(5A)(D)(iii).<sup>89</sup>

Finally, regarding benefit, the Department identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services at 19 CFR 351.511(a)(2). 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>90</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 this hierarchy, 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 SSC 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

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<sup>86</sup> *See* GQR at Exhibits E4-APP-1; E4-APP-2; E4-APP-26; and E4-APP-27.

<sup>87</sup> *Id.* at 67.

<sup>88</sup> *Id.* at Exhibit E4-14.

<sup>89</sup> *See* section 771(5A)(D)(iii)(I) of the Act.

<sup>90</sup> *See also Softwood Lumber from Canada* IDM at "Market-Based Benchmark."

significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.<sup>91</sup>

In the GQR, the GOC stated that its SSB does not maintain official statistics on stainless steel cold-rolled sheet or strip, including production volume by ownership type or import volumes; that, instead, it maintains data on cold-rolled sheet or strip that incorporates stainless and non-stainless products.<sup>92</sup> In the First GOC Supplemental Questionnaire, we requested that the GOC provide the data for the larger category, cold-rolled steel, and asked whether in the GOC's view such data was representative of stainless steel production.<sup>93</sup> The GOC responded that the cold-rolled steel data collected by the SSB includes four types of cold-rolled products in terms of chemical composition: non-alloy, low-alloy, alloy, and stainless steel.<sup>94</sup> Moreover, the GOC claimed that stainless and non-stainless steel are substantially different products, so that relying on information about cold-rolled steel for stainless steel could result in inaccurate and seriously distorted results.<sup>95</sup> The GOC did not submit the SSB data for cold-rolled steel.

Based on the GOC's claim that the cold-rolled steel information is not representative of stainless steel production, the Department has relied on record information that is specific to stainless steel as facts available.<sup>96</sup> This information shows that SOE producers of stainless steel account for at least 46 percent of Chinese production during the POI.<sup>97</sup> Furthermore, given additional business proprietary information we have addressed in the Final Determination BPI Memo, we find that this is a conservative estimate of the GOC's involvement.<sup>98</sup> Consequently, because of the government's significant involvement in the stainless steel market, the use of private producer prices for SSC in the PRC would not be an appropriate benchmark (*i.e.*, such a benchmark would reflect the distortions of the government presence).<sup>99</sup> As we explained 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.<sup>100</sup>

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<sup>91</sup> See *CVD Preamble*, 63 FR at 65377.

<sup>92</sup> See GQR at 63.

<sup>93</sup> See First GOC Supplemental Questionnaire at 7.

<sup>94</sup> See GOC's July 20, 2012 SQR at 6.

<sup>95</sup> *Id.* at 7.

<sup>96</sup> See section 776(a)(1) of the Act.

<sup>97</sup> See Petition, Volume III at 49 and Exhibit III-57. See also Yingao Preliminary Calculation Memo at Attachment 2 and Superte Preliminary Calculation Memo at Attachment 2. In *Coated Paper from the PRC*, the Department found that SOEs and collectives accounted for 36.68 percent and 33.1 percent of domestic production of caustic soda and kaolin clay, respectively. The Department determined that these levels of SOE and collective ownership were substantial. See *Coated Paper from the PRC* IDM at "Programs Determined To Be Countervailable – Provision of Papermaking Chemicals for LTAR."

<sup>98</sup> See Final Determination BPI Memo at 2.

<sup>99</sup> See *Softwood Lumber from Canada* IDM at "There are no market-based internal Canadian benchmarks" section.

<sup>100</sup> *Id.* at 38-39.

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 available to producers of subject merchandise in the PRC. Petitioner and Yingao both submitted prices that they suggest are appropriate.<sup>101</sup> Petitioner proposed using MEPS world market price data, while Yingao has submitted prices for imports of SSC into various Asian countries (not including the PRC). Consistent with our practice, we have not relied on the import prices because there is no evidence that such prices are available to SS sinks producers in the PRC.<sup>102</sup> Instead, we are relying on the MEPS world market prices.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we have added to the monthly benchmark prices ocean freight and inland freight charges that would be incurred to deliver SSC from the port to the companies' facilities. We have also added the applicable VAT and import duties, at the rates reported by the GOC.<sup>103</sup> Our benchmark calculations are fully described in Yingao Preliminary Calculation Memo and Superte Preliminary Calculation Memo.

We then compared the monthly benchmark prices to Superte's actual purchase prices for SSC, including taxes and delivery charges, as appropriate. For Yingao, as explained above under "Use of Facts Otherwise Available and Adverse Inferences - *Yingao – Purchases of SSC*," we compared the monthly benchmark prices to the lowest "bundled" purchase price reported by Yingao, adjusted to include taxes and delivery charges. 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 SSC purchased from the GOC authorities to arrive at the benefit.<sup>104</sup>

Because the benchmark prices exceeded the prices paid by Superte and Yingao for SSC, we find that the GOC's provision of SSC for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). To calculate the net subsidy rates attributable to Superte and Yingao, we divided the benefit by each company's respective sales as described in the "Subsidies Valuation Information" section above.

On this basis, we determine countervailable subsidy rates of 8.75 percent *ad valorem* for Superte and 0.87 percent *ad valorem* for Yingao. Because Zhaoshun did not purchase SSC, Superte and Zhaoshun's cumulated rate for this program is the rate calculated for Superte.

We address parties' comments on this program in Comments 8 through 12, below.

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<sup>101</sup> See YQR at Exhibit 21; see also Petitioner's FIS at Exhibit 2.

<sup>102</sup> See, e.g., *Seamless Pipe from the PRC IDM* at Comment 9A.

<sup>103</sup> See GQR at 66.

<sup>104</sup> See Yingao Final Calculation Memo and Superte Final Calculation Memo.

## D. Land for LTAR to Companies Located in Industrial or Other Special Economic Zones

### 1. Yingao

Yingao is located in Zone C of Shunde Science and Technology Industrial Zone (“Zone C”).<sup>105</sup> Yingao purchased its land-use rights in 2006 from the local land authority.<sup>106</sup> At that time, the Shunde Land Bureau and the Land and Resource Bureau of Foshan City jointly administered land-use rights in Zone C.<sup>107</sup>

The Department has determined in past PRC cases that the provision of land-use rights constitutes the provision of a good within the meaning of section 771(5)(D)(iii) of the Act.<sup>108</sup> The Department has also found that when the GOC provides land in an industrial park located within the seller’s (e.g., county’s or municipality’s) jurisdiction, the provision of the land-use rights is regionally specific.<sup>109</sup> In the instant investigation, Zone C is a designated region within the jurisdictions that provided land-use rights to Yingao. Moreover, as discussed more fully below in Comment 14, record evidence shows distinctions in the government’s provision of land-use rights within Zone C and outside of Zone C. Therefore, we determine that the government’s provision of land-use rights to Yingao is a financial contribution that is specific within the meaning of section 771(5A)(D)(iv) of the Act. Our analysis of the existence and extent of any benefit is described in the “Methodology” section below.

Magang reported that it leased its land during the POI in an area that is not a special economic zone.<sup>110</sup> No information on the record contradicts Magang’s statement, and no record information indicates that Magang leased the land from the GOC. Therefore, we find that Magang did not benefit from this program during the POI.

### 2. Superte

Superte is located in the Huangpu Food Industry Park (Huangpu Town is part of Zhongshan City). One of Superte’s owners purchased the company’s land-use rights in 2004 and 2009, and in 2010, Superte purchased the land-use rights from that owner.<sup>111</sup> Also in 2010, land-use certificates were issued.<sup>112</sup> In the *Preliminary Determination*, we concluded that the 2010 issuance effectively extended Superte’s land use rights without additional compensation to the government, and found a subsidy based on the extra years. In the Superte Post-Preliminary Analysis, we found that land-use rights were provided to Superte’s owner for LTAR.<sup>113</sup>

As explained above, the Department has determined in past PRC cases that the provision of land-

<sup>105</sup> See, e.g., GOC Verification Report at 6-7.

<sup>106</sup> See YQR at 38.

<sup>107</sup> See GOC’s October 23, 2012 SQR at 7; see also GOC Verification Report at 6-7.

<sup>108</sup> See LWS from the PRC IDM at 14-18.

<sup>109</sup> *Id.*; see also section 771(5A)(D)(iv) of the Act.

<sup>110</sup> See MQR at 25.

<sup>111</sup> See Superte’s July 23, 2012 SQR at 28.

<sup>112</sup> *Id.*

<sup>113</sup> See Superte Post-Preliminary Analysis at 5-9.

use rights constitutes the provision of a good within the meaning of section 771(5)(D)(iii) of the Act.<sup>114</sup> The Department has also found that when the GOC provides land in an industrial park located within the seller's (e.g., county's or municipality's) jurisdiction, the provision of the land-use rights is regionally specific.<sup>115</sup> In the instant investigation, Huangpu Food Industry Park is a designated region within the jurisdictions that provided land-use rights to Superte. Moreover, as discussed more fully below in Comment 14, record evidence shows distinctions in the government's provision of land-use rights within the Huangpu Food Industry Park and outside that Park. Therefore, we determine that the government's provision of land-use rights to Superte is a financial contribution that is specific within the meaning of section 771(5A)(D)(iv) of the Act. Our analysis of the existence and extent of any benefit is described in the "Methodology" section below.

Zhaoshun reported that it has not acquired land-use rights and that it rented its office space from an individual during the POI.<sup>116</sup> No information on the record contradicts Zhaoshun's statement. Therefore, we find that Zhaoshun did not benefit from this program during the POI.

### 3. Methodology – Superte and Yingao

To determine whether Superte and Yingao received a benefit, we have analyzed potential benchmarks in accordance with 19 CFR 351.511(a). First, we look to whether there are market-determined prices within the country. See 19 CFR 351.511(a)(2)(i). In *LWS from the PRC*, the Department determined that "Chinese land prices are distorted by the significant government role in the market" and, hence, that usable tier one benchmarks do not exist.<sup>117</sup> The Department also found that tier two benchmarks (world market prices that would be available to purchasers in the PRC) are not appropriate. See 19 CFR 351.511(a)(2)(ii). Therefore, the Department determined the adequacy of remuneration by reference to tier three and found that the sale of land-use rights in the PRC was not consistent with market principles because of the overwhelming presence of the government in the land-use rights market, and the widespread and documented deviation from the authorized methods of pricing and allocating land. See 19 CFR 351.511(a)(2)(iii). There is insufficient new information on the record of this investigation to warrant a change from the findings in *LWS from the PRC*.

For these reasons, we are not able to use Chinese or world market prices as a benchmark. Therefore, we are comparing the prices that Superte and Yingao paid for their land-use rights with comparable market-based prices for land purchases in a country at a comparable level of economic development that is reasonably proximate to the PRC. Specifically, we are comparing the prices Superte and Yingao paid to sales of certain industrial land in industrial estates, parks, and zones in Thailand, consistent with *LWS from the PRC* and *Solar Cells from the PRC*.<sup>118</sup>

<sup>114</sup> See *LWS from the PRC* IDM at 14-18.

<sup>115</sup> *Id.*; see also section 771(5A)(D)(iv) of the Act.

<sup>116</sup> See ZQR at 23.

<sup>117</sup> See *LWS from the PRC Preliminary Determination*, 72 FR at 67907 (unchanged in *LWS from the PRC* IDM at 15). See also Post-Preliminary Analysis Attachment Memo – Superte at Attachment 5 and Post-Preliminary Analysis Attachment Memo – Yingao at Attachment 6 (Memorandum from Toni Page to the File titled "Land Benchmark Information" (November 26, 2007), which the Department cited in the *LWS from the PRC Preliminary Determination*).

<sup>118</sup> See *Solar Cells from the PRC* IDM at 6.

Following the methodology from *Solar Cells from the PRC*, we relied on four publicly-available quarterly reports from C.B. Richard Ellis. The quarterly reports include industrial land prices for plots in industrial estates, parks, and zones in the Philippines, Thailand, and other Asian countries.<sup>119</sup>

To calculate the benefit, we computed the amount that Superte and Yingao would have paid for their land-use rights and subtracted the amounts Superte and Yingao actually paid. Because the subsidy amounts exceeded 0.5 percent of sales in the years of receipt, we have used the discount rates described under the “Discount Rate Benchmarks” section above to allocate the benefit over the life of the land-use rights contracts. We divided the amounts allocated to the POI by Superte’s and Yingao’s respective POI sales.

On this basis, we determine countervailable subsidy rates of 1.27 percent *ad valorem* for Superte and 1.22 percent *ad valorem* for Yingao. Because Zhaoshun did not purchase land-use rights, Superte and Zhaoshun’s cumulated rate for this program is the rate calculated for Superte.

#### E. Land-Use Rights Extension - Superte

Based on section 775 of the Act, we determine that the GOC conferred a countervailable subsidy on Superte when it issued Superte’s land-use certificates in 2010, which effectively extended Superte’s land use rights by additional years without additional consideration.<sup>120</sup> We determine that Superte received a financial contribution in the form of revenue forgone by the GOC and a benefit in the amount of forgone revenue. *See* section 771(5)(d)(ii) of the Act. We further determine that the subsidy was specific to Superte under section 771(5A)(D)(iii)(I) of the Act.

To calculate the benefit, we considered the subsidy to be exceptional within the meaning of 19 CFR 351.524(c)(2)(i) and, hence, have treated it as non-recurring. Thus, we divided the benefit by Superte’s total sales in 2010 (the year of approval) pursuant to 19 CFR 351.524(b)(2). Because the result was greater than 0.5 percent, we allocated the benefit over the 12-year AUL, using the discount rate described in the “Discount Rate Benchmarks” section above, and divided the allocated amount by Superte’s total sales during the POI.

On this basis, we determine a countervailable subsidy rate of 0.19 percent *ad valorem* for Superte. *See* Superte Preliminary Calculation Memo at 6 and Attachment 7. Because Zhaoshun did not receive this benefit, Superte and Zhaoshun’s cumulated rate for this program is the rate calculated for Superte.

#### F. Policy Lending to the SS Sinks Industry

The Department investigated policy lending to the SS sinks industry. In the *Preliminary Determination*, we preliminarily determined that there was a program of preferential policy lending specific to SS sinks producers in Zhongshan City, within the meaning of section

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<sup>119</sup> *See* Post-Preliminary Analysis Attachment Memo – Superte at Attachment 3 and Post-Preliminary Analysis Attachment Memo – Yingao at Attachment 3 (benchmark pages from *Solar Cells from the PRC*).

<sup>120</sup> *See* SQR at 28.

771(5A)(D)(i) of the Act.<sup>121</sup> We also preliminarily determined that the producers outside of Zhongshan did not have policy loans outstanding during the POI. Subsequently, in our post-preliminary analyses, we preliminarily determined that Superte, Zhaoshun, and Yingao received countervailable loans under Preferential Export Financing.<sup>122</sup> However, as discussed under “Use of Facts Otherwise Available and Adverse Inferences: *GOC – Policy Lending*,” above, we now determine, based on AFA, that there is a program of preferential policy lending specific to SS sinks producers in the Pearl River Delta region. Both respondents are located in the Pearl River Delta region.

