



C-570-013  
Investigation  
POI: 01/01/2013-12/31/2013  
**Public Document**  
ADCVD Ops II/RT/RK

**DATE:** November 12, 2014

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Issues and Decision Memorandum for the Final Determination in the  
Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire  
Rod from the People's Republic of China

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## I. SUMMARY

The Department of Commerce (Department) determines that countervailable subsidies are being provided to producers and exporters of carbon and certain alloy steel wire rod (SWR) in the People's Republic of China (the PRC), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties:

### Issues

1. Application of Adverse Facts Available (AFA) to Hebei Iron & Steel and Benxi Steel
2. AFA Rates for Hebei Iron & Steel and Benxi Steel
3. Calculation of the All-Others Rate
4. Critical Circumstances

## II. BACKGROUND

### A. Case History

The mandatory respondents in this proceeding are Benxi Beiyong Iron & Steel Group Import & Export Corp., Benxi Beiyong Iron & Steel (Group) Co., Ltd., and their cross-owned affiliates<sup>1</sup> (collectively,

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<sup>1</sup>Benxi Steel Group Corporation; Beitai Iron & Steel (Group) Co., Ltd.; Benxi Northern Steel Rolling Co., Ltd.; Benxi Beifang Gaosu Steel Wire Rod Co., Ltd.; Benxi Beitai Gaosu Steel Wire Rod Co., Ltd.; Benxi Northern Steel Co., Ltd.; Benxi Beifang Second Rolling Co., Ltd.; Benxi Beitai Ductile Iron Pipes Co., Ltd.; Benxi Iron and Steel (Group) Metallurgy Co., Ltd.; Benxi Iron and Steel (Group) Real Estate Development Co., Ltd.; Bei Tai Iron and Steel Group Imp. and Exp. (Dalian) Co., Ltd.; and Bengang Steel Plate Co., Ltd.



Benxi Steel), and Hebei Iron & Steel Co. Ltd. Tangshan Branch (Hebei Iron & Steel). On July 8, 2014, the Department published the Preliminary Determination in this proceeding.<sup>2</sup> On July 11, 2014, Benxi Steel and the Government of China (GOC) informed the Department that they were withdrawing from participation in this investigation, and would no longer respond to the Department's requests for information.<sup>3</sup> On September 2, 2014, the Department issued a post-preliminary analysis for Benxi Steel.<sup>4</sup> On September 11, 2014, we received a case brief from the petitioners, ArcelorMittal USA LLC, Charter Steel, Evraz Pueblo (formerly Evraz Rocky Mountain Steel), Gerdau Ameristeel US Inc., Keystone Consolidated Industries, Inc. (collectively, the petitioners), and a separate case brief from the petitioner, Nucor Corporation (Nucor). No parties submitted rebuttal briefs, and no parties requested a hearing.

## **B. Period of Investigation**

The period of investigation (POI) is January 1, 2013, through December 31, 2013.

## **III. 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>5</sup> 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.<sup>6</sup>

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.<sup>7</sup> 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

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Co., Ltd.; Benxi Iron and Steel (Group) Real Estate Development Co., Ltd.; Bei Tai Iron and Steel Group Imp. and Exp. (Dalian) Co., Ltd.; and Bengang Steel Plate Co., Ltd.

<sup>2</sup> See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 79 FR 38490 (July 8, 2014) (Preliminary Determination).

<sup>3</sup> See Letter from Benxi Steel Re: "Benxi Steel Withdrawal from Investigation – CVD Investigation of Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China" (July 11, 2014), and Letter from the GOC Re: GOC Letter on Benxi Steel Withdrawal: Countervailing Duty Investigation Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China" (July 11, 2014). See also the Memorandum to the File from James Maeder, Director, Office II, AD/CVD Operations, "Conversation with Counsel for Benxi and the Government of China" (July 17, 2014).

<sup>4</sup> See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from James Maeder, Director AD/CVD Operations, Office II, "Post-Preliminary Analysis of Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China" (September 2, 2014) (Post-Preliminary Analysis Memorandum).

<sup>5</sup> See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007), and accompanying Issues and Decision Memorandum (I&D Memo) at Comment 6 (CFS from the PRC).

<sup>6</sup> Id.

