



C-570-995
Investigation
POI 1/1/12 – 12/31/12
Public Document
E&C/OVI: YN

September 24, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Countervailing Duty Investigation of Grain-
Oriented Electrical Steel from the People's Republic of China

I. SUMMARY

The Department of Commerce (Department) determines that countervailable subsidies are being provided to producers and exporters of grain-oriented electrical steel (GOES) in the People's Republic of China (the PRC), as provided in section 705 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Case History

On March 11, 2014, the Department published the *Preliminary Determination* for this investigation.¹ On March 11, 2014, Baoshan Iron & Steel Co., Ltd. (Baoshan) submitted ministerial error comments regarding the *Preliminary Determination*. On March 20, 2014, AK Steel Corporation, Allegheny Ludlum, LLC, and the United Steelworkers (collectively, Petitioners), as well as the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (domestic interested party), commented on Baoshan's ministerial error comments. On March 27, 2014, the Department responded to these comments,

¹ See *Countervailing Duty Investigation of Grain-Oriented Electrical Steel From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 79 FR 13617 (March 11, 2014) (*Preliminary Determination*), and the accompanying Preliminary Decision Memorandum.

stating that the issues raised by Baoshan were methodological in nature and did not constitute ministerial errors within the meaning of the Department's regulations.²

On April 29, 2014, the Department issued a post-preliminary analysis for one of Baoshan's cross-owned affiliates, Anhui Wanbao Mining Co., Ltd.³ The Department also scheduled a verification of Baoshan and the Government of the People's Republic of China's (GOC) questionnaire responses. On May 13, 2014, Baoshan notified the Department of its decision to withdraw from participating in the verification.⁴ Also on May 13, 2014, the GOC requested that, in light of Baoshan's non-participation, the Department cancel its verification of the GOC's response.⁵ On May 14, 2014, the Department requested that the GOC clarify its request and state whether it was withdrawing from participating in this investigation.⁶ On May 14, 2014, the GOC informed the Department that it was withdrawing from the verification.⁷ On May 15, 2014, the Department notified Baoshan and the GOC that it was cancelling the verification, pursuant to Baoshan's and the GOC's non-participation in this investigation.⁸

On July 1, 2014, Petitioners and the domestic interested party filed a case brief. On July 7, 2014, the GOC timely filed its rebuttal brief. On July 9, 2014, Baoshan withdrew its request for a hearing. On July 15, 2014, the GOC withdrew its request for a hearing.

B. Period of Investigation

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

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, and as noted in the *Initiation*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation*.⁹

² See Memorandum to Richard Weible, Director, Office VI, AD/CVD Operations, Enforcement and Compliance, "Countervailing Duty Investigation of Grain-Oriented Electrical Steel from the People's Republic of China: Allegation of a Significant Ministerial Error in the Preliminary Determination," March 27, 2014.

³ See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Countervailing Duty Investigation of Grain-Oriented Electrical Steel from the People's Republic of China: Post-Preliminary Analysis Memorandum," April 29, 2014.

⁴ See Letter from Baoshan, to the Department, "Re: Countervailing Duty Investigation of Grain-Oriented Electrical Steel from the People's Republic of China – Withdrawal," dated May 13, 2014.

⁵ See Letter from the GOC, to the Department, "Re: Grain-Oriented Electrical Steel ("GOES") from China; CVD Investigation GOC Request to Cancel Verification" dated May 13, 2014.

⁶ See Letter from Richard Weible, Office Director, Office VI, AD/CVD Operations, Enforcement and Compliance, to the GOC, dated May 14, 2014

⁷ See Letter from the GOC, to the Department, "Re: Grain-Oriented Electrical Steel ("GOES") from China; CVD Investigation GOC Clarification Regarding Verification" dated May 14, 2014.

⁸ See Letters from Richard Weible, Office Director, Office VI, AD/CVD Operations, Enforcement and Compliance, to Baoshan and the GOC, dated May 15, 2014.