We find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are “authorities.”<sup>123</sup> The loans to Superte, Zhaoshun, and Yingao provide a benefit equal to the difference between what these companies paid on their loans and the amount they would have paid on comparable commercial loans. *See* section 771(5)(E)(ii) of the Act. (Our benchmarks are discussed above under the “Discount Rate Benchmarks” section.) Finally, as discussed under “Use of Facts Otherwise Available and Adverse Inferences: *GOC – Policy Lending*,” above, we find the benefit to be specific to the SS sinks industry within the meaning of section 771(5A)(D)(i) of the Act.

#### Methodology- Superte and Yingao

To calculate the net subsidy rate attributable to Superte and Zhaoshun, we divided the benefit by each company’s respective total sales during the POI. To calculate the net subsidy rate attributable to Yingao, we divided the benefit by Yingao’s and Magang’s total sales during the POI, in accordance with 19 CFR 351.514(a).

On this basis, we determine a countervailable subsidy rate of 1.23 percent *ad valorem* for Superte, a countervailable subsidy rate of 0.05 percent *ad valorem* for Zhaoshun, and a countervailable subsidy rate of 0.99 percent *ad valorem* for Yingao.

#### G. Export Assistance Grants

Superte reported that it received a grant under this program during the POI.<sup>124</sup> Yingao reported that it received grants under this program in 2010 and during the POI.<sup>125</sup> The GOC stated that actual export performance or export marketing activities of an applicant or recipient is one of the criteria in determining eligibility for or receipt of assistance under this program.<sup>126</sup>

We determine that the grants received by Superte and Yingao under this program constitute a financial contribution and provide a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Moreover, based on the GOC’s identification of the grants under this program as

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<sup>121</sup> *See Preliminary Determination*, 77 FR at 46726-46727.

<sup>122</sup> *See Superte Post-Preliminary Analysis* at 9-12, and *Yingao Post-Preliminary Analysis* at 9-12.

<sup>123</sup> *See Preliminary Determination*, 77 FR at 46727.

<sup>124</sup> *See SQR* at 13-14.

<sup>125</sup> *See YQR* at 13.

<sup>126</sup> *See GQR* at 9.

export-related, as cited in the previous paragraph, we determine that this program is contingent upon export and, therefore, specific within the meaning of section 771(5A)(B) of the Act.

The grants that Superte and Yingao received during the POI were less than 0.5 percent of their respective POI export sales, as described above in the “Attribution of Subsidies” section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI.

On this basis, we determine that Superte received a countervailable subsidy of 0.04 percent *ad valorem*, and that Yingao received a countervailable subsidy of 0.04 percent *ad valorem*. Because Zhaoshun did not receive any grants under this program, Superte and Zhaoshun’s cumulated rate for this program is the rate calculated for Superte.

The grant to Yingao in 2010 under this program was less than 0.5 percent of Yingao’s export sales in the year of receipt. Therefore, because any potential subsidy would expense prior to the POI in accordance with 19 CFR 351.524(b)(2), we have not included this grant in the subsidy rate for Yingao.

#### H. Special Funds of Guangdong Province for International Market Expansion

Yingao reported that it received a grant under an unknown program during POI.<sup>127</sup> The GOC identified this grant under the program listed above.<sup>128</sup> The GOC stated that this grant program supports small- and medium-sized enterprises in Guangdong Province to expand international markets.<sup>129</sup>

We determine that the grant received by Yingao under this program constitutes a financial contribution and provides a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Moreover, based on the GOC’s statement that this grant program supports small- and medium-sized enterprises in Guangdong Province to expand international markets, as cited in the previous paragraph, we determine that this program is contingent upon export and, therefore, specific within the meaning of section 771(5A)(B) of the Act.

The grant that Yingao received during the POI was less than 0.5 percent of Yingao’s POI export sales, as described above in the “Attribution of Subsidies” section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we determine that Yingao received a countervailable subsidy of 0.04 percent *ad valorem*.

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<sup>127</sup> See YQR at 43-44.

<sup>128</sup> See GOC’s July 20, 2012 SQR at 1.

<sup>129</sup> *Id.*

## I. “Two New” Product Special Funds of Guangdong Province

Yingao reported that it received a grant under another unknown program during POI.<sup>130</sup> The GOC identified this grant under the program listed above, but did not respond to any of the questions from the Original Questionnaire.<sup>131</sup>

We determine that the grant received by Yingao under this program constitutes a financial contribution and provides a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Moreover, as discussed under “Use of Facts Otherwise Available and Adverse Inferences,” above, the Department is relying on AFA to determine that the grant program is specific.

The grant that Yingao received during the POI was less than 0.5 percent of Yingao’s POI sales, as described above in the “Attribution of Subsidies” section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we determine that Yingao received a countervailable subsidy of 0.07 percent *ad valorem*.

## J. Grant for Loan Interest (Zhongshan City)

Superte reported that it received a grant under this program during POI.<sup>132</sup> The GOC provided a brief description of the program, but did not respond to any of the questions from the Department’s Original Questionnaire.<sup>133</sup>

We determine that the grant received by Superte under this program constitutes a financial contribution and provides a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Moreover, as discussed under “Use of Facts Otherwise Available and Adverse Inferences,” above, the Department is relying on AFA to determine that the grant program is specific.

The grant that Superte received during the POI was less than 0.5 percent of Superte’s POI sales, as described above in the “Attribution of Subsidies” section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we determine that Superte received a countervailable subsidy of 0.09 percent *ad valorem*. Because Zhaoshun did not receive any grants under this program, Superte and Zhaoshun’s cumulated rate for this program is the rate calculated for Superte.

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<sup>130</sup> See YQR at 43-44.

<sup>131</sup> See GOC’s July 20, 2012, SQR at 1.

<sup>132</sup> See SQR at 34.

<sup>133</sup> See GOC’s July 26, 2012 SQR at 4.

K. Grant of Zhongshan City for Enterprises' Participation in Overseas Professional Exhibition

Superte reported that it received a grant under this program during the POI.<sup>134</sup> The GOC stated that the purpose of this program is to encourage enterprises in Zhongshan City to explore international markets.<sup>135</sup>

We determine that the grant received by Superte under this program constitutes a financial contribution and provides a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Moreover, based on the GOC's statement that the purpose of this program is to encourage enterprises in Zhongshan City to explore international markets, as cited in the previous paragraph, we determine that this program is contingent upon export and, therefore, specific within the meaning of section 771(5A)(B) of the Act.

The grant that Superte received during the POI was less than 0.5 percent of Superte's POI export sales, as described above in the "Attribution of Subsidies" section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we determine that Superte received a countervailable subsidy of 0.05 percent *ad valorem*. Because Zhaoshun did not receive any grants under this program, Superte and Zhaoshun's cumulated rate for this program is the rate calculated for Superte.

L. Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises

The GOC reported that Yingao received a grant under this program during POI.<sup>136</sup> The GOC stated that the program supports adoption of e-commerce by foreign trade enterprises in Guangdong Province.<sup>137</sup> Superte also reported that it received a grant under this program during the POI.<sup>138</sup>

We determine that the grants received by Yingao and Superte under this program constitute a financial contribution and provide a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Moreover, based on the GOC's statement that the program supports adoption of e-commerce by foreign trade enterprises in Guangdong Province, as cited in the previous paragraph, we determine that this program is contingent upon export and, therefore, specific within the meaning of section 771(5A)(B) of the Act.

The grant that Superte received during the POI was less than 0.5 percent of Superte's POI export sales, as described above in the "Attribution of Subsidies" section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we determine that Superte received a countervailable subsidy of 0.01 percent *ad valorem*. Because Zhaoshun did

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<sup>134</sup> See SQR at 36-37; see also GOC's July 26, 2012 SQR at 4.

<sup>135</sup> See GOC's July 26, 2012 SQR at 4.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> See Superte's July 23, 2012 SQR at 17.

not receive any grants under this program, Superte and Zhaoshun’s cumulated rate for this program is the rate calculated for Superte.

The grant that Yingao received during the POI was less than 0.005 percent of Yingao’s POI export sales. Therefore, consistent with our past practice, we did not include this program in our net CVD rate.<sup>139</sup>

#### M. Shunde Intensive Industrial Zone Administrative Fee Exemptions and Reductions

Yingao reported that it received a reduction in its land transfer fee when it purchased land use rights in 2006.<sup>140</sup> The GOC reported that only companies with industrial-use land and ancillary residential facilities-use land within an intensive industrial zone are eligible for the reduction.<sup>141</sup>

We find that the reduced land-use fee paid by Yingao under this program constitutes a financial contribution and provides a benefit under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Furthermore, based on the GOC’s explanation that the fee reduction is limited to companies in intensive industrial zones, we find that the program is specific within the meaning of sections 771(5A)(D)(i) and (iv) of the Act.

To calculate the benefit, we considered the subsidy to be exceptional within the meaning of 19 CFR 351.524(c)(2)(i) and, hence, have treated it as non-recurring. Thus, we divided the benefit by Yingao’s total sales in 2006 (the year of approval) pursuant to 19 CFR 351.524(b)(2). Because the result was greater than 0.5 percent, we allocated the benefit over the 12-year AUL, using the discount rate described in the “Discount Rate Benchmarks” section above, and divided the allocated amount by Yingao’s and Magang’s combined total sales (less intercompany sales) during the POI.

On this basis, we find that Yingao received a countervailable subsidy rate of 0.09 percent *ad valorem*.<sup>142</sup>

## II. Programs Determined To Have Been Not Used By Respondents or To Not Provide Benefits During the POI

We determine that the respondents did not apply for or receive measurable benefits during the POI under the following programs.

#### A. Export Subsidies 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

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<sup>139</sup> See, e.g., *CFS from the PRC* IDM at 15.

<sup>140</sup> See NSA Initiation Memo; see also YQR NSA at 1-5.

<sup>141</sup> See GQR NSA at 5.

<sup>142</sup> See Post-Preliminary Analysis Attachment Memo – Yingao at Attachment 5.

sold for domestic consumption.”<sup>143</sup>

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 SS sinks sales in the domestic market (17 percent) exceeded the amount of VAT exempted upon the export of SS sinks (nine percent).<sup>144</sup>

Thus, consistent with past cases, we determine that the VAT exempted upon the export of SS sinks does not confer a countervailable benefit.<sup>145</sup>

#### B. Grant Programs Identified in Responses

The GOC, Superte, Zhaoshun, and Yingao reported that the respondents received various grants in 2005, 2008, 2009, and 2010.<sup>146</sup> We find that the grants represent less than 0.5 percent of Yingao’s, Superte’s and Zhaoshun’s respective export or total sales, as applicable, for the years of approval. Therefore, we have expensed these grants to the year of receipt, in accordance with 19 CFR 351.524(b)(2), and have not allocated the benefits from these grants to the POI.

These programs are as follows:

1. Special Funds for Development of Foreign Trade (Foshan City)
2. Special Funds of Guangdong Province for Development of Foreign Trade
3. Support Funds of Guangdong Province of Export Rebate for Mechanic, Electronic and High-tech Products
4. Special Funds of Shunde District for International Market Expansion
5. Subsidy to Attend Domestic Fair in Shanghai
6. Subsidy to Attend Overseas Fair
7. Interest Discount for Export Goods
8. Technology and Trade Specific Fund of Guangdong Province
9. International Market Development Fund for Export Companies

We also determine the following programs to have been not used by the respondents:

1. The State Key Technology Renovation Fund
2. “Famous Brands” Awards
3. Grants to Cover Legal Fees in Trade Remedy Cases
4. Special Fund for Energy Saving Technology Reform
5. The Clean Production Technology Fund
6. Grants for Listing Shares
7. Guangdong Province Science and Technology Bureau Project Fund (aka Guangdong Industry, Research, University Cooperating Fund)

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<sup>143</sup> See 19 CFR 351.517(a); see also 19 CFR 351.102 (for a definition of “indirect tax”).

<sup>144</sup> See GQR at 51.

<sup>145</sup> See, e.g., *OCTG from the PRC* IDM at 25.

<sup>146</sup> See GOC’s July 20, 2012, SQR at 2; see also Superte’s July 23, 2012 SQR at 10-17.

8. Export Rebate for Mechanic, Electronic, and High-tech Products
9. Funds for Outward Expansion of Industries in Guangdong Province
10. Fund for Small and Medium Enterprises Bank-enterprise Cooperation Projects
11. Special Fund for Fostering Stable Growth of Foreign Trade
12. Local Government Deposits Into Bank Accounts
13. Treasury Bond Loans or Grants
14. Preferential Loans for SOEs
15. Provincial Tax Exemptions and Reductions for “Productive” FIEs
16. Tax Reductions for FIEs Purchasing Chinese-made Equipment
17. Tax Reductions for FIEs in Designated Geographic Locations
18. Tax Reductions for Technology- or Knowledge-intensive FIEs
19. Tax Reductions for FIEs that are also High or New Technology Enterprises
20. Tax Reductions for HNTes Involved in Designated Projects
21. Tax Offsets for Research and Development at FIEs
22. Tax Credits for Domestically Owned Companies Purchasing Chinese-made Equipment
23. Tax Reductions for Export-oriented FIEs
24. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
25. Tax Reduction for High-tech Industries in Guangdong Province
26. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
27. VAT Rebates on FIE Purchases of Domestically Produced Equipment
28. City Tax and Surcharge Exemptions for FIEs
29. Exemptions from Administrative Charges for Companies in Industrial Zones
30. VAT and Import Duty Exemptions on Imported Material
31. VAT Rebates on Domestically Produced Equipment
32. Provision of Land to SOEs at LTAR
33. Exemptions from Land Development Fees
34. Land Purchase Grants
35. Grants to Hire Post-doctoral Workers
36. Financial Subsidies: Interest Subsidies, Preferential Loans, and Lowered Interest Rates
37. Tax Reductions or Exemptions
38. Shunde Intensive Industrial Zone Preferential Land Grants
39. Shunde Intensive Industrial Zone Tax Reductions
40. Shunde Intensive Industrial Zone Preferential Electricity Rates
41. Foshan City Grants to “Contract-Honoring and Promise-Keeping” Enterprises
42. Foshan City Financial Subsidies to “Contract-Honoring and Promise-Keeping” Enterprises

## **Analysis of Comments**

### **General Issues**

#### **Comment 1: Application of the CVD Law to the People's Republic of China**

##### *GOC's Affirmative Arguments*

- In *GPX (Fed. Cir.)*, the Federal Circuit held that the Department has no lawful authority to pursue CVD investigations against the PRC where the Department also holds that the PRC is an NME country.
- As a result of Constitutional deficiencies in Public Law 112-99, there is no legitimate statutory basis for the investigation. The Department should, therefore, terminate the investigation and not issue a CVD order.
- Public Law 112-99 violates the Fifth Amendment by not providing equal protection of the law and by its severe retroactivity. It also violates the constitutional prohibition against passage of an *ex post facto* law.

