



C-570-997  
Investigation  
POI: 01/01/2012 – 12/31/2012  
**Public Document**  
AD/CVD Office I

March 18, 2014

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Determination of  
Countervailing Duty Investigation: Non-Oriented Electrical Steel  
from the People's Republic of China

## I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of non-oriented electrical steel (NOES) in the People's Republic of China (the PRC), as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

## II. BACKGROUND

### A. Initiation and Case History

On September 30, 2013,<sup>1</sup> AK Steel Corporation (hereinafter, Petitioner) filed a petition with the Department seeking the imposition of antidumping and countervailing duties (CVDs) on NOES from, *inter alia*, the PRC.<sup>2</sup> Supplements to the Petition and our consultations with the Government of the PRC (GOC) are described in the Initiation Checklist.<sup>3</sup> On November 6, 2013,

<sup>1</sup> As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013. See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).

<sup>2</sup> See Letter from Petitioner, "Petitions For The Imposition Of Antidumping And Countervailing Duties Against Non-Oriented Electrical Steel From China, Germany, Japan, Korea, Sweden, and Taiwan" (September 30, 2013) (Petition).

<sup>3</sup> See "Initiation Checklist: Non-Oriented Electrical Steel from the People's Republic of China" (November 6, 2013) (Initiation Checklist).



the Department initiated a CVD investigation on NOES from the PRC.<sup>4</sup>

The Department stated in the *CVD Initiation* that we intended to select respondents based on data obtained from U.S. Customs and Border Protection (CBP).<sup>5</sup> On November 8, 2013, we released the CBP entry data under administrative protective order (APO) for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings included in the scope of the *CVD Initiation*.<sup>6</sup> We invited comments on these data and received a submission from Petitioner on November 21, 2013.<sup>7</sup> On December 17, 2013, we selected Baoshan Iron & Steel Co., Ltd. (Baoshan) as the mandatory company respondent.<sup>8</sup>

On December 18, 2013, the Department extended the deadline to file new subsidy allegations to February 5, 2014,<sup>9</sup> and on December 19, 2013, in accordance with section 703(c)(1)(A) of the Act, postponed the due date for this preliminary determination.<sup>10</sup>

On December 17, 2013, the Department issued the initial CVD questionnaires to Baoshan and the GOC. We confirmed that both Baoshan and the GOC received the initial questionnaire,<sup>11</sup> but we did not receive a response to our initial CVD questionnaire from either Baoshan or the GOC.<sup>12</sup>

On February 4, 2013, Petitioner timely submitted six new subsidy allegations,<sup>13</sup> and we initiated an analysis of four of these allegations on March 12, 2014.<sup>14</sup> However, we interpret the GOC's and Baoshan's lack of response to our initial questionnaires as the GOC's and Baoshan's intention not to participate in this proceeding. Therefore, we did not issue new subsidy allegation questionnaires, as is our standard practice.<sup>15</sup> Additionally, on February 25, 2014, Petitioner alleged that critical circumstances exist regarding imports of NOES from the PRC.<sup>16</sup>

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<sup>4</sup> See *Non-Oriented Electrical Steel from the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations*, 78 FR 68412 (November 14, 2013) (*CVD Initiation*).

<sup>5</sup> See *CVD Initiation* at 68415.

<sup>6</sup> See Memorandum to the File, "Release of Customs and Border Protection ("CBP") Data" (November 7, 2013).

<sup>7</sup> See Letter from Petitioner, "Non-Oriented Electrical Steel From The People's Republic Of China: Petitioner's Comments On CBP Data And Respondent Selection" (November 21, 2013).

<sup>8</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Countervailing Duty Investigation of Non-Oriented Electrical Steel from the People's Republic of China: Respondent Selection" (December 17, 2013) (Respondent Selection Memo).

<sup>9</sup> See Memorandum to the File, "New Subsidy Allegation Deadline: Non-Oriented Electrical Steel from the People's Republic of China and the Republic of Korea" (December 18, 2013).

<sup>10</sup> See *Non-Oriented Electrical Steel from the People's Republic of China, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 78 FR 76815 (December 19, 2013).