⁹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation*, 78 FR at 59001.

POSCO, a respondent in the less-than-fair-value investigation of GOES from the Republic of Korea (Korea), submitted comments on November 13, 2013, requesting that the Department clarify whether GOES that is further processed into shapes that are not square or rectangular, such as trapezoids, fall within the scope of the Department's investigation. Petitioners submitted rebuttal comments on December 11, 2013, stating such products should be within the scope of the investigation. ABB Inc., which identified itself as an interested party by virtue of it being a U.S. importer of GOES from Japan and the Russian Federation, submitted comments on December 19, 2013, claiming that the petitioners' rebuttal comments represented an attempt to expand the scope beyond the products made by the petitioners.

On January 10, 2014, POSCO requested clarification regarding whether "laminations" and "cores" are covered by the scope of these investigations. Specifically, POSCO stated that it believes that those products are downstream products manufactured from GOES, noting "the physical and mechanical properties of the steel can be altered by any combination of the stamping or shearing, heat treatment, additional coating processes for laminations or stamping, molding, and stacking for cores, resulting in a new and different article with very different end uses." On January 24, 2014, Petitioners stated they do not wish relief on lamination products which have been: (1) cut-to-shape of the final design in which they will be incorporated into a stacked core; (2) subjected to additional post-processing heat treatment; and (3) potentially punched to create holes in their surface and subjected to additional coating processes.

On January 28, 2014, POSCO submitted additional comments, and, alluding to certain "cut to shape" products described in other submissions that it had filed (the aforementioned November 13, 2013 submission; a November 20, 2013 submission involving physical characteristics and the model matching hierarchy; and a January 21, 2014 submission involving its Section A response in the GOES from Korea less-than-fair-value investigation), indicated that such products for which it desires scope clarification may not have undergone heat treatment but may nevertheless be stacked into a stacked transformer core. In a memorandum to the file following a meeting between Department officials and counsel to POSCO, the Department noted that "if the products are in the 'drop in' condition and suitable for production of cores without any further cutting/shaping, then based on the petitioners' January 24, 2014 letter, these products should not be reported as subject merchandise."

In a letter dated April 1, 2014, Custom Materials, Inc. asked that the wording of the scope be changed to explicitly exclude what it terms "off-cuts," which allegedly are pieces of GOES of no greater than three inches in width that are cut from wider coils. Custom Materials, Inc. claims to import such merchandise and states that it is "traditionally sold as waste or scrap for re-melting and recovery purposes." However, we have made no changes to the language of the scope of this investigation to exclude so-called "off-cuts," as these are strips of GOES in coils specifically covered by the investigation.

On April 29, 2014, Petitioners submitted revised scope language addressing POSCO's request to exclude certain cut to shape products. We have incorporated that language in this final determination.

IV. SCOPE OF THE INVESTIGATION

The scope of this investigation covers grain-oriented silicon electrical steel (GOES). GOES is a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths. The GOES that is subject to this investigation is currently classifiable under subheadings 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive. Excluded are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the HTSUS as a transformer part (*i.e.*, laminations).

V. 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.¹⁰ In *CFS from the PRC*, the Department found that:

... given the substantial differences 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 China.¹¹

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.¹² Furthermore, on March 13, 2012, Public Law 112-99 was enacted which confirms that the Department has the authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.¹³ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.¹⁴

VI. 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

¹⁰ See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decision Memorandum (CFS IDM) at Comment 6.

¹¹ *Id.*

¹² 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 Issues and Decision Memorandum (CWP IDM) at Comment 1.

¹³ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

¹⁴ See Public Law 112-99, 126 Stat. 265 §1(b).

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.