##### *Petitioner's Rebuttal Arguments*

- The Department recently rejected the same arguments by the GOC in *Wind Towers from the PRC*.<sup>147</sup>
- In *GPX 2*, the CIT recently held that section 777A(f) of the Act is constitutional.

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

Public Law 112-99 clarifies that the Department has the authority to apply the CVD law to imports from NME countries, such as the PRC. The GOC contends that the Department lacks such authority by relying on a court decision which never became final and was, in fact, vacated by a subsequent decision of the Federal Circuit in *GPX (Fed. Cir.) 2*.

Contrary to the GOC's arguments, Public Law 112-99 does not violate equal protection of the law under the Fifth Amendment's due process clause.<sup>148</sup> Section 1 of Public Law 112-99 imposes no new obligation on parties, but rather reaffirms the Department's authority to apply the CVD law to NME countries. Moreover, section 1 does not single out one group of companies and deny them the "protections" of section 2. Rather, section 1 simply confirms that existing law, to which all companies already were subject, applies. Further, the distinction between section 1 and section 2 of the legislation serves a rational purpose. As evidenced by the legislative history, section 2 of Public Law 112-99 was adopted, in part, to bring the United

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<sup>147</sup> See *Wind Towers from the PRC* IDM at Comment 1.

<sup>148</sup> See *GPX 2*.

States into compliance with its WTO obligations.<sup>149</sup> Given the statutory scheme for prospective implementation of adverse WTO decisions,<sup>150</sup> it was entirely reasonable for Congress to decline to upset the finality of already-completed administrative determinations or to impose new obligations in administrative proceedings already in progress by requiring the Department to make adjustments not necessary to bring the United States into compliance with its WTO obligations.

Further, we disagree that the “retroactivity” of the legislation violates the Fifth Amendment’s due process clause. Section 1 of Public Law 112-99 is not retroactive. Rather, it clarifies existing law by ensuring that the Department will continue to apply the CVD law to NME countries. Congress enacted the legislation to prevent the Federal Circuit’s decision in *GPX (Fed. Cir.)* – a decision that would have changed existing law – from becoming final and taking effect.<sup>151</sup> In any event, even if section 1 of Public Law 112-99 were considered retroactive, it does not violate the due process clause. This is because the legislation has a rational basis, which is to correct what was perceived by Congress to be an erroneous decision in *GPX (Fed. Cir.)* by confirming and clarifying the existing law.<sup>152</sup>

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

## **Comment 2: Double Counting/Overlapping Remedies**

### *Yingao’s Affirmative Arguments*

- To the extent that the Department does not adjust Guangdong Yingao’s AD margins under specific provisions of law to avoid “double remedies,” its practice is to offset selling, general, and administrative expenses by the amount of such unaddressed benefits.<sup>153</sup>
- The Department should decline from imposing any CVD for any program in the final determination for which it has not made such an adjustment to account for double remedies in the AD margin.

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<sup>149</sup> See, e.g., 158 Cong. Rec. at H1167–68, H1171 (daily ed. March 6, 2012) (statements of Representatives Camp, Brady, and Jackson Lee).

<sup>150</sup> See 19 U.S.C. 3533, 3538.

<sup>151</sup> See, e.g., 158 Cong. Rec. at H1167–68 (daily ed. March 6, 2012) (statements of Representatives Camp, Levin, Rohrabacher, and Boustany).

<sup>152</sup> See, e.g., *General Motors*, 503 U.S. at 191 (upholding retroactive legislation that corrected unexpected results of judicial opinion).

<sup>153</sup> See *SS Bar from Brazil – AD IDM* at Comment 3.

### *Petitioner's Rebuttal Arguments*

- The Department should address any double remedy arguments on the record of the AD investigation because, by statute, the Department addresses purported double remedy issues in an AD investigation that is concurrent with a CVD investigation.<sup>154</sup>

### **Department's Position**

We agree with Petitioner. When the Department makes both AD and CVD determinations with respect to a class or kind of merchandise from an NME, the law provides for any adjustments to be made to the AD margins calculated in the concurrent AD investigation.<sup>155</sup> Accordingly, there is no basis for the Department to adjust Yingao's final calculated CVD margins, and we have not done so.

### **Policy Lending to the Stainless Steel Sinks Industry**

#### **Comment 3 National and Regional Policy Lending Programs**

##### *Petitioner's Affirmative Arguments:*

- The Department should reverse its *Preliminary Determination* that the GOC's policy lending is limited to Zhongshan City. Instead, the Department should determine that a national policy lending program exists and provided benefits to both respondents in the investigation.
- The *National 11th Five-Year Plan* encourages the "household appliance" industry, calling on it "to develop new products and improve technical content and quality."<sup>156</sup> The respondents received loans during the time period covered by this plan.
- Provinces across the PRC follow the directives of national plans, such as the above-referenced *National 11<sup>th</sup> Five-Year Plan*. Specifically, the *Guangdong 11th Five-Year Plan* designates "household appliances" as one of three "pillar industries" to upgrade.
- The record shows that local authorities within Guangdong Province followed the national and provincial directives to encourage the production of household appliances.
- The *Foshan City 10th Five-Year Plan* identifies the household appliance industry as one of four pillar industries designated for enlargement in Foshan City. In addition, the *Foshan City 10th Five-Year Plan* lists government treasury support, investment guidance, financial loan, and credit guarantees as means of support provided to firms in the four pillar industries.<sup>157</sup>

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<sup>154</sup> See *Sinks from the PRC – AD Prelim* and accompanying IDM.

<sup>155</sup> See section 777A(f) of the Act; see also *Sinks from the PRC – AD Prelim* IDM at 21.

<sup>156</sup> See GQR at Exhibit B-1-1.

<sup>157</sup> *Id.* at Exhibit B-2-2

- The implementation of national directives in cities and provinces in addition to those in Guangdong Province provides further evidence that the GOC’s national policy lending program is enacted through provincial and local governments.<sup>158</sup>
- Despite two Department requests, the GOC refused to provide industrial planning documents related to Guangdong and the Pearl River Delta region and refused to allow the Department to verify information related to the *Pearl River Delta Plan*. Therefore, even if the Department does not determine on record evidence that there is a national, provincial, or regional policy lending program, it should at a minimum apply AFA to determine that there is a preferential lending program in Guangdong and the jurisdictions under the authority of the *Pearl River Delta Plan*, consistent with Department practice.<sup>159</sup>

### *GOC’s Rebuttal Arguments*

- Petitioner exclusively relies on references to household appliances in the various industrial, local, and national planning documents to demonstrate that the GOC has a policy lending program in place to benefit the SS sinks industry. However, as discussed in the GOC’s case brief (summarized in Comment 4, below), the GOC asserts there is no evidence that SS sinks are in the home appliance industry.
- The GOC submitted rebuttal comments on proprietary plans cited by Petitioner.<sup>160</sup>
- Petitioner fails to follow the Department’s framework for establishing the existence of national policy lending as outlined in *Citric Acid from the PRC*, where the Department stated that it “looks to whether the government plans or policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals.”
- In this regard, the GOC notes that the only national policy cited to by Petitioner in support of its allegation is the *National 11th Five-Year Plan*. The GOC states that this plan does not “call for lending” to support its objective and, therefore, does not meet the Department’s above-referenced framework for establishing the existence of national policy lending.
- The provincial and regional plans Petitioner references do not specifically call for credit or lending to be extended by banking institutions.
- Petitioner’s references to “government treasury support, investment guidance, financial loan, {and} credit guarantee{s}” as evidence that the *Pearl River Delta Plan* directs financing to the household appliance industry are not found in any of the GOC plans on the record, but rather are from a news article published two years prior to the *Pearl River Delta Plan*.

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<sup>158</sup> See Petition Volume III at 4-5.

<sup>159</sup> See *CWP from the PRC* IDM at I.C. See also *LWS from the PRC* IDM at Part VI.A.3.

<sup>160</sup> See GOC Case Brief at 8-10.

- None of the respondents’ loan documents on the record reference any of the provincial or regional plans Petitioner cites in its brief.
- Citing distribution patterns of loans by three of the respondents’ lending banks, the GOC states it is clear that the banks did not identify “stainless steel” or “home appliance” industries as specific industries to which they provided loans during the POI.<sup>161</sup>
- The Department should reject Petitioner’s arguments that facts available be used to determine provincial or regional policy lending exists because “Commerce can only use facts otherwise available to fill a gap in the record.”<sup>162</sup> In this case, the record contains the documents Petitioner alleges were withheld by the GOC.
- Furthermore, the GOC states that “when Commerce has access to information on the record...it is expected to consider such evidence.”<sup>163</sup> Thus, because the record contains no gaps, the Department cannot draw an adverse inference.

*Yingao’s Rebuttal Arguments*

- There is no call for lending in the *National 11th Five-Year Plan*.
- The Department correctly found in its *Preliminary Determination* that references to steel and stainless steel are not specific to the SS sinks industry.
- Yingao submitted proprietary rebuttal comments regarding whether plans on the record direct lending.<sup>164</sup>
- The Department should not rely on vague assertions of support in the industry plans, but should look to each company’s loan contracts to determine whether, in fact, the loans were provided in furtherance of industrial policies.
- There is no mention of GOC policies in any of Yingao’s loan documents showing that the loans were provided pursuant to any alleged GOC policy lending program.
- All the documents Petitioner cited were before the Department at the time of its *Preliminary Determination*.
- The Department should reject Petitioner’s assertion that the Department find regional policy lending on the basis of facts available.
- The Department cannot resort to the “facts available” statute if the information is not actually missing from the record.

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<sup>161</sup> See GQR at Exhibit B-8-7.

<sup>162</sup> See *Zhejiang Dunan*, 652 F.3d at 1348.

<sup>163</sup> See *GPX 2* at 56.

<sup>164</sup> See Yingao’s Case Brief at 1-3.

- The fact that an official for the *Pearl River Delta Plan* was not available at verification is irrelevant because, had the official been present, the official would not have been able to submit new information on the record at verification.

## Department's Position

While the GOC argues that none of the plans cited by Petitioner are specifically listed or referenced in the respondents' lending documents, this fact alone is not dispositive of the existence of, or receipt of, policy loans. In its analysis of policy lending, the Department considers the totality of evidence on the record in making its determination. In the *Preliminary Determination*, the Department relied on GOC planning documents (*i.e.*, the *Zhongshan City 12th Five-Year Plan*) that, in combination with information contained in loan documents provided by the GOC, demonstrated the existence of policy lending in Zhongshan City. Specifically, in regard to information contained in the loan documents the Department referenced in reaching its *Preliminary Determination*, the Department stated “{w}hile this information is not necessary in determining whether policy lending exists, in this instance, the information contained in the documents support a preliminary determination that the GOC has a policy in place to encourage the development and production of SS sinks through policy lending in Zhongshan City.”<sup>165</sup> Thus, while the Department can use information contained in loan documents in making a determination, a lack of specific references to GOC planning documents alone is not enough to conclude that policy lending does not exist. Similarly, that specific reference was not made of “stainless steel” or “home appliance” industries is superseded by our finding of policy lending to stainless steel under the *Pearl River Delta Plan*.

We agree with Petitioner that the GOC's failure to provide the *Pearl River Delta Plan* created a gap in our record and the absence of officials from Guangdong Province at verification precluded us from verifying GOC claims. Therefore, as explained under “Use of Facts Otherwise Available and Adverse Inferences: GOC - Policy Lending,” we have determined as AFA that the respondents' loans are countervailable under the *Pearl River Delta Plan*.

Consequently, it is not necessary to address the parties' arguments with respect to the other plans. Therefore, while Yingao is correct that the documents cited by Petitioner were before the Department at the time of the *Preliminary Determination*, because of the GOC's failures, described above, and because we have determined as AFA that the respondents' loans are countervailable under the *Pearl River Delta Plan*, this argument is without merit.

## Comment 4 Specificity to Drawn Stainless Steel Sink Producers

### *GOC's Affirmative Arguments*

- The home appliance industry does not include SS sinks. According to the NBSC's website, the references to the home appliance industry in the *Zhongshan City 12th Five-Year Plan* only relates to electrical appliances, not SS sinks.

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<sup>165</sup> See *Preliminary Determination*, 77 FR at 46727.

- There is no evidence on the record that the GOC, at any level, considers terms such as “kitchen,” “kitchenware,” “hardware,” or “utensil” to be synonymous with “home appliance” or SS sinks.
- Producers with these terms in their names may also produce different products under other industrial categories. Thus, the Department’s reliance on company names in relation to determining that SS sinks are in the home appliance industry is misguided.
- The Department should not rely on business scope descriptions in company business licenses because they are extremely broad and may include products and activities the company may not be currently involved with.
- The *Zhongshan City 12th Five-Year Plan* does not specifically call for lending to support objectives or goals for the SS sinks industry.
- Absent any connection to an actual GOC policy (in this instance, the *Zhongshan City 12th Five-Year Plan*), there is no basis for the Department to conclude that the references in Superte’s loan documents support the Department’s *Preliminary Determination* that there is policy lending in Zhongshan City.

#### *Petitioner’s Rebuttal Arguments*

- The Department verified with Zhongshan officials that there were no documents defining the home appliance industry, and the NBSC’s website to which the GOC refers related to a classification heading for “home electrical driven equipment manufacturing.”
- The GOC could not document that the NBSC’s website was actually used as a reference in the development of the *Zhongshan City 12th Five-Year Plan*. Thus, the GOC’s claims that the home appliance industry only refers to electrical appliances are unsupported.
- The Department was correct in drawing on the names of the respondents as well as their business licenses, which demonstrate that the companies operate in the home or household appliance industry.
- There are references in the respondents’ loan and land contracts that also suggest SS sink producers are in the home appliance industry.<sup>166</sup>
- The GOC’s inability to demonstrate which industry SS sinks fall under further demonstrates that the Department’s *Preliminary Determination* that SS sinks are in the home appliance industry is correct.

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<sup>166</sup> Information that Petitioner cites is business proprietary. See Petitioner’s Rebuttal Brief at 6-7.

- The Department was correct in pointing to the relevance of statements in Superte’s loan documents as evidence of policy lending in Zhongshan City in its *Preliminary Determination*.

## **Department’s Position**

Because we have determined as AFA that the respondents’ loans are countervailable under the *Pearl River Delta Plan*, as discussed in the “Programs Determined To Be Countervailable” section, above, the remaining arguments pertaining to policy lending are moot. Therefore, it is not necessary to address these arguments.