<sup>11</sup> See Memorandum to the File, "Confirmation of Receipt of Initial Questionnaire" (January 24, 2014) at Attachment.

<sup>12</sup> See Memorandum to the File, "Tracking History and Delivery Confirmation of Initial Questionnaire to Baoshan Iron & Steel Co., Ltd." (March 7, 2014) (Delivery Confirmation Memorandum).

<sup>13</sup> See Letter from Petitioner, "Non-Oriented Electrical Steel From The People's Republic Of China: Petitioner's New Subsidy Allegations" (February 4, 2014) (NSA Submission).

<sup>14</sup> See Memorandum to Thomas Gilgunn, Director, Office I, AD/CVD Operations, "Analysis of New Subsidy Allegations" (March 12, 2014).

<sup>15</sup> See, e.g., *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010*, 78 FR 21594 (April 11, 2013), and accompanying Issues and Decision Memorandum (IDM) at 5-7. See also, *Certain Kitchen Appliance Shelving and Racks From the People's*

The deadline for the preliminary determination of this investigation was March 17, 2014. Due to the closure of the Federal Government in Washington, DC on March 17, 2014, the Department reached this determination on the next business day (*i.e.*, March 18, 2014).<sup>17</sup>

## **B. Period of Investigation**

The period of investigation (POI) is January 1, 2012, through December 31, 2012.

## **III. CRITICAL CIRCUMSTANCES**

As noted above, on February 25, 2014, Petitioner alleged critical circumstances exist with respect to imports of non-oriented electrical steel from the PRC.<sup>18</sup> In accordance with 19 CFR 351.206(c)(2)(i), because Petitioner submitted a critical circumstances allegation more than 20 days before the scheduled date of this preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination.<sup>19</sup>

In its Critical Circumstances Allegation, Petitioner contends that there have been massive imports of NOES from the PRC over a relatively short period since the filing of the Petition. Petitioner provided import statistics released by the U.S. International Trade Commission (ITC) and shipment information for the merchandise under investigation.<sup>20</sup> Petitioner argues that these data demonstrate that imports of subject merchandise from the PRC have increased more than the fifteen percent required to be considered “massive” under 19 CFR 351.206(h)(2). In addition, Petitioner alleges that the NOES industry in the PRC has benefitted from subsidies that are inconsistent with World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement).<sup>21</sup>

Section 703(e)(1) of the Act states that if the petitioner alleges critical circumstances, the Department will determine, on the basis of information available to it at the time, if there is a reason to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the SCM Agreement, and (B) there have been massive imports of the subject merchandise over a

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*Republic of China: Countervailing Duty Administrative Review; 2011*, 78 FR 63166 (October 23, 2013), and accompanying Preliminary Decision Memorandum at 2-4.

<sup>16</sup> See Letter from Petitioner, “Non-Oriented Electrical Steel From the People’s Republic of China: Petitioner’s Critical Circumstances Allegations” (February 25, 2014) (Critical Circumstances Allegation).

<sup>17</sup> See *Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

<sup>18</sup> *Id.*

<sup>19</sup> See, e.g., *Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations*, 63 FR 55364 (October 15, 1998).

<sup>20</sup> See Critical Circumstances Allegation at 4 and Attachment.

<sup>21</sup> *Id.*, at 2-4. Specifically, Petitioner cites to the income tax reduction program for export-oriented foreign invested enterprises (FIEs), corporate income tax refund program for reinvestment of FIE profits in export-oriented enterprises, income tax credits on purchase of domestically produced equipment by domestically owned companies, income tax credits on purchase of domestically produced equipment by FIEs, VAT rebates on domestically produced equipment, and government purchase of goods for more than adequate remuneration. See *CVD Initiation*, and accompanying Initiation Checklist.

relatively short period.

In determining whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, the Department limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the SCM Agreement).<sup>22</sup>

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," "the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, the Department will not consider imports to be massive unless imports during the "relatively short period" (comparison period) have increased by at least fifteen percent compared to imports during an "immediately preceding period of comparable duration" (base period).<sup>23</sup> Section 351.206(i) defines "relatively short period" as normally being the period beginning on the date the proceeding commences (*i.e.*, the date the petition is filed) and ending at least three months later. However, if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Department may consider a period of not less than three months from that earlier time.<sup>24</sup> In addition, the Department expands the periods as more data are available.