As discussed above, Baoshan and the GOC notified the Department of their withdrawal from verification. Accordingly, by not participating in verification, Baoshan and the GOC significantly impeded the proceeding and provided information that cannot be verified as provided by section 782(i) of the Act. Thus, we must rely on facts otherwise available in accordance with section 776(a)(2)(C) and (D) 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 participate in the verifications, Baoshan and the GOC did not cooperate to the best of their abilities in this investigation. Thus, we find that both Baoshan and the GOC failed to cooperate in this investigation, and as such, this final 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."¹⁵ 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."¹⁶

Because the GOC failed to cooperate to the best of its abilities in this investigation, we are adversely inferring that under the programs at issue in this investigation, there is a financial contribution from an "authority" within the meaning of sections 771(5)(B) and 771(5)(D) of the Act. We are also adversely inferring that the programs at issue meet the specificity requirements of section 771(5A) of the Act. Further, because the GOC and Baoshan failed to cooperate to the best of their abilities, we are adversely inferring that each program conferred a benefit within the meaning of section 771(5)(E) of the Act. A description of the programs at issue in this investigation is attached to this memorandum. We note that all of the programs at issue here have been found countervailable in the past.

¹⁵ 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).

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

In turning to the rate for each program at issue, it is the Department's practice in a CVD investigation to select, as AFA, the highest calculated rate for the same or similar program.¹⁷ 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.¹⁸ 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.¹⁹ 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.²⁰

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 two 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.²¹ Thus, the highest possible benefit for these two income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the two 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.²²

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 final 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:

¹⁷ 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) (*Woven Sacks Investigation*), 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."

¹⁸ 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.

¹⁹ *Id.*

²⁰ See, e.g., *Aluminum Extrusions Investigation* and *Steel Wire Investigation*.

²¹ See Countervailing Duty Petition, Volume II, the People's Republic of China CVD: Grain-Oriented Electrical Steel from the People's Republic of China, the Czech Republic, the Federal Republic of Germany, Japan, the Republic of Korea, Poland, and the Russian Federation, dated September 18, 2013, at page 26.

²² See, e.g., *Aluminum Extrusions Investigation* at "Application of Adverse Inferences: Non-Cooperative Companies."

- Preferential Export Financing from the Export-Import Bank of China;²³
- Export Sellers Credit;²⁴
- Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment;²⁵
- Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries;²⁶
- Provision of Land-Use Rights for Less Than Adequate Remuneration (LTAR);²⁷ and
- Provision of Electricity for LTAR.²⁸

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:

- Policy Loans;²⁹
- Preferential Loans for State-Owned Enterprises (SOEs);³⁰
- Tax Offsets for Research and Development at FIEs;³¹
- Shanghai Tax Refunds and Administrative Fee Reduction for Advanced Enterprises;³²
- State Key Technology Renovation Fund;³³

²³ 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.”

²⁴ See *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 IDM at 12.

²⁵ See *Certain Steel Grating from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32362 (June 8, 2010), and accompanying IDM at 14, “3. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment.”

²⁶ See *New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010) (*Tires from the PRC Preliminary Results*) at “C: VAT and Import Duty Exemptions on Imported Material,” unchanged in final *New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011) (*Tires from the PRC Final Results*).

²⁷ See *Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009), and accompanying IDM at page 22.”

²⁸ 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.”

²⁹ 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).

³⁰ *Id.*

³¹ See *Tires from the PRC Preliminary Results* at “C: VAT and Import Duty Exemptions on Imported Material,” unchanged in *Tires from the PRC Final Results*.

³² *Id.*

- Baoshan District Advanced Manufacturing Industry Development Special Fund;³⁴
- Baoshan District Science and Technology Innovation Special Fund;³⁵
- Baoshan District Industrial Development Support Matching Special Fund;³⁶
- Special Fund for Energy Saving Technology Reform;³⁷ and
- Grants to Baoshan.³⁸

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 a rate for 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*.³⁹

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."⁴⁰ The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.⁴¹

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.⁴²

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

³³ 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."

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ See *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying IDM at "A. Hot-rolled Steel for Less Than Adequate Remuneration."

⁴⁰ See SAA, at 870.