## **Preferential Export Financing**

### **Comment 5 Timing of Department’s Determination**

#### *GOC’s Affirmative Arguments*

- In the *Preliminary Determination*, the Department stated that it “intend{ed} to request additional information about loans to these companies,” yet the Department did not seek additional information from the GOC on this program.
- It is only from the source of the loans (*i.e.*, the banks through the GOC) that the Department could have received clarification regarding these loans. Without such information, the Department is left to speculate as to the meaning of purpose behind certain statements in the loan documents on the record.
- The Department should postpone its finding regarding this program until the first administrative review of this case, pursuant to 19 CFR 351.311(c).
- Instead of allowing parties to submit arguments that are constrained by a closed record, the Department should issue post-preliminary determinations prior to verification and prior to the deadline for the submission of factual information. This would allow parties the opportunity to submit facts in response to the Department’s post-preliminary findings.
- The Department’s investigation into export lending was improperly initiated.
- In the Petition, Petitioner cited the *Fujian Iron and Steel Plan* as the basis for its policy-directed export financing allegation. However, Petitioner made no reference to such policies being implemented in Guangdong province or by local governments relevant to the respondents.
- Because this program was not initiated properly, the Department should not have investigated the program for respondents in Guangdong province and should not countervail this program in the final determination.

### *Petitioner's Rebuttal Comments*

- The GOC fails to make a credible argument that the Department did not execute its duties in investigating this subsidy program.
- The GOC provided loan documentation for each of the respondents that, in combination with information provided by the respondents, is sufficient to allow the Department to make a determination for this program.
- The Department should reject the GOC's request that the Department issue post-preliminary analyses prior to verification and the deadline for submission of factual information.
- Such a practice would incentivize respondents to withhold relevant information until after the Department's post-preliminary analysis, thereby hindering the Department's ability to complete its investigation by the established regulatory deadlines.
- The Petition cited specific industrial plans and instances where the Department found export financing in other CVD investigations of Chinese industries.
- Petitioner provided sufficient basis to initiate an investigation into this subsidy program, including citations to specific industrial plans and instances where the Department found export financing in other CVD investigations of Chinese industries.
- No party contests that Yingao received export financing from one of its lenders.

### **Department's Position**

Because we have determined the respondents' loans are countervailable under the Policy Lending to the SS Sinks Industry program, as discussed in the "Programs Determined To Be Countervailable" section, above, the arguments pertaining to Preferential Export Financing are moot. Therefore, it is not necessary to address these arguments.

### **Comment 6 Contingency of Loans on Exports**

#### *GOC Affirmative Arguments*

- The Department's references to each respondent's loan documents are simply observational and do not consider how or whether the banks have taken the information into account; thus, the references cannot serve as the basis for finding the loans contingent on export performance.
- Although banks may have reviewed financial statements specifically identifying the respondents' export sales volume in relation to total sales, there is no indication that the banks took this into account in making their lending decisions.

- The Department incorrectly concluded without explanation how the collateral used for one of Zhaoshun’s loans demonstrates that the loan was contingent upon export performance.<sup>167</sup>

*Petitioner’s Rebuttal Arguments*

- The Department correctly took into account the various references to exports in the respondents’ loan documents.
- It is reasonable to conclude that the banks included all the factual information in each respondent’s loan documents into their analysis.
- There is no evidence to demonstrate why some information would be requested by the banks if it were not relevant to their loan analysis. Thus, the GOC erroneously assumes that the banks ignore some facts in the loan documents, and/or places more weight on others.
- The Department was correct to base the Superte Post-Preliminary Analysis and Yingao Post-Preliminary Analysis on the premise that banks take into account all facts and information reported in the loan documents.

**Department’s Position**

Because we have determined the respondents’ loans are countervailable under the Policy Lending to the SS Sinks Industry program, as discussed in the “Programs Determined To Be Countervailable” section, above, the arguments pertaining to the contingency of loans on export are moot. Therefore, it is not necessary to address these arguments.

**Comment 7 Countervailability of One of Yingao’s Loans**

*Yingao’s Affirmative Arguments*

- The Department ignored record evidence that one of Yingao’s loans (“Loan 1”) was not contingent upon export. For example, the purpose of Loan 1 is the purchase of materials, there is no mention of export performance or the export of goods in the credit agreement for this loan, and the contract to the loan does not mention Yingao’s export performance.
- The Department relied heavily on the credit report of the bank, but referred only to the parts of the credit report relating to exports. The Department neglected other trade-neutral contents of the report.
- Treating loans as export subsidies on the basis that they were obtained by a company mainly engaged in export sales contravenes the *SCM Agreement*. Therefore, Loan 1 cannot be considered an export subsidy merely because most of Yingao’s sales are export sales.

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<sup>167</sup> Information the GOC cites is business proprietary. See GOC Case Brief at 43.

- The Department’s post-preliminary determination that one of Yingao’s loans was contingent upon export “in fact” is not consistent with the WTO’s interpretation of export contingency.
- In *EC-Civil Aircraft*, the WTO Appellate Body provided guidelines to determine whether a subsidy is *de facto* contingent upon export performance. In particular, the guidelines state:

The existence of *de facto* export contingency, as set out above, “must be inferred from the total configuration of the facts constituting and surrounding the granting of the subsidy,” which may include the following factors: (i) the design and structure of the measure granting of the subsidy; (ii) the modalities of operation set out in such a measure and; (iii) the relevant factual circumstances surrounding the granting of the subsidy that provide the context for understanding the measure's design, structure, and modalities of operation.

- The references to Yingao’s export situation in the credit report submitted by the GOC only explain why the loan is granted by the bank. The references do not affect the “design, structure and modalities of operation” of the loan.
- Yingao likens the issue with Loan 1 to the situation in *Australian Automotive Leather*. In that case, a WTO panel found that a loan provided by the Australian Government to a company whose sales were known to be 90 percent export sales was not contingent upon export because the loan was secured by a lien on the assets and undertakings. Nothing in the terms of the loan contract itself suggested a specific link to actual or anticipated exportation or export earnings.
- In *EC-Civil Aircraft*, the WTO Appellate Body stated that a subsidy could be geared to induce promotion of export performance if, *e.g.*, the subsidy is designed in such a way that it is expected to skew the recipient’s future sales in favour of export sales.
- There is no condition in Yingao’s loan agreement that the purchased materials were to be used to manufacture products sold only or disproportionately to foreign markets. Therefore, it is evident that the loan is not designed in any way to skew the recipient’s future sales in favor of export sales.

#### *GOC’s Affirmative Arguments*

- Yingao placed no export performance data in its loan application and did not highlight its export sales when applying for Loan 1. Therefore, the company was not seeking export financing.
- The loan approval document does not specifically state that the loan is contingent upon Yingao’s export performance.

- References in the bank’s credit report to Yingao’s export sales are merely a description of the company and its sales. The sales could not have been described without indicating whether the company exports or not.
- Simply because Yingao’s export sales are referenced in this credit report does not necessarily mean that the bank took this into account or issued the loan based on export performance.
- Similarly, references to certain expansion objectives in the credit report are not a prerequisite for granting financing to the company.

*Petitioner’s Rebuttal Arguments*

- The Department correctly noted that Yingao’s financial statements were submitted to the bank with its loan application and that these financial statements clearly indicate Yingao’s export sales revenue in relation to its total sales.
- The Department should reject the GOC’s argument that Yingao’s financing is not contingent upon export simply because the loan approval document does not explicitly state so. Rather, Petitioner asserts that this is why an investigating authority can find export subsidies to be *de jure* or *de facto* specific.
- The Department did not rest its post-preliminary determination on the volume of Yingao’s exports alone, but rather it correctly based its decision on a collective account of references to Yingao’s export sales and export performance that were considered and taken into account by the bank providing the financing.
- Yingao’s argument that its mortgage was used as collateral is irrelevant and does not mean that the financing was not for exports. Moreover, the mortgage collateral for this loan does not trump the significance of the numerous references to Yingao’s exports throughout the loan documentation.

*Department’s Position*

Because we have determined the respondents’ loans are countervailable under the Policy Lending to the SS Sinks Industry program, as discussed in the “Programs Determined To Be Countervailable” section, above, the arguments pertaining to the countervailability of Yingao’s Loan 1 are moot. Therefore, it is not necessary to address these arguments.

## **Provision of Stainless Steel Coil for LTAR**

### **Comment 8: Specificity Under Section 771(5A)(D)(III)(i) of the Act**

#### *GOC's Affirmative Arguments*

- Citing the *CVD Preamble* and *PPG*, the GOC claims sales of SSC are not limited under section 771(5A)(D)(III)(I) of the Act because the users represent numerous and diverse industries.<sup>168</sup>
- The Department's determination of what constitutes a limited number of industries in the *Preliminary Determination* and other PRC cases contrasts its determinations in previous determinations (e.g., *CFS from Indonesia*)<sup>169</sup> and court decisions.<sup>170</sup>
- The GOC identified a very diverse and broad range of industries that use SSC in the PRC.<sup>171</sup>
- The provision of SSC by state-owned producers is available to 100 percent of the users of these products, whether foreign or domestic, meaning that any benefits are widely distributed.

#### *Petitioner's Rebuttal Arguments*

- The Department's finding in the *Preliminary Determination* that the GOC is providing SSC to a limited number of industries or enterprises is consistent with 771(5A)(D)(iii) of the Act and previous Department determinations.<sup>172</sup>
- The GOC provided a list of various industries and sectors that use stainless steel, which the Department recognized included 20 or 32 different industry classifications.<sup>173</sup> The GOC, however, identified only 15 industries that *purchased* stainless steel, thereby providing additional support for the Department's specificity determination.<sup>174</sup>
- The information provided by the GOC in Exhibit E4-14 of the GQR may not be accurate because the GOC reported "not applicable" as the amount of stainless steel consumed or used in the production of "stainless steel sink with 3 basins."

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<sup>168</sup> See *CVD Preamble*, 63 FR at 65357; see also *PPG*, 978 F.2d at 1241.

<sup>169</sup> See *CFS from Indonesia* IDM at Comment 10.

<sup>170</sup> See *Bethlehem*, 25 CIT at 322; see also *Royal Thai*, 341 F. Supp. 2d at 1319.

<sup>171</sup> See GQR at 67 and Exhibit E4-14.

<sup>172</sup> See, e.g., *HPSC from the PRC* IDM at Section V.E., "Provision of Hot-Rolled Steel for Less Than Adequate Remuneration."

<sup>173</sup> See GQR at 67-68; see also *Preliminary Determination*, 77 FR at 46724-46725.

<sup>174</sup> See GOC Case Brief at 13-14 (emphasis added in GOC Case Brief).

- Additional documents from Petitioner and the GOC demonstrate that only a limited number of industries are eligible to receive this subsidy.<sup>175</sup>

### Department's Position

Based on information the GOC provided, we found that potential users of stainless steel products fall into 20 or 32 different industry classifications under ISIC and Chinese national economy industry classifications, respectively.<sup>176</sup> We disagree with the GOC that the number of industries using SSC as an input is too large to be considered a specific group of industries.

In the *Preliminary Determination*, we considered users in three major industrial categories under ISIC codes reported by the GOC: Manufacturing, Building of Ships and Floating Structures, and Repair. Within these three major categories are 21 more specific categories, 18 of which fall under Manufacturing.<sup>177</sup> Also, we considered users in two major industrial categories under the Chinese national economy industry codes reported by the GOC: Manufacturing and Repair. Within these two major categories are 33 more specific categories, 31 of which fall under Manufacturing.<sup>178</sup> The GOC's identification of users of SSC under both the ISIC codes and the Chinese national economy industry codes denotes a concentration of users in an industrial area that includes SS sinks production.

The GOC itself has observed that the Department, in determining whether a particular industry or enterprise fits within the term "limited," does not necessarily limit its consideration to the number of enterprises, but must also be "focused on the make-up of the users."<sup>179</sup> The make-up of the users and the number of industries or enterprises they represent are both factors in our analysis of whether the users of SSC are limited in number. In terms of the number of major industrial categories that comprise direct users of SSC, we continue to find the three major groups under the ISIC codes or two major groups under the Chinese national economy industry codes are a limited number, consistent with 771(5A)(D)(iii)(I) of the Act. The concentration of sub-categories under the Manufacturing categories only reinforces the finding that the number of types of users is limited. Although there is some variety among the Manufacturing sub-categories, there is clearly a close relationship between many of the sub-categories (*e.g.*, manufacturers of "fabricated metal products" and "structural metal products") that indicates a limited group of users.<sup>180</sup>

With respect to the GOC's claim that this specificity finding conflicts with prior determinations by the Department, we disagree. It makes no sense to compare the number of industries in

<sup>175</sup> See Petition at 51 and Exhibit III-61 (information from Baosteel); *see also* GQR at Exhibit E4-5 (information from Pohang Iron and Steel Co., Ltd.).

<sup>176</sup> See *Preliminary Determination*, 77 FR at 46724-46725, citing GQR at Exhibit E4-14.

<sup>177</sup> See GQR at Exhibit E4-14. We note that the number of ISIC classifications cited in the *Preliminary Determination* was missing one sub-category. The correct number of ISIC classifications that the GOC reported at Exhibit E4-14 of the GQR was 21, not 20.

<sup>178</sup> *Id.* We note that the number of Chinese national industry classifications cited in the *Preliminary Determination* was missing one sub-category. The correct number of Chinese national industry classifications that the GOC reported at Exhibit E4-14 of the GQR was 33, not 32.

<sup>179</sup> See GOC Case Brief at 11, citing *CVD Preamble*, 63 FR at 65357.

<sup>180</sup> See GQR at Exhibit E4-14.

specificity findings across cases when the extent to which using industries are aggregated differs from case-to-case. For example, citing *Bethlehem Steel*, the GOC contends that the Department found no specificity when the recipient industry “iron and steel” was one of 16 industries.<sup>181</sup> In the instant investigation, the GOC claims that there are 15 using industries, but they are more narrowly defined, as noted above (for example, treating “fabricated metal products” and “structural metal products” as two separate industries). The other cases referred to by the GOC involving the governmental provision of stumpage also involved different levels of aggregation.

Therefore, consistent with the *Preliminary Determination*, we continue to find that the industries named by the GOC as consumers of SSC in the PRC are limited in number and, hence, the subsidy is specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act, based on our review of the data and consistent with our past practice.<sup>182</sup>

### **Comment 9: Benchmark Analysis**

#### *GOC's Affirmative Arguments*

- The Department should use a tier one benchmark to determine the benefit for SSC for LTAR.
- The Department cannot base its SOE market share analysis on production data from TISCO and Baosteel because these data cover other stainless steel products, not just SSC.
- The Department’s reliance solely on SOEs’ share of a market fails to satisfy the *CVD Preamble*’s directive to apply a tier one benchmark unless “actual transaction prices are significantly distorted as a result of the government’s involvement in the market.”<sup>183</sup>
- In *Softwood Lumber from Canada*, the Department analyzed each private price on the record and took into account relative percentages of government ownership in each province to determine that private prices were distorted by government involvement.<sup>184</sup> The Department undertook no such in-depth analysis of potential market distortions for the *Preliminary Determination*.
- The record shows no evidence that private SSC prices are significantly distorted. Rather, consistent with the Department’s conclusions in the Georgetown Steel Memorandum, the

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<sup>181</sup> See *Bethlehem*, 25 CIT at 322.