As noted above, Baoshan and the GOC failed to respond to the Department's initial questionnaire. As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section below, we preliminarily determine that Baoshan and the GOC failed to cooperate to the best of their abilities. Therefore, the Department finds that an adverse inference is appropriate.<sup>25</sup> Because the GOC and the mandatory company respondent decided not to participate in this investigation, we also made our preliminary determination with respect to critical circumstances on facts otherwise available, with an adverse inference.<sup>26</sup>

With respect to critical circumstances, we are making an adverse inference that Baoshan benefitted from import substitution and export subsidies, which are inconsistent with the SCM Agreement, and that it had "massive imports" over a "relatively short period." Given the nature of these allegations, and the lack of cooperation from the GOC and the mandatory company respondent, we preliminarily determine that critical circumstances exist for Baoshan, pursuant to sections 703(e) and 776(a) and (b) of the Act, and 19 CFR 351.206.

To determine whether all other PRC producers/exporters of the subject merchandise under investigation benefitted from countervailable subsidies that are inconsistent with the SCM Agreement, we are basing our finding on the decision applied to Baoshan, and, therefore, find that all other producers/exporters benefitted from import substitution and export subsidies. As

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<sup>22</sup> See, e.g., *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 55808, 55809 (August 30, 2002).

<sup>23</sup> See 19 CFR 351.206(h)(2).

<sup>24</sup> See 19 CFR 351.206(i).

<sup>25</sup> See section 776(b) of the Act.

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

shown in the “Subsidy Rate Chart” below, the subsidies determined to be countervailable included subsidy programs that are inconsistent with the SCM Agreement, such as export subsidy programs (*e.g.*, Tax Reductions for Export-Oriented FIES) and import substitution subsidy programs (*e.g.*, Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment).

To determine whether there are “massive imports” over a “relatively short period,” for all other producers/exporters, we relied on U.S. import statistics. In its Critical Circumstances Allegation, Petitioner provided ITC monthly import statistics for the merchandise under investigation for the period July 2013 through December 2013. Consistent with *Glycine from Japan*, we are using the ITC monthly import statistics to determine whether there are “massive imports” with respect to all other producers/exporters.<sup>27</sup> Based on our analyses of these import data, we preliminarily find that imports of subject merchandise from the PRC did increase by more than fifteen percent during the “relatively short period” (*i.e.*, between July 2013 through September 2013, and October 2013 through December 2013). Therefore, we preliminarily determine that the requirements of section 703(e)(1)(B) of the Act have been satisfied, and that critical circumstances exist for all other PRC producers/exporters of subject merchandise.

We intend to make a final determination concerning critical circumstances when we make the final subsidy determination, currently scheduled for July 29, 2014.

#### **IV. SCOPE COMMENTS**

In accordance with the preamble to the Department’s regulations, we set aside a period of time in our *CVD Initiation* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.<sup>28</sup>

We received numerous comments concerning the scope of the antidumping duty (AD) and CVD investigations of NOES from, *inter alia*, the PRC. Because of the timing of these scope comments, we have not had adequate time to analyze the issues raised by parties prior to this preliminary determination. Therefore, we plan on addressing scope issues raised by interested parties in the preliminary determination of the corresponding AD investigations.

#### **V. SCOPE OF THE INVESTIGATION**

The merchandise subject to this investigation consists of non-oriented electrical steel (NOES), which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term “substantially equal” in the prior sentence means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES

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<sup>27</sup> See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271, 67274 (November 28, 2007) (*Glycine from Japan*).

<sup>28</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *CVD Initiation*.

contains by weight at least 1.25 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum.

NOES is subject to this investigation whether it is fully processed (fully annealed to develop final magnetic properties) or semi-processed (finished to final thickness and physical form but not fully annealed to develop final magnetic properties); whether or not it is coated (*e.g.*, with enamel, varnish, natural oxide surface, chemically treated or phosphate surface, or other non-metallic materials). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404-8-4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of this investigation is not limited to merchandise meeting the specifications noted above.