⁴¹ *Id.*

⁴² *Id.*, at 869-870.

will not use information where circumstances indicate that the information is not appropriate as AFA.⁴³

In the absence of verifiable record evidence concerning the alleged programs due to the respondents' decision to cease participation 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 program 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 respondent and the resulting lack of verifiable record information concerning these programs, the Department has corroborated the rates it selected to use as AFA to the extent practicable for this final determination.

On this basis, we determine the AFA countervailable subsidy rate for Baoshan to be 127.69 percent *ad valorem*.

B. Subsidy Rate Chart

| Program Name | AFA Rate |
|--|----------|
| Policy Loans to the GOES Industry | 10.54% |
| Preferential Export Financing by the Export-Import Bank of China | 1.06% |
| Export Seller's Credit | 4.25% |
| Preferential Loans for State-Owned Enterprises ⁴⁴ | * |
| Tax Reductions for FIEs that are also High- or New-Technology Enterprises (HNTEs) | 25.00% |
| Enterprise Tax Law Research and Development Program | |
| Tax Offsets for Research and Development at FIEs | 9.71% |
| Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment | 1.68% |
| Shanghai Tax Refunds and Administrative Fee Reduction for Advanced Enterprises | 9.71% |
| Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries | 9.71% |

⁴³ See, e.g., *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

⁴⁴ For the Policy Lending and Preferential Loans to SOEs programs, we are using a single AFA rate because the two allegations in this investigation encompass the same loans provided by state-owned commercial banks.

| | |
|---|--------|
| Provision of Land-Use Rights for LTAR | 2.55% |
| Government Purchases of GOES for MTAR | 44.84% |
| Provision of Electricity for LTAR | 5.34% |
| The State Key Technology Renovation Fund | 0.55% |
| Baoshan District Advanced Manufacturing Industry Development Special Fund | 0.55% |
| Baoshan District Industrial Development Support Matching Special Fund | 0.55% |
| Baoshan District Science and Technology Innovation Special Fund | 0.55% |
| Special Fund for Energy Savings Technology Reform | 0.55% |
| Grants to Baoshan | 0.55% |
| Total Benefit = 127.69% | |

VII. ANALYSIS OF COMMENTS

Comment 1: Countervailable Subsidy Rate for Baoshan and All-Others Rate

Petitioners' and Domestic Interested Party's Comments

- Baoshan's and the GOC's questionnaire responses are not verified because both of these parties withdrew from verification.
- These parties' lack of cooperation resulted in an administrative record that is inadequate for calculating an accurate subsidy margin.
- All information submitted by Baoshan and the GOC must be dismissed as unreliable and replaced by total AFA.
- In accordance with the statute and the Department's regulations, the Department should apply a total AFA analysis.⁴⁵
- Consistent with prior proceedings, such as *Steel Wire Investigation*, the Department must apply the AFA rate to all other PRC producers and exporters of GOES.⁴⁶

GOC's Comments

- The GOC asserts that verification was never intended to verify all alleged subsidies under examination. Instead, the focus for verification with the GOC was the MTAR allegation.⁴⁷
- The Department has previously verified the information provided by the GOC for many of the programs alleged in this proceeding in other CVD investigations.⁴⁸ This

⁴⁵ See section 776 of the Act and sections 351.307(b)(4) and 351.308 of the Department's regulations.

⁴⁶ See *Steel Wire Investigation*, and accompanying IDM at 3, 4.

⁴⁷ See Letter to the GOC from Angelica Mendoza, Countervailing Duty Investigation: Grain-Oriented Electrical Steel from the People's Republic of China; Verification of the Government of China, (May 5, 2014) (identifying allegations that GOES were sold for More than Adequate Remuneration (MTAR), allegations that inputs were provided at LTAR, and alleged policy loans as topics for verification).

⁴⁸ See, e.g., *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013).

information should be used to calculate a reasonable final CVD rate for non-mandatory respondents.