<sup>182</sup> See, e.g., *HPSC from the PRC* IDM at Section V.E., “Provision of Hot-Rolled Steel for Less Than Adequate Remuneration” (“Further, the GOC has reported that hot-rolled steel is used by a ‘wide variety of steel consuming industries.’ Because hot-rolled steel is only provided to steel consuming industries, we determine that the subsidy is being provided to a limited number of industries and is, therefore, specific.”) See also *Citric Acid from the PRC* IDM at Comment 7. See also *Citric Acid from the PRC – Second Administrative Review* IDM at Comment 4.

<sup>183</sup> See *CVD Preamble*, 63 FR at 65377.

<sup>184</sup> See *Softwood Lumber from Canada* IDM at “Analysis of Programs: I. Provincial Stumpage Programs. Determined to Confer Subsidies.”

record evidence shows that the SSC industry is large and diverse, with each producer operating independently.<sup>185</sup>

### *Petitioner's Rebuttal Arguments*

- The GOC premised its argument on its own failure to provide data that could be used to determine the level of government distortion in the stainless steel industry.<sup>186</sup>
- The Petition contained information demonstrating that the Chinese market for stainless steel was distorted due to government intervention, and the Department relied on these data to calculate a conservative estimate of government involvement in the stainless steel sector.<sup>187</sup>
- Many of the Department's determinations in the four CVD investigations at issue in the *WTO DS 379* were based on the *Softwood Lumber from Canada* proceedings. The determinations made by the Department relying on *Softwood Lumber from Canada* were upheld at the WTO; thus, the Department should not revisit its analysis from *Softwood Lumber from Canada*.<sup>188</sup>

### **Department's Position**

Our positions for each issue raised by the GOC follow.

#### *SSC Production Analysis*

In the Original Questionnaire, we requested that the GOC provide information on production of SSC in the PRC during the POI.<sup>189</sup> In response, the GOC stated that the NBSC does not maintain official statistics on stainless steel cold-rolled sheet or wide strip.<sup>190</sup> The GOC also stated that the NBSC only maintains statistics on cold-rolled sheet or strip as a general category that incorporates stainless steel and non-stainless steel products.<sup>191</sup>

In the First GOC Supplemental Questionnaire, we asked the GOC to provide the same production information for cold-rolled sheet or strip.<sup>192</sup> In response, the GOC explained that market conditions of the SSC industry in the PRC cannot be appropriately reflected by using data for the production of cold-rolled sheet or strip.<sup>193</sup> The GOC provided the "Import and Export

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<sup>185</sup> See GQR at 67-68 and Exhibit E4-14; see also Georgetown Steel Memorandum (Exhibit III-4 of the Petition) at 5.

<sup>186</sup> See *Preliminary Determination*, 77 FR at 46725.

<sup>187</sup> See Petition Volume III at 49 and Exhibit III-57; see also Superte Preliminary Calculation Memo at Attachment 2 and Yingao Preliminary Calculation Memo at Attachment 2.

<sup>188</sup> See *WTO Panel Decision*.

<sup>189</sup> See Original Questionnaire at 11.

<sup>190</sup> See GQR at 63.

<sup>191</sup> *Id.*

<sup>192</sup> See First GOC Supplemental Questionnaire at 7.

<sup>193</sup> See the GOC's July 20, 2012 SQR at 6-7.

Tariff of China” website as support, which showed the tariff classifications of cold-rolled stainless steel and cold-rolled non-stainless steel products.<sup>194</sup>

In the *Preliminary Determination*, we preliminarily accepted the GOC’s claim that production information on cold-rolled steel was not representative of stainless steel production in the PRC.<sup>195</sup> We relied instead on record information (production information from TISCO and Baosteel) showing that SOE producers of stainless steel accounted for at least 46 percent of Chinese production during the POI.<sup>196</sup>

At pages 15-16 of the GOC Case Brief, the GOC argues that we cannot rely on the production information from TISCO and Baosteel because the production information covers all stainless steel products, not just SSC. We acknowledge that the information we relied on is broader than SSC; however, this represents the best information available. As explained above, the GOC was unable to provide more specific production information on SSC, informing the Department it only maintains production information on an aggregate basis for cold-rolled stainless steel and cold-rolled non-stainless steel products. Further, the GOC stated that production figures for the broader cold-rolled steel category were unreliable because of the differences between stainless and non-stainless steel, and the GOC provided no production data for this category. Therefore, given the GOC’s failure to provide more specific information, as explained above under “Programs Found To Be Countervailable - Provision of Stainless Steel Coils for LTAR,” we relied on record information from TISCO and Baosteel as facts available. This information shows that SOE producers of stainless steel accounted for at least 46 percent of Chinese production during the POI.

Although the GOC argues that we cannot rely on the production information from TISCO and Baosteel, the GOC has cited no other information on the record to indicate that the figures for TISCO and Baosteel are distortive or unreliable to determine the share of SOE production of both stainless steel and SSC. Furthermore, the GOC provided no alternative sources of information on the production of SSC in the PRC and provided no production information on the broader cold-rolled steel category. If the GOC does not maintain the information in the form and manner requested, then it is the GOC’s responsibility to provide information so that the Department can analyze such information and determine a reasonable method to measure the volume of SSC produced in the PRC. The GOC has knowledge of how its agencies and organizations compile and maintain data, and the Department is not privy to such information. Therefore, if the production information for TISCO and Baosteel was unreliable in light of the production information known to the GOC, the onus was on the GOC, and not the Department, to propose and present alternative data that could be used by the Department. *See* section 782(c)(1) of the Act. However, as the record is devoid of any evidence that would allow the Department to conduct such an analysis, we have relied on the application of neutral facts available with regard to the share of SOE production of SSC during the POI.

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<sup>194</sup> *Id.* at Exhibit G.

<sup>195</sup> *See Preliminary Determination*, 77 FR at 46725.

<sup>196</sup> *Id.*, citing Petition Volume III at 49 and Exhibit III-57; Superte Preliminary Calculation Memo; and Yingao Preliminary Calculation Memo.

## *Use of Tier One Benchmark / Market Distortion Analysis*

Regarding the use of an internal (*i.e.*, tier one) benchmark, the Department has addressed the arguments of the GOC in this regard in prior PRC CVD investigations.<sup>197</sup> The Department's long-standing practice is to use 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.<sup>198</sup> 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 IDM* at Comment 7. The GOC cited *Softwood Lumber from Canada* in support of its argument. However, in *Softwood Lumber from Canada*, the Department reached a conclusion similar to its conclusion in *CWP from the PRC*:

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>199</sup>

As explained above under "Programs Found To Be Countervailable - Provision of Stainless Steel Coils for LTAR," record information shows that SOE producers of stainless steel account for at least 46 percent of production in the PRC during the POI. Although this is not a majority of production, the substantial market share held by SOEs shows that the government plays a predominant role in this market.<sup>200</sup> Furthermore, given additional business proprietary information we have addressed in the Final Determination BPI Memo, we find that this is a conservative estimate of the GOC's involvement.<sup>201</sup> Consequently, because of the government's predominant role in the SSC 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).

Further, although the Department has previously determined that high levels of import penetration may indicate that domestic prices are not distorted, the GOC provided no information on imports of SSC and provided no other information demonstrating high levels of imports of SSC into the PRC. Therefore, no record information indicates that imports of SSC into the PRC as a share of total consumption are high, and we have no basis to conclude that domestic prices of SSC are not distorted because of high levels of imports of SSC into the PRC.

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<sup>197</sup> *See, e.g., Kitchen Racks from the PRC IDM* at Comment 8; *Line Pipe from the PRC IDM* at Comment 5; and *CWP from the PRC IDM* at Comment 7.

<sup>198</sup> *See, e.g., Line Pipe from the PRC IDM* at Comment 5.

<sup>199</sup> *See Softwood Lumber from Canada IDM* at Comment 34.

<sup>200</sup> The Department has found in previous cases that a substantial, but less than majority, market share held by SOEs shows that the government plays a predominant role in the market for an input. *See, e.g., Kitchen Racks from the PRC IDM* at "Programs Determined To Be Countervailable - Provision of Wire Rod for {LTAR};" *see also Coated Paper from the PRC IDM* at Programs Determined To Be Countervailable - Provision of Papermaking Chemicals for {LTAR}."

<sup>201</sup> *See Final Determination BPI Memo* at 2.

Thus, in keeping with the Department's practice (as identified in the first paragraph, above), SSC prices charged within the PRC are not viable for purposes of the SSC benchmark.

## **Comment 10: Government Authority Analysis**

### *GOC's Affirmative Arguments*

- The Department's application of AFA to the GOC for failing to provide information related to the government authority analysis was overly broad and did not apply only to information missing from the record.<sup>202</sup>
- The only information arguably missing from the record is the GOC's responses to questions as to whether owners, managers or board of director members of certain suppliers were "Government or CCP officials." Thus, the only adverse inference that the Department is permitted to apply is to the missing information.<sup>203</sup>
- The Department's discretion in applying adverse inferences "is not unbounded,"<sup>204</sup> must be supported by record evidence, and must "have some grounding in commercial reality."<sup>205</sup> If information is missing in this case, the missing information does not lead to the result that these companies are automatically government authorities.
- Chinese law prohibits government officials from participating or holding positions in a Chinese company; therefore, the Department cannot adversely infer that the owners, managers or directors of the respondents' suppliers are government officials.<sup>206</sup>
- Although the Department could determine adversely that the owners, managers or directors of the respondents' suppliers are CCP officials or representatives of the "seven entities" identified in the Original Questionnaire,<sup>207</sup> this does not render the suppliers to be government authorities for the following reasons:
  - The Department has never encountered a scenario where a company owned by individuals was controlled by the GOC. The Department recently reaffirmed, "{W}e have analyzed the {PRC} Company Law and have found it to establish sufficiently an absence of *de jure* control over privately owned companies in the PRC."<sup>208</sup>
  - The *PRC Company Law* demonstrates that the GOC has no influence or control over a publically owned company, even if the owners, managers or directors are CCP

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<sup>202</sup> See *Zhejiang Dunan*, 652 F.3d at 1348.

<sup>203</sup> *Id.*, quoting *Gerber*.

<sup>204</sup> See *de Cecco*, 216 F.3d at 1032.

<sup>205</sup> See *Gallant Ocean*, 602 F.3d at 1324.

<sup>206</sup> See GQR at Exhibit E4-APP-18.

<sup>207</sup> See Original Questionnaire, Section II, Appendix 1.

<sup>208</sup> See *CTL Plate from the PRC – AD IDM* at Comment 2.

officials or representatives of the “seven entities” identified in the Original Questionnaire.<sup>209</sup>

- The WTO Appellate Body recently confirmed that majority government ownership, or even “meaningful” government control of an entity, does not alone establish that a government has bestowed the entity with “governmental authority,” a requisite finding to establish that an entity is a “public body” within the meaning of the WTO SCM.<sup>210</sup>

### *Petitioner’s Rebuttal Arguments*

- The GOC’s arguments are virtually identical to the arguments it made in *Citric Acid from the PRC – Second Administrative Review*, which the Department rejected.<sup>211</sup> The Department should continue to reject the GOC’s arguments in this case.

### **Department’s Position**

We agree with Petitioner. We disagree with the GOC that the missing information is not necessary to our “authority” analysis. Information as to the affiliations of the owners, managers, and directors is essential to our “authority” analysis to determine whether there is government control over a producer.

To the extent that the owners, managers, or directors of the producer are CCP officials, the Department has inquired into the means by which the GOC may exercise control over company operations and other CCP-related information. The Department has explained that it considers the information regarding the CCP’s involvement in the PRC’s economic and political structure to be important because public information suggests that the CCP exerts significant control over activities in the PRC.<sup>212</sup> This is supported by the background report from the U.S. Department of State,<sup>213</sup> and prior PRC CVD cases.<sup>214</sup>

More fundamentally, it is for the Department, and not the respondents, to determine what information is necessary and must be provided.<sup>215</sup> By substantially failing to respond to our

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<sup>209</sup> See GQR at Exhibit E4-APP-10.

<sup>210</sup> See *WTO AB Decision* at paragraphs 318 and 346.

<sup>211</sup> See *Citric Acid from the PRC - Second Administrative Review* IDM at Comment 6.

<sup>212</sup> See *Preliminary Determination*, 77 FR at 46720.

<sup>213</sup> See *Preliminary Determination Additional Documents Memo* at Attachment III.

<sup>214</sup> See, e.g., *Seamless Pipe from the PRC* IDM at Comment 7.

<sup>215</sup> See, e.g., *Ansaldo*, 628 F. Supp. at 205. The Court in *Ansaldo* criticized the respondent for refusing to submit information which the respondent alone had determined was not needed, for failing to submit data which the respondent decided could not be a basis for the Department’s decision, and for claiming that submitting such information would be “an unreasonable and unnecessary burden on the company.” *Id.* See also *Essar Steel*, 721 F. Supp. 2d at 1298-99 (stating that “{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion,” and that “Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin”); *NSK CIT*, 919 F. Supp. at 447 (“NSK’s assertion that the information it submitted to Commerce provided a sufficient representation of NSK’s cost of manufacturing misses the point that ‘it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.’”); *Nachi-Fujikoshi*, 890 F. Supp. at 1111 (“Respondents have the burden of creating an adequate record to

questions, the GOC withheld information that was requested of it regarding the CCP's role in the ownership and management of the input producers and significantly impeded the proceeding. As such, we are finding that all of the producers of SSC for which the GOC failed to provide ownership information or failed to identify whether the owners were CCP officials are "authorities" within the meaning of section 771(5)(B) of the Act, as described under the "Use of Facts Otherwise Available and Adverse Inferences - GOC - Government Authorities Under Provision of SSC for LTAR" section, above.

Regarding the arguments concerning the *WTO AB Decision*, that decision involved an "as applied" challenge to the eight AD and CVD determinations at issue in that case, and the Department's recent implementation applied only to those eight AD and CVD determinations. *See Section 129 Implementation*. Neither the decision nor the implementation applies to this investigation. In any event, the Federal Circuit has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the *URAA*.<sup>216</sup>

### **Comment 11: Superte's Additional Stainless Steel Coil Producer Information**

#### *Superte's Affirmative Arguments*

- On August 10, 2012, Superte filed additional SSC producer information. The Department rejected this information.<sup>217</sup> The Department should allow the information to remain on the record and be fully considered for the final determination.
- The Department's rejection of the information contravenes the submission of factual information permitted under 19 CFR 351.301(b)(1).
- The rejection is inconsistent with past CVD proceedings in which the Department has routinely accepted submissions of factual information under 19 CFR 351.301(b)(1).<sup>218</sup>
- Superte indicated that it was unable to obtain some of the producer information because it was not in the direct control of the information.<sup>219</sup> Therefore, the Department's position that Superte should have requested an extension to submit the information was unrealistic.

#### *Petitioner's Rebuttal Arguments*

- The Department provided Superte two opportunities to submit information regarding its input suppliers. Superte failed to provide a complete response to the Department's

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assist Commerce's determinations").

<sup>216</sup> See *Corus I*, 395 F.3d at 1347-49; *Corus II*, 502 F.3d at 1375; and *NSK Fed. Cir.*, 510 F.3d at 1380.