NOES is sometimes referred to as cold-rolled non-oriented electrical steel (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO). These terms are interchangeable.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

## **VI. RESPONDENT SELECTION**

Section 777A(e)(1) the Act directs the Department to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if the Department determines it is not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise.

As noted above, on December 17, 2013, the Department determined that it was not practicable to examine more than one respondent in the instant investigation.<sup>29</sup> Therefore, the Department selected, based on data from CBP, the one exporter/producer accounting for the largest volume of NOES exported from the PRC during the POI: Baoshan.<sup>30</sup>

## **VII. INJURY TEST**

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On December 6, 2013, the ITC determined that there is a reasonable indication that an industry in the United States is

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<sup>29</sup> See Respondent Selection Memo.

<sup>30</sup> *Id.*

materially injured by reason of imports of NOES from, *inter alia*, the PRC.<sup>31</sup>

## **VIII. APPLICATION OF THE COUNTERVAILING DUTY LAW TO IMPORTS FROM THE PRC**

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.<sup>32</sup> In *CFS from the PRC*, the Department found that

... given the substantial difference between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as {a} bar to proceeding with a CVD investigation involving products from the PRC.<sup>33</sup>

The Department has affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.<sup>34</sup> Furthermore, on March 13, 2012, Public Law 112-99 was enacted which makes clear that the Department has the authority to apply the CVD law to non-market economies such as the PRC.<sup>35</sup> The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.<sup>36</sup>

Additionally, for the reasons stated in *CWP from the PRC*,<sup>37</sup> we are using the date of December 11, 2001, the date on which the PRC became a member of the WTO, as the date from which the Department will identify and measure subsidies in the PRC for purposes of this investigation.

## **IX. 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.

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<sup>31</sup> See *Investigation Nos. 701-TA-506-508 and 731-TA-1238-1243 (Preliminary) Non-Oriented Electrical Steel From China, Germany, Japan, Korea, Sweden, and Taiwan: Determinations*, 78 FR 73562 (December 6, 2013).

<sup>32</sup> See *Coated Free Sheet Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying IDM.

<sup>33</sup> See *CFS from the PRC* and accompanying IDM at Comment 6.

<sup>34</sup> See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*), and accompanying IDM at Comment 1.

<sup>35</sup> Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

<sup>36</sup> See Public Law 112-99, 126 Stat. 265§ 1(b).

<sup>37</sup> See *CWP from the PRC*, and accompanying IDM at Comment 2.

As discussed above, neither Baoshan nor the GOC responded to the Department's initial questionnaire. We sent the initial questionnaire to the GOC *via* e-mail and confirmed receipt.<sup>38</sup> We mailed *via* Federal Express (FedEx) the initial questionnaire to the address for Baoshan listed in the Petition.<sup>39</sup> As discussed in the Delivery Confirmation Memorandum, the address for Baoshan as listed in the Petition was undeliverable, so we searched online *via* the internet for an alternative address, and sent it to the Baosteel Group Corporation *via* FedEx.<sup>40</sup> Subsequently, we confirmed receipt of the initial questionnaire.<sup>41</sup> In addition, since the initial questionnaire was delivered after the due date, we extended the deadline to be 30 days from when the questionnaire was actually received.<sup>42</sup> We also confirmed receipt of this letter extending the deadline for responding to the initial questionnaire.<sup>43</sup> Baoshan did not respond. Accordingly, by not responding to our questionnaires, Baoshan and the GOC withheld information that has been requested by the Department and significantly impeded the Department's ability to conduct this investigation. Thus, we must rely on facts otherwise available in accordance with section 776(a)(2)(A) and (C) of the Act.

In selecting from among the facts available, the Department determined that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit a response to the Department's initial CVD questionnaire, Baoshan and the GOC did not cooperate to the best of their ability in this investigation. Thus, we find that both Baoshan and the GOC failed to cooperate in this investigation, and as such, this preliminary determination is based on total adverse facts available (AFA).

#### **A. Selection of the Adverse Facts Available Rate**

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."<sup>44</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>45</sup>

It is the Department's practice in a CVD investigation to select, as AFA, the highest calculated

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<sup>38</sup> See Memorandum to the File, "Confirmation of Receipt of Initial Questionnaire" (January 24, 2014).