- Excluding the partial AFA rate applied for Baoshan's affiliate, Rizhao Baoxin Mining Resources, in the *Preliminary Determination*, results in a CVD rate of 6.52 percent.
- The statute directs the Department to use any reasonable method to establish an all-others rate where the rates of examined respondents are zero, *de minimis*, or total AFA.
- The Department's past application of total AFA to all-others companies has been overturned by the Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (CAFC).⁴⁹
- The 6.52 percent rate was calculated with reference to the actual use of subsidies by a GOES producer. The 118.42 percent rate proposed by Petitioners and domestic interested party is calculated entirely from rates determined in non-GOES investigations. Thus, the 6.52 percent rate is a better indication of subsidies to the GOES industry.
- Where a sole respondent is selected, the Department undermines the statutory purpose of inducing cooperation by applying total AFA to all-other producers. If the respondent believes it may receive total AFA, it may simply give up on cooperating, with the understanding that the rest of the PRC industry would suffer the same AFA rate. This would occur less if the Department did not apply AFA to the respondents' competitors with the all-others rate.

Department's Position

With respect to Baoshan, as described above, we are relying on AFA to determine Baoshan's countervailable subsidy rate. We agree with the GOC that the Department identified certain programs in the verification outline issued to the GOC in preparation for the verification.⁵⁰

Given the circumstances of this investigation, we did not anticipate the need to re-verify previously verified subsidy programs with the GOC. However, the verification outline also stated that it was not all-inclusive, and that the Department may need to review additional materials or information at verification.⁵¹ Moreover, the Department intended to verify Baoshan's response *in toto*. Baoshan's responses and verification of its responses are what we would rely upon to calculate an actual countervailable subsidy rate. The GOC's response and verification relate to the existence of a financial contribution and specificity (and, in some instances, the existence of a benefit). Therefore, prior verifications of the GOC can only involve these issues. It is the responses and verification of Baoshan, however, that relate to the use of the subsidy programs, the amount of the benefit received, and the other information necessary to calculate a countervailable subsidy rate. Prior verifications of the GOC are irrelevant to these fundamental issues. Finally, we note that the AFA rate for this investigation does not include any subsidies that were previously verified to not exist.

We disagree with the GOC's suggestion that we depart from our established AFA methodology as described *supra*, at Selection of the Adverse Facts Available Rate. The Department's methodology selects the highest rates calculated for identical or similar subsidy programs. This

⁴⁹ See *MacLean-Fogg Co. v. United States*, 836 F. Supp. 2d 1367, 1373-74 (CIT 2012) (*MacLean-Fogg CIT*); *MacLean-Fogg Co. v. United States*, Slip Op. 2013-1187 (CAFC 2014) (*MacLean-Fogg Co. CAFC*).

⁵⁰ See Letter to the GOC from Angelica Mendoza, Countervailing Duty Investigation: Grain-Oriented Electrical Steel from the People's Republic of China; Verification of the Government of China (May 5, 2014).

⁵¹ *Id.*

is because it is reasonable to infer, based upon a respondent's considered decision not to participate in an investigation, that it used the alleged subsidy programs and that its rates were at least as high as the highest prior calculated rates. Our CVD AFA methodology is transparent and well-established, and we can infer that a respondent has used the alleged programs at the rates found in the past. The GOC argues that much of its information is reliable because the Department has verified some programs in other CVD proceedings. Consistent with our AFA methodology, and as explained above, we have not applied AFA to any programs that were previously proven to not exist. Beyond that, however, we do not believe that prior government verifications in other proceedings are otherwise relevant to determining an AFA rate of subsidies to PRC GOES producers.

Accordingly, we are using our normal AFA methodology to determine Baoshan's rate. However, the *Preliminary Determination* included some errors as we inadvertently overlooked previously calculated rates for certain programs. The corrected rates are noted *supra* in the Subsidy Rate Chart. The corrected rate is 127.69 percent *ad valorem*.