<sup>217</sup> See Superte SS Coil Rejection Letter.

<sup>218</sup> See, e.g., *LWS from the PRC IDM* at Comment 18.

<sup>219</sup> See Superte's July 23, 2012 SQR at 32.

request on both occasions.<sup>220</sup> The Department's rejection of Superte's information was, therefore, appropriate.

- The Department also did not verify the rejected information and, therefore, cannot rely on it for the final determination.

### Department's Position

We agree with Petitioner. The Department provided Superte with two opportunities to submit information regarding its input producers, and Superte failed to provide a complete response to the Department's request on both occasions. Only after the Department used AFA in the *Preliminary Determination* based on Superte's failure to provide the information did Superte come forward and attempt to submit some of the requested information. In the Superte SS Coil Rejection Letter, we explained the reasons for rejecting Superte's additional SSC producer information. Specifically, we explained the following:

Upon review of your August 10, 2012, submission, we find that you have provided the names of producers of stainless steel coil that you previously indicated you were unable to provide. This information is untimely because it was filed after the initial questionnaire deadline of June 28, 2012, and the supplemental questionnaire deadline of July 23, 2012. Further, you did not submit an extension request for providing this information, in accordance with 19 CFR 351.302(c) and the instructions in the Questionnaire. Moreover, you have not provided the Department with good cause to extend the deadline pursuant to 19 CFR 351.302(b) of the Department's regulations.<sup>221</sup>

Superte claims that our rejection of the producer information contravenes the submission of factual information permitted under 19 CFR 351.301(b)(1). In past cases, however, we have explained why general factual information deadlines do not apply to information we request in our questionnaires. For example, in *Seamless Pipe from the PRC*, we stated the following:

{Respondent} claims that its submission was within the deadline for submitting new factual information. As the Department has established, information that we specifically request in a questionnaire to a respondent is not subject to general factual information deadlines. Under {Respondent}'s interpretation, respondents may freely disregard our deadlines by designating any information that we request as "factual information" and submitting the information well after the deadlines we establish. Such an interpretation undermines the Department's ability to conduct a proper CVD investigation.<sup>222</sup>

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<sup>220</sup> See SQR at Exhibit 13 and Superte's July 23, 2012 SQR at Exhibit SQ1-18.

<sup>221</sup> See Superte SS Coil Rejection Letter at 2.

<sup>222</sup> See *Seamless Pipe from the PRC* IDM at Comment 22, citing *HRS from Japan*, 64 FR at 24361 ("{w}hen requesting information pursuant to a questionnaire, the Department will specify the deadlines by which the information is to be provided by the parties...Any information submitted after the deadline specified in the questionnaire is untimely, regardless of whether the general deadline in section 351.301(b)(I) has passed.") and 19 CFR 351.301(c)(2).

The same position applies to the circumstances of Superte's submission. The identification of Superte's producers within questionnaire response deadlines was necessary because the GOC also must provide necessary information on these producers. Further, we may need to request supplemental information from the GOC on these producers, make preliminary findings regarding the producers, and verify the information. If parties submitted this information by the deadline for factual information (as opposed to the deadlines for questionnaire responses), the Department would be unable to carry out a proper CVD investigation within statutory deadlines. Finally, although Superte argues that it was unrealistic to request an extension for submitting the information, nothing prevented Superte from making an extension request citing difficulties in obtaining or collecting the information. The record shows that the Department granted several extensions in this proceeding, and there is no evidence that Superte made any effort to request an extension of the deadlines to get additional time for obtaining and submitting the information. Therefore, for the reasons explained in the Superte SS Coil Rejection Letter, we have not accepted Superte's producer information and have not incorporated it into this final determination.

### **Comment 12: Stainless Steel Quality Differences Between Benchmark and Superte's Purchases**

#### *Superte's Affirmative Arguments*

- Superte uses Grade 304 and Grade 201 stainless steel for the production of SS sinks.
- Grades 304 and 201 differ significantly in their physical and chemical properties.<sup>223</sup> As shown in POI pricing data from AK Steel and SBB, the prices of Grade 201 SSC are significantly lower than Grade 304.<sup>224</sup>
- The Department should adjust the SSC benchmark to account for these differences.

#### *Petitioner's Rebuttal Arguments*

- The Department should make not revise the benchmark because information on Superte's SSC purchases is not on the record.<sup>225</sup>

### **Department's Position**

We agree with Superte. The Department's regulations at 19 CFR 351.511(a)(2)(ii) state that, in using a world market price as a benchmark, the Department will "mak {e} due allowance for factors affecting comparability." The information Superte provided from AK Steel and ASTM in the Superte SS Coil Submission shows significant differences between Grades 201 and 304 (*e.g.*, differences in nickel and manganese content).<sup>226</sup>

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<sup>223</sup> See Superte SS Coil Submission at Exhibits 2 and 3.

<sup>224</sup> *Id.* at Exhibits 4 and 5.

<sup>225</sup> Petitioner's argument is business proprietary. See Petitioner's Rebuttal Brief at 17.

<sup>226</sup> See Superte SS Coil Submission at Exhibits 2 and 3.

Although Petitioner stated that information on Superte's SSC purchases is not on the record, Superte provided the grades of SSC that it purchased during the POI in the Superte SS Coil Submission.<sup>227</sup> We verified these reported grades as part of our verification of Superte's reported SSC purchases.<sup>228</sup> Therefore, an adjustment to the benchmark to account for "factors affecting comparability," as 19 CFR 351.511(a)(2)(ii) directs, is appropriate.

To demonstrate the pricing differences resulting from the physical and chemical differences between Grades 201 and 304, Superte provided price lists covering the POI from SBB and AK Steel.<sup>229</sup> The lists from SBB, however, are for a "China domestic Foshan" price. As we stated under the "Programs Determined To Be Countervailable – Provision of Stainless Steel Coils for LTAR" section above, "{P}rices 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." Given this finding, the SBB prices do not serve as a reliable basis for adjusting the benchmark. Therefore, we have relied on the price difference between Grades 201 and 304 from AK Steel's price lists. We have adjusted downward the benchmark for Superte's purchases of Grade 201 steel by the percentage difference in prices between the grades (*i.e.*, \$2.6462 / lb. and \$2.0165 / lb., or 23.7964 percent).

*See* Superte Final Calculation Memo for the incorporation of the adjustment into the benefit calculation for Superte's purchases of SSC for LTAR.

## **Provision of Electricity for LTAR**

### **Comment 13 Application of AFA and Benchmark Analysis**

#### *Yingao's Affirmative Arguments*

- If the Department applies adverse inferences to the GOC under this program, the Department cannot extend lawfully the adverse inference to Yingao under section 776(b) of the Act.
- The Department selected the highest non-seasonal provincial rates in the PRC to determine the benchmark under AFA, but did so without suggesting that the rates are distorted by the GOC's role in the electricity sector.
- The Department's methodology was arbitrary and capricious, thereby punishing Yingao by assigning it the highest electricity rate in the PRC as a benchmark.
- If the Department continues to rely on domestic Chinese electricity tariffs for the final determination, the Department should take a simple average of all tariffs in each category (*e.g.*, peak, normal, valley) and assign that as the benchmark for the final determination.

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<sup>227</sup> *Id.* at Exhibit 1.

<sup>228</sup> *See* Superte Verification Report at 6-7.

<sup>229</sup> *See* Superte SS Coil Submission at Exhibits 4 and 5.

- If the Department continues to apply AFA with respect to the Chinese domestic benchmark, then it must derive benchmark data from outside the PRC.
- If GOC ownership of the electricity supply makes all domestic electricity tariffs unreliable and unrepresentative of market prices, then the Department must use an external benchmark to measure the benefit from the GOC's provision of electricity for LTAR.<sup>230</sup> This is consistent with the Department's methodology under the SSC for LTAR and Land for LTAR programs.

### *Petitioner's Rebuttal Arguments*

- Yingao has raised no new arguments in this investigation that could lead the Department to depart from its previous determinations regarding this issue.<sup>231</sup>
- The Department has stated that the application of AFA to the GOC for this program may affect a respondent, but that such an effect does not render unlawful the application of AFA to this program.<sup>232</sup>
- Appropriate in-county benchmarks exist on the record; therefore, the Department should not use an external benchmark.

### **Department's Position**

The arguments raised by Yingao regarding the appropriateness of "penalizing" Yingao for the GOC's failure to cooperate have been raised by respondents in a number of previous proceedings, such as *Wood Flooring from the PRC*<sup>233</sup> and *Steel Wire from the PRC*.<sup>234</sup> Yingao raises no new arguments in this investigation that would lead us to depart from our previous determinations regarding this issue.

As described in *Wood Flooring from the PRC*, we applied AFA to the GOC.<sup>235</sup> Although we recognize that such a finding may affect the respondent, such an effect does not render the application of AFA unlawful. Accordingly, for the reasons described in *Wood Flooring from the PRC* and other proceedings, we have continued to apply AFA to the GOC for its failure to cooperate to the best of its ability by complying with our request for information regarding electricity, as described above under "Use of Facts Otherwise Available and Adverse Inferences."

Furthermore, the Department has continued to apply AFA with respect to its selected electricity benchmark for this final determination. The information that the GOC failed to provide pertains

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<sup>230</sup> See letter from Yingao to the Department dated October 31, 2012, "New Facts Submission," at Attachment 1 (electricity prices from Thailand).

<sup>231</sup> See *HPSC from the PRC* IDM at Comment 10, citing *Wood Flooring from the PRC* IDM at Comment 4.

<sup>232</sup> *Id.*

<sup>233</sup> See *Wood Flooring from the PRC* IDM at Comment 4.

<sup>234</sup> See *Steel Wire from the PRC* IDM at Comment 9.

<sup>235</sup> See *Wood Flooring from the PRC* IDM at Comment 4.

directly to evaluating whether a benefit has been conferred. Section 351.511(a)(2)(i) of our regulations states the Department will normally make this evaluation based on a comparison between the price paid by the respondent and a market-determined price obtained from actual transactions in the country in question (the tier one benchmark). In the GQR, the GOC stated, “In these (electricity price adjustment) procedures, the NDRC takes the role as a check and balancing mechanism, while the provincial governments conduct a leading role.”<sup>236</sup> Thus, the GOC’s role in the electricity market rules out the use of a benchmark under 19 CFR 351.511(a)(2)(i).

Accordingly, where an actual market-determined, in-country price is unavailable, 19 CFR 351.511(a)(2)(ii) establishes that the Department will seek a world market price where it is reasonable to conclude that such a price would be available to purchasers in the country. The *CVD Preamble*, which describes the intent behind 19 CFR 351.511(a)(2)(ii), specifically states that “{w}e will consider whether the market conditions in the country are such that it is reasonable to conclude that the purchaser could obtain the good or service on the world market.”<sup>237</sup> The *CVD Preamble* uses electricity as an example where it is not reasonable to conclude that a world market price would be available to an in-country purchaser.<sup>238</sup> Moreover, while there may be certain cases where a Chinese electric provider is able to purchase electricity from another country, the Electricity Law of the PRC indicates that prices are uniform.<sup>239</sup> Thus, even if electricity is available from outside the PRC, it is not reasonable to expect that imported electricity could be priced differently than those rates established by the GOC. Therefore, contrary to Yingao’s assertion that the Department must derive electricity benchmark information from outside the PRC, 19 CFR 351.511(a)(2)(ii) is not an option in the determination of the benefit under this program.

Having determined that the first two sources in the hierarchy of benchmarks set forth in the regulations are not applicable to identifying a benchmark for the electricity benefit calculation, the Department turned to 19 CFR 351.511(a)(2)(iii), which establishes that, when no world market price is available, the Department will assess whether the government price is consistent with market principles. In order to make this assessment, the Department asked the GOC a series of questions about the way electricity rates were determined in the provinces or municipalities where the respondents have locations. In its questionnaire responses, as explained above in the “Use of Facts Otherwise Available and Adverse Inferences” section for electricity, the GOC provided no province-specific information.

The GOC’s decision not to provide this information makes it impossible for the Department to evaluate whether the government-determined prices are consistent with market principles. Furthermore, because the GOC readily acknowledges that the government determines the electricity prices in the country, its refusal to provide a detailed explanation about how these prices are calculated means that the GOC did not cooperate to the best of its ability. Therefore, although Yingao argues that the missing information has no relation to the establishment of benefit and benchmark and, thus, the Department cannot extend any AFA determination to the

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<sup>236</sup> See GQR at 72.

<sup>237</sup> See *CVD Preamble*, 63 FR at 65377.

<sup>238</sup> *Id.*

<sup>239</sup> See GQR at Exhibit E3-APP6-1.

benchmark, the Department's questions are clearly relevant to establishing a benchmark for the benefit calculation. Because the GOC refused to cooperate, the Department acted within its authority, as established in section 776(b) of the Act, in applying AFA to determine the benchmark to use in the benefit calculation in the *Preliminary Determination*.

We note that the CIT recently upheld the Department's analysis of this issue in *Wood Flooring from the PRC*, which is consistent with the analysis described above.<sup>240</sup>

Finally, because we appropriately applied AFA to the selection of the electricity benchmark, we will not consider Yingao's argument that the Department should calculate an average electricity benchmark.

## **Comment 14 Policies and Incentives, Marketing of Industrial Zones, and Pricing**

### *GOC's Arguments*

- The Department incorrectly relies on *LWS from the PRC* for its finding that the GOC's provision of land for LTAR is specific, because in that case the Department found preferences in granting land use rights that are not present here.
- There are no distinct marketing procedures for land-use rights in the zones that distinguish zones from surrounding areas.
- With respect to Superte's purchase of land-use rights, the land transfer was to a shareholder of Superte and, hence, not a financial contribution to Superte.
- Also with respect to Superte, the Department must find that the commercialization companies are "authorities" before it can determine that a financial contribution exists.
- Price differences inside and outside of zones are not evidence that there is a land for LTAR program. Because the Department rejects land prices in the PRC as a benchmark due to their distortion, any comparison of those prices is meaningless and unreliable.

### *Petitioner's Rebuttal*<sup>241</sup>

- Contrary to the GOC's claim, there are land incentives to attract companies to the zones in question.
- If the Department's findings regarding different prices and different marketing procedures are not, as the GOC claims, supported by record evidence, the fault lies with the GOC because of its failure to provide complete responses to the Department's questionnaires.

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<sup>240</sup> See *Fine Furniture*.

<sup>241</sup> Petitioner's rebuttal with respect to whether there was a financial contribution to Superte is proprietary and, hence, summarized separately. See Final Determination BPI Memo at 2.

- If the Department accepts the GOC’s arguments, the Department should, nonetheless, find a subsidy based on facts available because of the GOC’s failure to provide requested information regarding the *Pearl River Delta Plan*.