<sup>39</sup> See Delivery Confirmation Memorandum. See also Petition at Exhibit I-4.

<sup>40</sup> See Delivery Confirmation Memorandum at Attachments 1 and 2.

<sup>41</sup> *Id.*, at Attachment 2.

<sup>42</sup> See Letter from Nancy Decker, Program Manager, Office I, AD/CVD Operations, to Baoshan Iron & Steel Co., Ltd., courtesy of Chairman Xu Leijang, Baosteel Group Corporation, "Countervailing Duty Investigation: Non-Oriented Electrical Steel from People's Republic of China" (February 7, 2014).

<sup>43</sup> See Delivery Confirmation Memorandum at Attachments 3 and 4.

<sup>44</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>45</sup> See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H. Doc. No. 16, 103d Cong. 2d Session at 870 (1994).

rate for the same or similar program.<sup>46</sup> When selecting rates, we first determine if there is an identical program in the investigation with a rate above zero (or if none in the investigation, we look for the identical program with an above *de minimis* rate in previous cases from the same country), and take the highest calculated rate for the identical program.<sup>47</sup> If there is no identical program, we then determine if there is a similar/comparable program (based on treatment of the benefit) in any proceeding from that country and apply the highest calculated rate for a similar/comparable program.<sup>48</sup> Where there is no comparable program, we apply the highest calculated rate from any non-company specific program but do not use a rate from a program if the industry in the proceeding cannot use that program.<sup>49</sup>

Because Baoshan failed to act to the best of its ability in this investigation, as discussed above, we made an adverse inference that Baoshan benefitted from each program examined. To calculate the program rate for the nine alleged income tax programs pertaining to either the reduction of income tax paid or the payment of no income tax, we applied an adverse inference that Baoshan paid no income tax during the POI. The standard income tax rate for corporations in the PRC in effect during the POI was 25 percent.<sup>50</sup> Thus, the highest possible benefit for these nine income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the nine programs combine to provide a 25 percent benefit). Consistent with past practice, the 25 percent AFA rate does not apply to the income tax credit and rebate, accelerated depreciation, or import tariff and value add tax (VAT) exemption programs because such programs may not affect the tax rate.<sup>51</sup>

For all programs other than those involving income tax rate reduction or exemptions, we are applying, where available, the highest subsidy rate calculated for the same or similar program in a PRC CVD investigation or administrative review. For this preliminary determination, we are able to match based on program name, descriptions, and treatment of the benefit, the following programs to the same programs from other PRC CVD proceedings:

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<sup>46</sup> See, e.g., *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), and accompanying IDM at "Selection of the Adverse Facts Available;" *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and accompanying IDM (*Aluminum Extrusions Investigation*) at "Application of Adverse Inferences: Non-Cooperative Companies;" and *Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012) (*Steel Wire Investigation*), and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences."

<sup>47</sup> See, e.g., *Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at 8-9.

<sup>48</sup> *Id.*

<sup>49</sup> See, e.g., *Aluminum Extrusions Investigation* and *Steel Wire Investigation*.

<sup>50</sup> See Petition, Volume VIII at 19-20.

<sup>51</sup> See, e.g., *Aluminum Extrusions Investigation* at "Application of Adverse Inferences: Non-Cooperative Companies."

- Policy Loans;<sup>52</sup>
- Preferential Export Financing from the Export-Import Bank of China;<sup>53</sup>
- Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries;<sup>54</sup>
- VAT Rebates on Domestically Produced Equipment;<sup>55</sup> and
- Provision of Electricity for Less Than Adequate Remuneration (LTAR).<sup>56</sup>

We are able to match based on program type and treatment of the benefit the following programs to similar programs from other PRC CVD proceedings:

- Treasury Bond Loans or Grants;<sup>57</sup>
- Preferential Loans for State-Owned Enterprises (SOEs);<sup>58</sup>
- Tax Offsets for Research and Development at FIEs;<sup>59</sup>
- Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment;<sup>60</sup>
- Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises;<sup>61</sup>
- Shanghai Municipal Tax Refund for High-tech Achievement Commercialization Projects;<sup>62</sup>

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<sup>52</sup> See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper Investigation Amended Final*), and accompanying Ministerial Error Memorandum (MEM) at "Revised Net Subsidy Rate for the Gold Companies." This document is proprietary in nature. However, the public version states the revised subsidy rates which include, *infra*, the policy lending rate (Policy Loans to Coated Paper Producers and Related Pulp Producers from State-Owned Commercial Banks and Government Policy Banks program).