With respect to the all-others rate, section 705(c)(5)(A)(i) states that the all-others rate shall be an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* rates and any rates determined entirely under section 776 of the Act. However, section 705(c)(5)(A)(ii) of the Act states that if the countervailable subsidy rates for all exporters and producers individually investigated are zero or *de minimis* rates, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated.

In this investigation, the rate for the sole individually investigated exporter/producer is determined entirely under section 776 of the Act. Accordingly, we are using "any reasonable method" to establish the all-others rate. We find that it is reasonable to use the rate established for Baoshan as the all-others rate. The statute expressly states that when the rates for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may average the weighted average countervailable subsidy rates for the individually investigated exporters and producers. Therefore, because Congress expressly stated that it is reasonable to base the all-others rate on an average of the section 776 rates of the individually investigated exporters/producers, then it must also be reasonable to base the all-others rate on a sole individually investigated rate determined under section 776 of the Act.⁵² In short, our methodology here is consistent with the statute.

We disagree with the GOC's assertion that the rate calculated in the *Preliminary Determination*, minus the AFA component for Baoshan's affiliate, Rizhao Baoxin Mining Resources, is a more reasonable choice for the all-others rate. The GOC alleges this rate to be 6.52 percent. However, because Baoshan withdrew from verification, the accuracy of all the information it

⁵² Moreover, this is consistent with the general rule that in construing federal statutes, "words importing the plural include the singular." See 1 USC 1.

reported is unreliable.⁵³ Therefore, the information regarding program usage and benefit amounts reported by Baoshan, which the Department relied upon for the *Preliminary Determination*, is unusable not only for purposes of Baoshan's countervailable subsidy rate, but also for purposes of the all-others rate. We do not agree with the GOC's assertions that using a rate based upon partial⁵⁴ and unverified information is more reasonable than the actual statutory method expressed by Congress. If Congress had wanted the Department to base the all-others rate on the partial record information of the individually investigated companies whose rates are determined under section 776 of the Act, rather than on the actual "rates determined," it would have said so.

The GOC's reference to prior CIT and CAFC decisions in *MacLean-Fogg Co. v. United States* is misplaced. *MacLean-Fogg Co. v. United States* addressed two questions: whether to include voluntary respondents in the calculation of the all-others rate, and whether the Department's AFA rate of 374.15 percent was reasonable.⁵⁵

The CIT ruled that the statute was ambiguous with regard to the question of whether to include rates calculated for voluntary respondents in the AFA rate.⁵⁶ Therefore, it upheld the Department's regulation excluding the voluntary respondent rates from the AFA rate.⁵⁷ However, the CIT nonetheless considered the rates of the voluntary respondents in assessing the reasonableness of the all-others rate, distinguishing past instances of the Department's practice by stating that those past instances did not involve voluntary respondents.⁵⁸ The CIT also stated that "{w}hile Commerce was permitted not to use the voluntary respondents' rates in setting the all-others rate, these rates nonetheless demonstrate that the AFA rate was not attributable to all respondents."⁵⁹ The CIT then remanded the case to the Department to recalculate the all-others rate because it found that the 374.15 percent rate was not reasonable. On remand, the Department arrived at a reasonable method for the all-others rate, settling on a rate of 137.65 percent.⁶⁰ As this brief discussion shows, the situation in *MacLean-Fogg Co. v. United States* is distinguishable from the present investigation. The presence of the voluntary respondents' rates in *MacLean-Fogg* caused the CIT to question the reasonableness of the all-others rate. In this investigation, there are no voluntary respondents, and there is therefore no reason to question the application of Baoshan's rate to all other companies. The petition in this investigation described alleged subsidies to the entire GOES industry in China, not just to Baoshan.⁶¹ Consistent with the CIT's decision in *MacLean-Fogg*, we also find that the all-others rate in this investigation is remedial, not punitive, because it is based on a reasonable estimation of what the subsidy rate for

⁵³ See *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, 12183 (March 11, 2005), where the Department applied AFA to a respondent that withdrew from the proceeding two weeks prior to verification.