<sup>7</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), and accompanying I&D Memo at Comment 1.

economies under section 771(18) of the Act, such as the PRC.<sup>8</sup>

#### IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in relying on the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In making this final determination, we find it necessary to rely on adverse facts available (AFA) for both Hebei Iron & Steel and Benxi Steel, as detailed below.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) 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 other 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 rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”<sup>9</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>10</sup>

##### A. Application of the AFA Rate: Hebei Iron & Steel and Benxi Steel

In the Preliminary Determination, we applied AFA to Hebei Iron & Steel because it did not respond to the Initial CVD Questionnaire.<sup>11</sup> As a result of Hebei Iron & Steel’s failure to participate in this investigation, we continue to find that Hebei Iron & Steel withheld information that had been requested and failed to provide information within the deadlines established. Further, by not responding to the questionnaire, Hebei Iron & Steel significantly impeded this proceeding. Thus, in reaching our final determination, pursuant to sections 776(a)(1), (2)(A), (B) and (C) of the Act, we based the CVD rate for Hebei Iron & Steel on facts otherwise available.

As noted in the “Summary” section above, Benxi Steel notified the Department after the Preliminary Determination that it would no longer participate in this investigation. By refusing to participate further in the investigation, Benxi Steel withheld requested information, failed to provide information within the

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<sup>8</sup> Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

<sup>9</sup> See, e.g., Drill Pipe From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 76 FR 1971 (January 11, 2011); see also 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>10</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

<sup>11</sup> See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: Decision Memorandum for the Preliminary Determination” (June 30, 2014) (Preliminary Decision Memorandum) at 15.

deadlines established, significantly impeded this proceeding, and provided information that cannot be verified. Thus, for the final determination, pursuant to sections 776(a)(2)(A), (B), (C) and (D) of the Act, we are basing the CVD rate for Benxi Steel on facts otherwise available.

We determine that an adverse inference is warranted for both respondents, pursuant to section 776(b) of the Act. By failing to participate in the investigation, in the case of Hebei Iron & Steel, and discontinuing its participation, in the case of Benxi Steel, neither company cooperated to the best of its ability in this investigation. Accordingly, we find that AFA is warranted to ensure that these companies do not obtain more favorable results by failing to cooperate than had they fully complied with our requests for information.

## B. Selection of AFA Rates

It is the Department's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for a cooperating respondent in the same investigation, or, if not available, rates calculated in prior CVD cases involving the same country.<sup>12</sup> Specifically, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not de minimis. If there is no identical program match within the investigation, or if the rate is de minimis, the Department uses the highest non-de minimis rate calculated for the same or for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-de minimis subsidy rate calculated for the same or for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.<sup>13</sup>

In applying AFA to Hebei Iron & Steel and Benxi Steel, we are guided by the Department's methodology detailed above. Because Hebei Iron & Steel and Benxi Steel failed to act to the best of their abilities in this investigation, as discussed above, we made an adverse inference that each company benefitted from the programs appearing below. To calculate the program rate for the six income tax programs alleged in the petition which pertain to either the reduction of income tax paid or the payment of no income tax, we applied an adverse inference that Hebei Iron & Steel and Benxi Steel paid no income tax during the POI.<sup>14</sup> The standard income tax rate for corporations in the PRC in effect during

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<sup>12</sup> See, e.g., Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 73 FR 70971, 70975 (November 24, 2008) (unchanged in Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 29180 (June 19, 2009), and accompanying I&D Memo at "Application of Facts Available, Including the Application of Adverse Inferences"); see also Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 18521 (April 4, 2011) (Aluminum Extrusions from the PRC), and accompanying I&D Memo (Aluminum Extrusions I&D Memo) at "Application of Adverse Inferences: Non-Cooperative Companies."

<sup>13</sup> Id.; see also, e.g., Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008), and accompanying I&D Memo at "Selection of the Adverse Facts Available Rate."

<sup>14</sup> Upon further review, we have reconsidered our application of AFA for the following programs: "Tax Offsets for Research and Development (R&D) Under the EIT," "Tax Offsets for R&D by Foreign-Invested Enterprises (FIEs)," "Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises," "Tax Benefits to Enterprises in the Northeast Region," and "Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China." Consistent with past practice, we are assigning these programs individual rates for this final determination. See e.g., Non-Oriented Electrical Steel

the POI was 25 percent.<sup>15</sup> Thus, the highest possible benefit for these six income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (i.e., the six 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>16</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 final determination, we updated the rates below based on recent PRC CVD investigations and administrative reviews.<sup>17</sup> Thus, 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:

- The Provision of Electricity for LTAR<sup>18</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:

- Policy Loans<sup>19</sup>
- Preferential Loans to State Owned Enterprises (SOEs)<sup>20</sup>
- Directed Credit<sup>21</sup>
- Treasury Bond Loans or Grants<sup>22</sup>
- Development of Famous Brands and China World Top Brands Programs<sup>23</sup>
- Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands<sup>24</sup>

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From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 79 FR 61607 (October 14, 2014) (NOES from the PRC), and accompanying I&D Memo (NOES I&D Memo).