<sup>53</sup> See *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010), and accompanying IDM at "B. Export Loans from the Export-Import Bank of China."

<sup>54</sup> See *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at "C. Import Tariff and Value Added Tax Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries."

<sup>55</sup> See *Certain Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010) (*Bricks Investigation*), and accompanying IDM at "1. VAT Rebates on Purchases of Domestically Produced Equipment."

<sup>56</sup> See *Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 49475 (August 14, 2013), and accompanying IDM at "B. Provision of Electricity for LTAR."

<sup>57</sup> See *Coated Paper Investigation Amended Final* and accompanying MEM at "Revised Net Subsidy Rate for the Gold Companies." (Policy Loans to Coated Paper Producers and Related Pulp Producers from State-Owned Commercial Banks and Government Policy Banks program.)

<sup>58</sup> *Id.*

<sup>59</sup> See *Bricks Investigation* and accompanying IDM at "1. VAT Rebates on Purchases of Domestically Produced Equipment."

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

- VAT Rebates on FIE Purchases of Chinese-Made Equipment;<sup>63</sup>
- Exemptions From Administrative Charges for Companies in Industrial Zones *and* the Provision of Land Use Rights in Certain Industrial and Special Economic Zones (SEZs);<sup>64</sup>
- Provision of Allocated Land Use Rights for SOEs for LTAR;<sup>65</sup>
- State Key Technology Renovation Fund;<sup>66</sup>
- Famous Brands Awards;<sup>67</sup>
- Special Fund for Energy Saving Technology Reform;<sup>68</sup>
- Grants for Listing Shares;<sup>69</sup>
- Grants to Baoshan;<sup>70</sup> and
- Shanghai Municipal Subsidy to Coal-Fired Power Plants for Emissions Reduction.<sup>71</sup>

In applying the highest calculated subsidy rate for the sole remaining program, the GOC's Purchase of Goods for More Than Adequate Remuneration (MTAR), we note that this program, or a similar type of program based on the treatment of the benefit, has not been calculated in a prior PRC CVD proceeding. Accordingly, as AFA, following our practice, we applied the highest calculated subsidy rate for any PRC program that conceivably could be used by the non-cooperative respondent. We determine this rate is 44.84, for the GOC's provision of hot-rolled steel for LTAR, which was calculated in *CWP from the PRC*.<sup>72</sup>

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."<sup>73</sup> The SAA provides that to "corroborate" secondary information, the Department will satisfy itself

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<sup>63</sup> See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010), and accompanying IDM at "1. VAT and Tariff Exemptions on Imported Equipment."

<sup>64</sup> See *Aluminum Extrusions Investigation* and accompanying IDM at "T. Provision of Land-Use Rights and Fee Exemptions To Enterprises Located in the ZHITDZ for LTAR." We note that the program from *Aluminum Extrusions Investigation* is a combination of two programs in the instant investigation.

<sup>65</sup> See *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), and accompanying IDM at "I. Subsidies Provided in the TBNA and the Tianjin Economic and Technological Development Area – Land."

<sup>66</sup> See *Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers Investigation*), and accompanying IDM at "8. Support Funds for Construction of Project Infrastructure Provided by Administration Commission of LETDZ."

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

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

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

<sup>71</sup> *Id.*

<sup>72</sup> See *CWP from the PRC*, and accompanying IDM at "A. Hot-rolled Steel for Less Than Adequate Remuneration."

<sup>73</sup> See SAA, at 870.

that the secondary information to be used has probative value.<sup>74</sup>

The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.<sup>75</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>76</sup>

In the absence of record evidence concerning the alleged programs due to the respondents' decision not to participate in the investigation, the Department reviewed the information concerning PRC subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this case. For the programs for which there is no program-type match, we have selected the highest calculated subsidy rate for any PRC program, from which the non-cooperative respondent could conceivably receive a benefit, to use as AFA. The relevance of these rates is that they are actual calculated CVD rates for PRC programs, from which the non-cooperative respondent could actually receive a benefit. Due to the lack of participation by the respondents and the resulting lack of record information concerning these programs, the Department has corroborated the rates it selected to use as AFA to the extent practicable for this preliminary determination.