⁵⁴ The rate advocated by the GOC does not include all subsidies countervailed at the preliminary determination.

⁵⁵ See *MacLean-Fogg CIT at 1373-1376*.

⁵⁶ *Id.* The CAFC reversed this decision.

⁵⁷ *Id.*

⁵⁸ *Id.* at 1375.

⁵⁹ *Id.*

⁶⁰ See *MacLean-Fogg Co. v. United States*, 885 F. Supp. 2d 1337, 1343 (CIT 2012).

⁶¹ See "Countervailing Duty Petition Volume II People's Republic of China," dated September 18, 2013. Even though it might appear from the programs described above that the "Grants to Baoshan" program would only be relevant to Baoshan, the petition described grant programs to other GOES producers in China. See *id.* at 49-51

the GOES industry would be, in light of Baoshan's non-cooperation. Indeed, the AFA rate for Baoshan is not punitive, but rather is reasonable. Therefore the all-others rate also is not punitive.

Further, the CAFC's decision in *MacLean-Fogg* was limited to the issue of whether to include rates that were calculated for voluntary respondents in the all-others rate. Specifically, the CAFC considered whether section 705(c)(5)(A) of the Act requires the inclusion of voluntary respondents' rates in the all-others rate and whether 19 CFR 351.204(d)(3) is consistent with the Act. In this investigation we have no calculated rates for voluntary respondents. Therefore, the question of whether to include a voluntary respondent's rate in the all-others calculation is not applicable. Rather, the issue in this investigation is a straightforward application of section 705(c)(5)(A)(ii) of the Act, which clearly states that when all of the rates for individually investigated companies are based on section 776 of the Act, then the all-others rate may be based on the rates for those individually investigated companies. Moreover, neither the CIT nor the CAFC in *MacLean-Fogg* indicated that it would be appropriate to use unverified information to calculate an all-others rate, as the GOC urges here.

We disagree with the GOC's argument that using the sole respondent's rate, when based on AFA, as the all-others rate incentivizes the respondent to quit cooperating. In situations where there is a sole mandatory respondent, the respondent and the all-others companies usually will receive the same rate, regardless of cooperation. The application or non-application of AFA to the mandatory respondent does not change this result. It is unclear why the respondent would act to its own detriment, simply to spite its competitors, when normally its rate is the basis for the all-others rate. The GOC hypothesizes that, in situations where the sole respondent stops cooperating, the Department could construct a lower rate for the all-others companies. As discussed above, however, our methodology here is consistent with the statute.

Attachment

Description of Programs Being Reviewed

Below is a description of the programs initiated on by the Department and described by Petitioners.

Policy Loans to the GOES Industry

Description: The GOC has encouraged the development of the GOES industry through financial support from state-owned commercial banks (SOCBs) and the China Development Bank. The loans provide favorable lending terms that provide an economic benefit to the recipient.

Preferential Export Financing by the Export-Import Bank of China

Description: PRC exporters of GOES are eligible to receive special export financing by SOCBs and the Export-Import Bank of China because the production of specialty steel, such as GOES, is encouraged by the GOC. The Export-Import Bank of China is a state-owned policy bank that supports the exports of PRC electromechanical products and high-tech products.

Preferential Loans for SOEs

Description: The GOC provides preferential lending to state-owned enterprises, and certain GOES producers are state- or collectively-owned enterprises.

Income Tax Reductions for HNTEs

Description: Enterprises that are designated as HNTEs are entitled to a reduced tax rate of 15 instead of 25 percent. Additional tax benefits may also be available. For example, HNTEs located in a special economic zone or in the Pudong New District of Shanghai are exempt from income taxes for the first two years after earning income from production and pay only half the standard tax rate for the next three years.

Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment

Description: The GOC permits a domestically invested company a tax credit up to 40 percent on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC.