### *Department Position*

Contrary to the GOC’s contention, we did not misstate the Department’s specificity determination in *LWS from the PRC* in our post-preliminary analyses. While the GOC points to certain “findings” by the Department in *LWS from the PRC* of preferences in granting land-use rights, in *LWS from the PRC* the Department was clear there that its specificity finding was based solely on the fact that the granting authority provided land-use rights in an industrial park, a designated geographical region within the larger area of the granting authority.<sup>242</sup>

In this investigation, we examined the totality of circumstances surrounding the provision of land-use rights at issue. Superte’s land-use rights in the Huangpu Food Industry Park, a designated geographical region within Zhongshan City, were granted by Land and Resource Bureau of Zhongshan City. Yingao’s land-use rights in Zone C of the Shunde Science and Technology Industrial Zone, a designated geographical area within Shunde and, in turn, Foshan, were granted by the City Construction and Water Conservancy Bureau of Shunde and the Land and Resource Bureau of Foshan City.<sup>243</sup> Moreover, the Department identified in its post-preliminary analyses distinctions in the provision of land-use rights inside and outside the zones. The Department cited certain differences in the regime for providing the land-use rights inside and outside the zone as well as the pricing differences.<sup>244</sup> The GOC disputes this, citing to its questionnaire responses which state that there are no distinctions in the provision of land within and outside the zones and further contends that the Department failed to provide any comparisons showing such differences. We disagree.

Regarding Superte, the GOC reported that commercialization companies were responsible for developing, promoting and managing the land in Huangpu Food Industry Park, including negotiating land-use rights contracts and prices.<sup>245</sup> The record evidence demonstrates that commercialization companies operate within the zone. In contrast, there is no record evidence that commercialization companies were used for these purposes outside of development zones. To the contrary, the GOC responded that the commercialization companies in this case were “incorporated primarily to commercialize *several* lands in Huangpu,”<sup>246</sup> Consistent with this, the

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<sup>242</sup> See *LWS from the PRC* IDM at “Programs Determined To Be Countervailable: Government Provision of Land for Less Than Adequate Remuneration,” and Comment 9

<sup>243</sup> Petitioner’s claim that land preferences exist in these zones relies on Preferential Policies on Supporting the Development of Food Enterprises (Huangpu Food Industry Park) and a press report about “preferential policies on land” in Shunde’s industrial parks and zones. See Petitioner’s Rebuttal Brief. Regarding the former, the GOC reported that the cited policy applies only to enterprises that produce food products, which is supported by the language of the policy. See GOC’s July 31, 2012 SQR at 3; see also GOC’s October 23, 2012 SQR at Exhibit 3S-1. Regarding the latter, various land fees are exempted for companies locating in Shunde’s intensive industrial zones, consistent with the press report. We are finding one of the fee exemptions to be a countervailable subsidy bestowed in Yingao. See “Programs Determined To Be Countervailable – Land-Use Rights Extension – Superte,” above.

<sup>244</sup> See Superte Post-Preliminary Analysis at 4- 8 and Yingao Post-Preliminary Analysis at 5-7.

<sup>245</sup> See GOC’s October 23, 2012 SQR at 2.

<sup>246</sup> *Id.* (emphasis added).

price list issued by the commercialization companies states that their pricing rules are “to accelerate the development of industry zones of Huangpu Town, Zhongshan City...”<sup>247</sup>

Moreover, while the GOC claims in its responses and brief that there are no differences inside and outside the zones with regard to how prices are set, the procedures for purchasing land use rights, or the length of the land-use rights contracts, the record does not support these claims. With respect to prices, the GOC points to benchmark prices in effect in Zhongshan at the time Superte’s land-use rights were purchased<sup>248</sup>, but states that these benchmark prices did not apply in Superte’s case because Superte’s land-use rights were purchased from collectives, rather than the State.<sup>249</sup>

Moreover, as noted above, the GOC provided the commercialization companies’ price list “to inform land pricing and sales within Huangpu Town industrial zones, including Huangpu Food Industry Park.”<sup>250</sup> According to an official of the one of the commercialization companies, the Zhongshan benchmark prices served as a reference for the prices in the industry zones, but the prices in the zones normally differed from the Zhongshan benchmarks.<sup>251</sup> Thus, contrary to the GOC’s claims, there is no indication of uniform pricing procedures in Huangpu. Regarding purchase procedures, the GOC referred to the bid, auction and quotation procedures described in “Notice on Issuing the Administrative Measures of Zhongshan City for the Public Trade of Land-use Rights.”<sup>252</sup> However, Superte “negotiated” the price it paid.<sup>253</sup> Superte’s ability to “negotiate” the price for its land-use rights with a commercialization company differs from the normal bid, auction and quotation procedures referenced by the GOC. Thus, the evidence indicates that Superte’s process for obtaining land-use rights differed from the norm in Zhongshan City. An additional distinction, which relies on proprietary information, is addressed separately.<sup>254</sup>

Regarding Yingao’s purchase of land-use rights in Zone C of Shunde Science and Technology Industrial Zone, we only learned at verification that the prices of land-of use rights in this zone were negotiated with the Economic Promotion Bureau of Xintan Township.<sup>255</sup> This method of arriving at Yingao’s price differed from the bid, auction or quotation procedures described in Measures of Foshan City on Implementing Provisions on the Administration of Transaction Market of Land Use Right of Guangdong Province which, according to the GOC, established uniform procedures inside and outside of Zone C.<sup>256</sup> Thus, because the GOC and Yingao were not forthcoming with this information until verification, we were not able to develop the record regarding differences inside and outside the Zone C as thoroughly as we would have liked. As stated earlier, the record evidence demonstrates that land-use rights in this zone were negotiated

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<sup>247</sup> *Id.* at Exhibit 3S-7.

<sup>248</sup> *Id.* at Exhibits 3S-4 – 3S-6.

<sup>249</sup> *Id.* at 4.

<sup>250</sup> *Id.*

<sup>251</sup> *See* GOC Verification Report at 5.

<sup>252</sup> *See* GOC’s October 23, 2012 SQR at 5 and Exhibit 3S-3.

<sup>253</sup> *See* SQR at 29.

<sup>254</sup> *See* Final Determination BPI Memo.

<sup>255</sup> *See* GOC Verification Report at 8.

<sup>256</sup> *See* GOC’s October 23, 2012 SQR at 9.

with the Economic Promotion Bureau of Xintan Township.<sup>257</sup> However, there is no record evidence that Economic Promotion Bureau, which is responsible for the development, construction and administration of the zone, was involved in negotiating prices outside of the zone, or that prices outside the zone were negotiated. Thus, we continue to find that there are differences in the provision of land-use rights inside and outside of Zone C Science and Technology Industrial Zone.

Turning to the GOC's argument that because Superte's land-use rights were provided to a shareholder of the company rather than the company itself, there was no subsidy to Superte, we disagree. Superte has operated on this land since it was established (shortly after the land-use rights were purchased by its shareholder).<sup>258</sup> Thus, the distinction the GOC seeks to establish between the shareholder and Superte is one of form, not substance.<sup>259</sup>

We also find that the commercialization companies are "authorities" within the meaning of section 771(5)(B) of the Act. While they are not owned by the government,<sup>260</sup> record evidence shows that they effectively act as the government's agents in the development of the industrial zones. As the GOC explained, commercialization of land is complicated and difficult for the government.<sup>261</sup> Consequently, in Zhongshan, this function was carried out by the commercialization companies on the government's behalf. As described at verification, the commercialization companies acquired agricultural land from farmers either through expropriation or direct purchase.<sup>262</sup> Then, the Zhongshan City land bureau converted the land into land for commercial or industrial use. Once converted, the commercialization companies promoted, developed and managed the land, including negotiating land contracts and collecting land sale payments.<sup>263</sup>

Finally, regarding the GOC's argument that price differences inside and outside of zones are not evidence of a land for LTAR program and may be explained by other factors, in this case we are not using the PRC land prices within and outside the zone to measure the benefit from the subsidy. On an appropriate record, price differences may be explained by factors that do not indicate a regionally specific program. However, land prices, even when such prices are distorted by the government interference and not useable as benchmarks, are among the factors we may examine in determining whether the provision of land by the government differs inside and outside a zone. Although the existence of different prices inside and outside a zone is not a prerequisite for finding specificity, it may, as in this case, support such a finding. Other factors could include differences in the method of establishing the prices, the procedures for obtaining the land use rights, and the terms of the provision.

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<sup>257</sup> See GOC Verification Report at 8.

<sup>258</sup> See GOC's July 31, 2012 SQR at 1; *see also* SQR at 27.

<sup>259</sup> See *also* Final Determination BPI Memo.

<sup>260</sup> See GOC Verification Report at 3.

<sup>261</sup> See GOC's October 23, 2012 SQR at 2.

<sup>262</sup> See GOC Verification Report at 4.

<sup>263</sup> See GOC's October 23, 2012 SQR at 2. *See also* Final Determination BPI Memo.

**Recommendation**

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

AGREE

DISAGREE

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

  
\_\_\_\_\_  
(Date)

## APPENDIX

### I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Complete Title
Act	Tariff Act of 1930, as amended
AD	Antidumping Duty
AFA	Adverse Facts Available
AK Steel	AK Steel Corporation
ASTM	ASTM International
AUL	Average Useful Life
Baosteel	Baosteel Stainless Steel Co., Ltd.
CCP	Chinese Communist Party
CFR	Code of Federal Regulations
CIT	Court of International Trade
CVD	Countervailing Duty
Department	Department of Commerce
FIE	Foreign-Invested Enterprise
FIE Tax Law	Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises
GOC	Government of the People's Republic of China
HNTE	High and New Technology Enterprises
IDM	Issues and Decision Memorandum
IRS Tables	U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System
IFS	international financial statistics
ISIC	International Standard Industrial Classification
kWh	Kilowatt hour
LIBOR	London Interbank Offering Rate
LTAR	Less Than Adequate Remuneration
Magang	Foshan Magang Kitchen Utensils Co., Ltd.
MEPS	Management Engineering and Production Services International, Ltd.
NBSC	National Bureau of Statistics of China
NDRC	National Development and Reform Commission
NME	Non-Market Economy
Petitioner	Elkay Manufacturing Company

<b>Acronym/Abbreviation</b>	<b>Complete Title</b>
POI	Period of Investigation
PRC	People's Republic of China
QR	Questionnaire Response
RMB	Renminbi
SBB	Steel Business Briefing
Shunde Land Bureau	City Construction and Water Conservancy Bureau of Shunde (formerly, the Shunde Branch of the Land and Resource Bureau of Foshan)
SOCB	State Owned and Controlled Bank
SOE	State Owned Enterprise
SQ	Supplemental Questionnaire
SS Sinks	Drawn Stainless Steel Sinks, or the subject merchandise
SSB	State Statistics Bureau
SSC	Stainless Steel Coil
Superte	Zhongshan Superte Kitchenware Co., Ltd.
TISCO	Taiyuan Iron and Steel Group Co., Ltd.
VAT	Value Added Tax
WTO	World Trade Organization
WTO SCM	World Trade Organization Agreement on Subsidies and Countervailing Measures
Yingao	Guangdong Yingao Kitchen Utensils Co., Ltd. Also used to refer collectively to Yingao and Magang.
Zhaoshun	Foshan Zhaoshun Trade Co., Ltd.
Zone C	Zone C of the Shunde Science and Technology Industrial Zone (previously, Xintan Industrial Estate)

## **II. LITIGATION TABLE**

<b>Short Citation</b>	<b>Complete Court Case Title</b>
<i>Ansaldo</i>	<i>Ansaldo Componenti, S.p.A. v. United States</i> , 628 F. Supp. 198 (CIT 1986)
<i>Australian Automotive Leather</i>	<i>WTO Dispute Panel Report on U.S. Complaint Concerning Australia - Subsidies Provided to Producers and Exporters of Automotive Leather</i> , WT/DS126/R, 99-1888 (May 25, 1999)
<i>Bethlehem</i>	<i>Bethlehem Steel Corp. v. United States</i> , 25 CIT 307 (2001)
<i>Corus I</i>	<i>Corus Staal BV v. Dep't of Commerce</i> , 395 F.3d 1343 (Fed. Cir. 2005)
<i>Corus II</i>	<i>Corus Staal BV v. United States</i> , 502 F.3d 1370 (Fed. Cir. 2007)

<b>Short Citation</b>	<b>Complete Court Case Title</b>
<i>de Cecco</i>	<i>F.lli de Cecco di Filippo Fara S. Martino S.p.A. v. United States</i> , 216 F.3d 1027 (Fed. Cir. 2000)
<i>Essar Steel</i>	<i>Essar Steel Ltd. v. United States</i> , 721 F. Supp. 2d 1285 (CIT 2010)
<i>Fabrique</i>	<i>Fabrique de Fer de Charleroi, SA v. United States</i> , 166 F. Supp. 2d 593 (CIT 2001).
<i>Fine Furniture</i>	<i>Fine Furniture (Shanghai) Ltd., et al., v. United States</i> , 865 F. Supp. 2d 1254 (CIT 2012)
<i>Gallant Ocean</i>	<i>Gallant Ocean (Thail.) Co. v. United States</i> , 602 F.3d 1319 (Fed. Cir. 2010).
<i>General Motors</i>	<i>General Motors Corp. v. Romein</i> , 503 U.S. 181 (1992)
<i>Gerber</i>	<i>Gerber Good (Yunnan) Co. v. United States</i> , 387 F. Supp. 2d 1270 (CIT 2005)
<i>GPX 2</i>	<i>GPX Int'l Tire Corp. v. United States</i> , 2013 Ct. Intl. Trade LEXIS 2, Slip Op. 2013-2 (CIT January 7, 2013)
<i>GPX (Fed. Cir.)</i>	<i>GPX Int'l Tire Corp. v. United States</i> , 666 F.3d 732 (Fed. Cir. 2011)
<i>GPX (Fed. Cir.) 2</i>	<i>GPX Int'l Tire Corp., v United States</i> , 678 F. 3d 1308 (Fed. Cir. 2012)
<i>Nachi-Fujikoshi</i>	<i>Nachi-Fujikoshi Corp. v. United States</i> , 890 F. Supp. 1106 (CIT 1995)
<i>NSK CIT</i>	<i>NSK, Ltd. v. United States</i> , 919 F. Supp. 442 (CIT 1996)
<i>NSK Fed. Cir.</i>	<i>NSK Ltd. v. United States</i> , 510 F.3d 1375 (Fed. Cir. 2007)
<i>PPG</i>	<i>PPG Industries v. United States</i> , 978 F.2d 1232 (Fed. Cir. 1992).
<i>Royal Thai</i>	<i>Royal Thai Gov't v. United States</i> , 341 F. Supp. 2d 1315 (CIT 2004)
<i>Zhejiang Dunan</i>	<i>Zhejiang Dunan Hetian Metal Co., Ltd. v. United States</i> , 652 F.3d 1333 (Fed. Cir. 2011)