On this basis, we determine the AFA countervailable subsidy rate for Baoshan to be 125.83 percent *ad valorem*.

## B. Subsidy Rate Chart

<u>Program Name</u>	<u>AFA Rate</u>
Policy Loans	10.54%
Preferential Export Financing from the Export-Import Bank of China	1.06%
Treasury Bond Loans or Grants	10.54%
Preferential Loans for State-Owned Enterprises	10.54%
Two Free, Three Half	25.00%
Tax Reductions for FIEs Purchasing Chinese-Made Equipment	

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*, at 869-870.

<sup>76</sup> See, e.g., *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

Tax Reductions for FIEs in Designated Geographic Locations	
Tax Reductions for Technology- or Knowledge-Intensive FIEs	
Tax Reductions for FIEs that are also High- or New-Technology Enterprises (HNTEs)	
Tax Reductions for HNTEs Involved in Certain Projects	
Tax Reductions for Export-Oriented FIEs	
Reduction of Taxable Income for Enterprises Comprehensively Utilizing Resources <sup>77</sup>	
Additional Deduction of Taxable Income for Research and Development Expenses on New Technologies, New Products, and New Techniques <sup>78</sup>	
Tax Offsets for Research and Development at FIEs	0.51%
Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment	0.51%
Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises	0.51%
Shanghai Municipal Tax Refund for High-tech Achievement Commercialization Projects <sup>79</sup>	0.51%
Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries	1.14%
VAT Rebates on FIE Purchases of Chinese-Made Equipment	3.46%
Exemptions From Administrative Charges for Companies in Industrial Zones and the Provision of Land-Use Rights for LTAR – Land Use Rights in Certain Industrial and SEZs	4.97%
VAT Rebates on Domestically Produced Equipment	0.51%
Provision of Land-Use Rights for LTAR – Allocated Land Use Rights for SOEs	2.55%
Provision of Electricity for LTAR	5.34%
The State Key Technology Renovation Fund	0.55%
Famous Brand Awards	0.55%
Special Fund for Energy Saving Technology Reform	0.55%
Grants for Listing Shares	0.55%
Grants to Baoshan	0.55%
Shanghai Municipal Subsidy to Coal-Fired Power Plants for Emissions Reduction <sup>80</sup>	0.55%
GOC Purchases of NOES from Baoshan for MTAR	44.84%
<b>Total Benefit =</b>	<b>125.83%</b>

<sup>77</sup> New subsidy allegation.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

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

## **X. ITC NOTIFICATION**

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

## **XI. DISCLOSURE AND PUBLIC COMMENT**

All calculations in this preliminary determination are contained in the instant memorandum. Therefore, we hereby disclose to interested parties the calculations performed in connection with this preliminary determination.<sup>81</sup> Case briefs or other written comments for all non-scope issues may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS) no later than 30 days after the publication of this preliminary determination in the *Federal Register*, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>82</sup> Case briefs or other written comments on scope issues may be submitted no later than 30 days after the publication of this preliminary determination in the *Federal Register*, and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for the case briefs. For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for all of the concurrent antidumping and countervailing duty investigations.

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>83</sup> This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.<sup>84</sup> Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

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<sup>81</sup> 19 CFR 351.224(b) calls for the Department to disclose calculations performed in connection with a preliminary determination within five dates of its public announcement.

<sup>82</sup> See 19 CFR 351.309.

<sup>83</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>84</sup> See 19 CFR 351.310(c).

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using the IA ACCESS.<sup>85</sup> Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,<sup>86</sup> on the due dates established above.

## XII. CONCLUSION

We recommend that you approve the preliminary findings described above.

✓  
Agree

\_\_\_\_\_  
Disagree

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

18 March 2014  
(Date)

<sup>85</sup> See 19 CFR 351.303(b)(2)(i).

<sup>86</sup> See 19 CFR 351.03(b)(1).