Import Tariff and VAT Exemptions for Foreign Invested Enterprises and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Description: The GOC provides a subsidy to Foreign Invested Enterprises (FIEs) and certain domestic enterprises in the form of VAT and import tariff exemptions on imported equipment, including components and parts.

Government Provision of Land-Use Rights for Less Than Adequate Remuneration

Description: PRC producers of GOES are eligible to benefit from the government provision of land-use rights for less than adequate remuneration in the form of granted rights to encouraged industries and allocated rights to SOEs.

Provision of Electricity for Less Than Adequate Remuneration

Description: GOES producers receive electricity from the GOC for less than adequate remuneration.

GOC Purchases of GOES for More Than Adequate Remuneration

Description: As part of its policy to assist directly in the development and expansion of this industry, the GOC has implemented a program to purchase steel from PRC producers at prices that exceed world market prices. Such procurements are specific financial contributions that result in a significant benefit to PRC GOES producers.

State Key Technology Project Fund

Description: The GOC uses this fund to facilitate technology upgrades, improve product quality and supply, and perform other services for qualifying industries. Benefits under the program are largely selected from SOEs and state holding enterprises among 512 key enterprises, 120 pilot enterprise groups, and leading enterprise industries.

Special Fund for Energy Savings Technology Reform

Description: The Circular of the Ministry of Finance and National Development and Reform Commission on Printing and Distributing Interim Measures on Administration of Energy-Saving Technology Reform Awards Fiscal Funds establishes that awards will be provided to support certain enterprises undertaking energy-saving technology reform projects. The financial statement of a GOES producer includes information of possible benefits under this program.

Grants to Baoshan

Description: Baoshan's 2012 annual report indicates that it has received numerous grants from the GOC.

Export Credits

Description: Other forms of export financing are provided by the Export-Import Bank of China, including Export Seller's Credits.

Enterprise Tax Law Research and Development Program

Description: Article 30.1 of the Enterprise Tax Law (ETL) allows companies to deduct from taxable income “expenditures for researching and developing new technologies, new products and new techniques.”

Shanghai City Tax Refund and Administrative Fee Reduction for Advanced Enterprises

Description: The Shanghai City Baoshan District provides several tax incentives to companies designated as “Advanced Enterprises.” Specifically, companies with this classification are refunded 50 percent of corporate income taxes and/or 30 percent of individual income taxes of the local authority’s portion of these taxes. Administrative fees paid to the Baoshan District are reduced by 50 percent. There is evidence that Baoshan has been designated as an “Advanced Enterprise” by Shanghai City.

Baoshan District Advanced Manufacturing Industry Development Special Fund

Description: The Baoshan District Economic Development Commission and Baoshan District Development and Reform Commission established the Advanced Manufacturing Industries Special Fund (Advanced Manufacturing Fund) to support the development of certain advanced manufacturing industries. The Advanced Manufacturing Fund provides grants to support technological upgrades, constructions of technological centers, industrialization of patented new technologies and new products, brand building, strategy standardizing, and construction of intelligent power grids and logistics networks.

Baoshan District Industrial Development Support Matching Fund Special Fund

Description: The Industrial Development Support Matching Fund Special Fund (Matching Fund) was established by Baoshan District to supplement funding extended to enterprises through national or Shanghai Special Funds. Specifically, the Matching Fund seeks to encourage more companies to apply for “national and Shanghai City special funds” by allocating 100 million RMB annually, over a two-year period, to provide grants when other special funds are not sufficient.

Baoshan District Science and Technology Innovation Special Fund.

Description: The Baoshan District Science and Technology Innovation Special Fund (Science and Technology Fund) was established in 2011 to implement national and Shanghai mid-term and long-term science and technology development plans. Based upon the description of these funds, as described in the underlying law, GOES producers would be eligible for assistance under two sub-programs, the Baoshan District Development Fund and the Baoshan District High-tech Fiscal Loan Interest Subsidies.