### III. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

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

Short Citation	Administrative Case Determinations
<i>Bricks from the PRC</i>	<i>Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 45472 (August 2, 2010), and accompanying Issues and Decision Memorandum</i>
<i>CFS from Indonesia</i>	<i>Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination, 72 FR 60642 (October 25, 2007), and accompanying Issues and Decision Memorandum</i>
<i>CFS from the PRC</i>	<i>Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007), and accompanying Issues and Decision Memorandum</i>
<i>Citric Acid from the PRC</i>	<i>Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 16836 (April 13, 2009), and accompanying Issues and Decision Memorandum</i>
<i>Citric Acid from the PRC – First Administrative Review</i>	<i>Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review, 76 FR 77206 (December 12, 2011), and accompanying Issues and Decision Memorandum</i>
<i>Citric Acid from the PRC – Second Administrative Review</i>	<i>Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 (December 5, 2012), and accompanying Issues and Decision Memorandum</i>
<i>Coated Paper from the PRC</i>	<i>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), and accompanying Issues and Decision Memorandum</i>
<i>CTL Plate from the PRC - AD</i>	<i>Cut-to-Length Carbon Steel Plate from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 8301 (February 24, 2010), and accompanying Issues and Decision Memorandum</i>

Short Citation	Administrative Case Determinations
<i>CWP from the PRC</i>	<i>Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008), and accompanying Issues and Decision Memorandum</i>
<i>HPSC from the PRC</i>	<i>High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 26738 (May 7, 2012), and accompanying Issues and Decision Memorandum</i>
<i>HRS from Japan</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 24329 (May 6, 1999)</i>
<i>Kitchen Racks from the PRC</i>	<i>Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009), and accompanying Issues and Decision Memorandum</i>
<i>Line Pipe from the PRC</i>	<i>Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008), and accompanying Issues and Decision Memorandum</i>
<i>LWRP from the PRC</i>	<i>Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008)</i>
<i>LWS from the PRC</i>	<i>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)</i>
<i>LWS from the PRC Preliminary Determination</i>	<i>Laminated Woven Sacks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 72 FR 67893 (December 3, 2007)</i>
<i>OCTG from the PRC</i>	<i>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)</i>
<i>OTR Tires from the PRC</i>	<i>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)</i>

Short Citation	Administrative Case Determinations
<i>Seamless Pipe from the PRC</i>	<i>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)</i>
<i>Sinks from the PRC – AD Prelim</i>	<i>Drawn Stainless Steel Sinks From the People's Republic of China: Antidumping Duty Investigation, 77 FR 60673 (October 4, 2012), and accompanying Issues and Decision Memorandum</i>
<i>Softwood Lumber from Canada</i>	<i>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)</i>
<i>Solar Cells from the PRC</i>	<i>Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 63788 (October 17, 2012), and accompanying Issues and Decision Memorandum</i>
<i>SRAMs from Taiwan - AD</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909 (February 23, 1998), and accompanying Issues and Decision Memorandum</i>
<i>SS Bar from Brazil - AD</i>	<i>Stainless Steel Bar From Brazil: Final Results of Antidumping Duty Administrative Review, 74 FR 33995 (July 14, 2009), and accompanying Issues and Decision Memorandum</i>
<i>Steel Wire from the PRC</i>	<i>Galvanized Steel Wire from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 17418 (March 26, 2012)</i>
<i>Thermal Paper from the PRC</i>	<i>Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008), and accompanying Issues and Decision Memorandum</i>
<i>Wind Towers from the PRC</i>	<i>Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 75978 (December 26, 2012), and accompanying Issues and Decision Memorandum</i>

Short Citation	Administrative Case Determinations
<i>Wood Flooring from the PRC</i>	<i>Multilayered Wood Flooring From the People's Republic of China: Final Affirmative Countervailing Duty Determination</i> , 76 FR 64313 (October 18, 2011), and accompanying Issues and Decision Memorandum

#### IV. CASE-RELATED DOCUMENTS

Short Citation	Complete Document Title
Banking Memorandum	Memorandum to the File from Jennifer Meek, “Placement of Banking Memoranda on Record of the Instant Investigation” (July 30, 2012)
Electricity Benchmark Memo	Memorandum to the File from Shane Subler, “PRC Electricity Benchmark Rates” (July 30, 2012)
Final Determination BPI Memo	Memorandum from Austin Redington, International Trade Compliance Analyst to the File, “Final Determination BPI Memorandum” (February 19, 2013)
First GOC Supplemental Questionnaire	Letter from the Department to the GOC, “Supplemental Questionnaire – Investigation of Drawn Stainless Steel Sinks from the People’s Republic of China” (July 12, 2012)
Georgetown Steel Memorandum	Memorandum, “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) (Exhibit III-4 of the Petition)
GOC Case Brief	Letter from the GOC to the Department, “GOC’s Administrative Case Brief in the Countervailing Duty Investigation on Drawn Stainless Steel Sinks from the People’s Republic of China” (January 17, 2013)
GOC Verification Outline	Letter to the GOC from the Department, “Drawn Stainless Steel Sinks from the People’s Republic of China” (November 2, 2012)
GOC Verification Report	Memorandum from Shane Subler and Austin Redington to Susan Kuhbach, “Verification Report: Government of the People’s Republic of China” (December 4, 2012)

Short Citation	Complete Document Title
GOC's July 20, 2012 SQR	Letter from the GOC to the Department, "GOC Response to the First Supplemental Questionnaire (Questions 4-10, 12-13 and 16) in the Countervailing Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic Of China" (July 20, 2012)
GOC's July 26, 2012 SQR	Letter from the GOC to the Department, "GOC Response to the First Supplemental Questionnaire (Questions 1-3, 14-15 and 17) in the Countervailing Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic Of China" (July 26, 2012)
GOC's July 31, 2012 SQR	Letter from the GOC to the Department, "GOC Response to the First Supplemental Questionnaire (Question 11) in the Countervailing Duty Investigation of Drawn Stainless Steel Sinks form the People's Republic of China" (July 31, 2012)
GOC's October 23, 2012 SQR	Letter from the GOC to the Department, "GOC Third Supplemental Questionnaire Response in the Countervailing Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic Of China" (October 23, 2012)
GQR	Letter from the GOC to the Department, "GOC Initial Questionnaire Response in the Countervailing Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic Of China" (June 29, 2012).
GQR NSA	Letter from the GOC to the Department, "GOC New Subsidy Allegation Questionnaire Response in the Countervailing Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic Of China" (August 29, 2012)
<i>Initiation Checklist</i>	Countervailing Duty Investigation Initiation Checklist: Drawn Stainless Steel Sinks from the People's Republic of China (March 21, 2012)
Interest Rate Benchmark Memorandum	Memorandum from Shane Subler to the File, "Countervailing Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic of China: Interest Rate Benchmark Memorandum (November 2, 2012)
MQR	Letter from Magang to the Department, "Drawn Stainless Steel Sinks from the People's Republic of China: Questionnaire Response" (June 28, 2012)
NSA Initiation Memo	Memorandum from Jennifer Meek to Susan Kuhbach, "Initiation of New Subsidy Allegation" (August 7, 2012)

Short Citation	Complete Document Title
Original Questionnaire	Letter from the Department to the GOC, “Countervailing Duty Investigation: Drawn Stainless Steel Sinks from People’s Republic of China” (May 10, 2012)
Petition	Letter from Petitioner to the Department, “Petitions For The Imposition Of Antidumping And Countervailing Duties Against Drawn Stainless Steel Sinks From The People's Republic of China” (March 1, 2012)
Petition Supplemental	Petitioner's Response To the Department's March 6, 2012 Supplemental Questions Concerning Volume III (Countervailing Duty Allegation) Of The Petitions (March 9, 2012)
Petitioner’s FIS	Letter from Petitioner to the Department, “Factual Information Regarding Stainless Steel Coils” (July 16, 2012)
Petitioner’s Rebuttal Brief	Letter from Petitioner to the Department, “Drawn Stainless Steel Sinks from the People's Republic of China – Petitioner’s Rebuttal Brief” (January 25, 2013)
Post-Preliminary Analysis Attachment Memo - Superte	Memorandum from Shane Subler to the File, “Post-Preliminary Analysis Memorandum for (Superte and Zhaoshun): Attachments,” (January 8, 2013)
Post-Preliminary Analysis Attachment Memo - Yingao	Memorandum from Shane Subler to the File, “Post-Preliminary Analysis Memorandum for (Yingao and Magang): Attachments,” (January 8, 2013)
<i>Preliminary Determination</i>	<i>Drawn Stainless Steel Sinks From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, 77 FR 46717 (August 6, 2012)</i>
Preliminary Determination Additional Documents Memo	Memorandum to the File from Jennifer Meek, “Additional Documents for Preliminary Determination” (July 30, 2012)

Short Citation	Complete Document Title
SQR	Letter from Superte to the Department, “Drawn Stainless Steel Sinks from China: Initial CVD Questionnaire Response” (June 28, 2012)
Superte Final Calculation Memo	Final Determination Calculations for Zhongshan Superte Kitchenware Co., Ltd. and Foshan Zhaoshun Trade Co., Ltd. (February 19, 2013)
Superte Post-Preliminary Analysis	Memorandum from Susan Kuhbach, Office Director, to Paul Piquado, Assistant Secretary for Import Administration, “Post-Preliminary Analysis Memorandum for Zhongshan Superte Kitchenware Co., Ltd (‘Superte’) and Foshan Zhaoshun Trade Co., Ltd. (‘Zhaoshun’)” (January 8, 2013)
Superte Preliminary Calculation Memo	Preliminary Determination Calculations for Zhongshan Superte Kitchenware Co., Ltd. and Foshan Zhaoshun Trade Co., Ltd. (July 30, 2012)
Superte SS Coil Rejection Letter	Letter from the Department to Superte, “Investigation of Drawn Stainless Steel Sinks from the People’s Republic of China” (September 13, 2012)
Superte SS Coil Submission	Letter from Superte to the Department, “Drawn Stainless Steel Sinks from China: Resubmission of August 10. 2012 Submission” (September 18, 2012)
Superte Verification Report	Memorandum from Shane Subler and Christopher Siepmann, International Trade Analysts, to Susan H. Kuhbach, Office Director, Verification Report: Zhongshan Superte Kitchenware Co., Ltd. (“Superte”), and Foshan Zhaoshun Trade Co., Ltd. (“Zhaoshun”)(December 12, 2012)

Short Citation	Complete Document Title
Superte's July 23, 2012 SQR	Letter from Superte to the Department, "Drawn Stainless Steel Sinks from China; First Supplemental Questionnaire Response" (July 23, 2012)
Yingao Final Calculation Memo	Final Determination Calculations for Guangdong Yingao Kitchen Utensils Co., Ltd. and Foshan Magang Kitchen Utensils Co., Ltd. (February 19, 2013)
Yingao Post-Preliminary Analysis	Memorandum from Susan Kuhbach, Office Director, to Paul Piquado, Assistant Secretary for Import Administration, "Post-Preliminary Analysis Memorandum for Guangdong Yingao Kitchen Utensils Co., Ltd. ('Yingao') and Foshan Magang Kitchen Utensils Co., Ltd. ('Magang')" (January 8, 2013)
Yingao Preliminary Calculation Memo	Preliminary Determination Calculations for Guangdong Yingao Kitchen Utensils Co., Ltd. and Foshan Magang Kitchen Utensils Co., Ltd. (July 30, 2012)
Yingao Verification Report	Memorandum from Shane Subler and Austin Redington, International Trade Analysts, to Susan H. Kuhbach, Office Director, Verification Report: Guangdong Yingao Kitchen Utensils Co., Ltd. ("Yingao"), and Foshan Magang Kitchen Utensils Co., Ltd. ("Magang") (December 4, 2012)
Yingao's Case Brief	Letter from Yingao to the Department, "Drawn Stainless Steel Sinks from the People's Republic of China: Case Brief" (January 17, 2013)
Yingao's Rebuttal Brief	Letter from Yingao to the Department, "Rebuttal Brief" (January 25, 2013)

Short Citation	Complete Document Title
YQR	Letter from Yingao to the Department, “Drawn Stainless Steel Sinks from the People’s Republic of China: Questionnaire Response” (June 28, 2012)
YQR NSA	Letter from Yingao to the Department, “Drawn Stainless Steel Sinks from the People’s Republic of China: Supplemental Questionnaire Response” (August 29, 2012)
ZQR	Letter from Zhaoshun to the Department, “Drawn Stainless Steel Sinks from China; Initial CVD Questionnaire Response” (June 28, 2012)

**V. MISCELLANEOUS TABLE (REGULATORY, STATUTORY, ARTICLES, ETC.)**

Short Cite	Complete Title
<i>CVD Preamble</i>	<i>Countervailing Duties; Final Rule</i> , 63 FR 65348 (November 25, 1998)
<i>EC-Civil Aircraft</i>	<i>European Communities and Certain Member States - Measures Affecting Trade in Large Civil Aircraft</i> , WTO/DS316/AB/R, AB-2010-1, 11-2462 (May 18, 2011)
<i>Foshan City 10th Five-Year Plan</i>	Exhibit B-2-2 of the GQR: <i>Guidelines of the Tenth Five-Year Plan for the Economic and Social Development of Foshan City</i>
<i>Fujian Iron and Steel Plan</i>	<i>Fujian Province Iron and Steel Industry and Non Ferrous Metals Industry Adjustment and Revitalization Implementation Plan</i>
<i>Guangdong 11th Five-Year Plan</i>	Exhibit B-2-1 of the GQR: <i>Outline of the Eleventh Five-Year Plan for the Economic and Social Development of Guangdong Province</i>
<i>National 11th Five-Year Plan</i>	Exhibit B-1-1 of the GQR: <i>Guidelines for the Eleventh Five-Year (2006-2010) Plan of the People’s Republic of China for the National Economic and Social Development</i>
<i>Pearl River Delta Plan</i>	<i>Pearl River Delta Industrial Layout Integration Plan (2009-2020)</i>
Public Law 112-99	<i>Application of Countervailing Duty Provisions to Nonmarket Economy Countries</i> , 112 Pub. L. No. 99, 126 Stat. 265 (March 13, 2012)
<i>SAA</i>	<i>Statement of Administrative Action accompanying the Uruguay Round Agreements Act</i> , H.R. Doc. No. 316, 103d Cong., 2d Session (1994)
<i>SCM Agreement</i>	<i>Agreement on Subsidies and Countervailing Measures</i> , April, 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts 264 (1994)

<b>Short Cite</b>	<b>Complete Title</b>
<i>Section 129 Implementation</i>	<i>Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China, 77 FR 52683 (August 30, 2012)</i>
<i>URAA</i>	<i>Uruguay Round Agreements Act, Pub L. No. 103-465, 108 Stat. 4809 (1994)</i>
<i>WTO AB Decision</i>	<i>United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/AB/R (March 11, 2011)</i>
<i>WTO DS 379</i>	<i>United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China</i>
<i>WTO Panel Decision</i>	<i>Panel Report, United States - Definitive Anti-Dumping And Countervailing Duties On Certain Products From China (DS379) WT/DS379/R (October 22, 2010)</i>
<i>Zhongshan City 12th Five-Year Plan</i>	<i>Exhibit B-2-3 of the GQR: Guidelines of the Twelfth Five-Year Plan for the Economic and Social Development of Zhongshan City</i>