<sup>15</sup> See Petition for the Imposition of Antidumping and Countervailing Duties, Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China (SWR Petition), Volume III at 80 (January 31, 2014).

<sup>16</sup> See e.g., Aluminum Extrusions from the PRC, and Aluminum Extrusions I&D Memo at "Application of Adverse Inferences: Non-Cooperative Companies."

<sup>17</sup> See e.g., NOES from the PRC, and NOES I&D Memo at "IV. Use of Facts Otherwise Available and Adverse Inferences."

<sup>18</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 I&D Memo at "B. Provision of Electricity for LTAR."

<sup>19</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>20</sup> See Coated Paper Investigation Amended Final at "Preferential Lending to the Coated Paper Industry."

<sup>21</sup> Id.

<sup>22</sup> See id. 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>23</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), and I&D Memo (Wind Towers I&D Memo) at "8. Support Funds for Construction of Project Infrastructure Provided by Administration Commission of LETDZ."

- Funds for Outward Expansion of Industries in Guangdong Province<sup>25</sup>
- Provincial Fund for Fiscal and Technological Innovation<sup>26</sup>
- State Specific Fund for Promoting Key Industries and Innovation Technologies<sup>27</sup>
- Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers<sup>28</sup>
- Grants for Antidumping Investigations<sup>29</sup>
- Shandong Province's Award Fund for Industrialization of Key Energy-Saving Technology<sup>30</sup>
- Shandong Province's Environmental Protection Industry R&D Funds<sup>31</sup>
- Shandong Province's Construction Fund for Promotion of Key Industries<sup>32</sup>
- Waste Water Treatment Subsidies<sup>33</sup>
- Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises<sup>34</sup>
- Technology to Improve Trade R&D Fund<sup>35</sup>
- The Provision of Steel Billet for Less than Adequate Remuneration (LTAR)<sup>36</sup>
- The Provision of Land-Use to SOEs for LTAR<sup>37</sup>
- Land-Use Rights Extension<sup>38</sup>
- Tax Offsets for R&D Under the EIT<sup>39</sup>
- Tax Offsets for R&D by FIEs<sup>40</sup>
- Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises<sup>41</sup>
- Tax Benefits to Enterprises in the Northeast Region<sup>42</sup>
- Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China<sup>43</sup>

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</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) (OCTG from China), and accompanying I&D Memo (OCTG from China I&D Memo) at "C. Provision of Steel Rounds for Less than Adequate Remuneration."

<sup>37</sup> See OCTG from China, and OCTG from China I&D Memo at "I. Subsidies Provided in the TBNA and the Tianjin Economic and Technological Development Area – Land."

<sup>38</sup> Id.

<sup>39</sup> 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) 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).

<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Id.

- VAT and Import Duty Exemptions for Use of Imported Equipment<sup>44</sup>
- VAT Rebates on FIE Purchases of Chinese-Made Equipment<sup>45</sup>
- VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund Program<sup>46</sup>

Additionally, we made an adverse inference that Hebei Iron & Steel benefitted from Direct Government Grants to Hebei Iron & Steel, which we are able to match based on program type and treatment of the benefit to a similar program from another PRC CVD proceeding.<sup>47, 48</sup> Similarly, we made an adverse inference that Benxi Steel benefitted from the grants listed below, which we are able to match based on program type and treatment of the benefit to a similar program from another PRC CVD proceeding, i.e., Wind Towers.<sup>49</sup>

- 2nd Batch Science and Technology Plan Projects of Liaoning Province
- Dandong Finance Bureau Directly Pays the Zero-Balance Account With Discounted Interest
- Demonstration Project to Improve the Mixed Iron Ore Recovery in Dressing Plant
- Energy-Efficiency Subsidies of Electricity Generating Project
- Financial Discounts
- Financial Operation Subsidy for Environmental Protection Project
- Financial Reward Funds of Energy-Saving Technical Transformation
- Fiscal Award for Energy-Saving Technical Reconstruction
- Fund for Sewage Charges
- Funds of Government Support
- Government Allocated Fund for Technology Advancement
- Government Subsidy for Electricity Purchase Fund
- Governmental Subsidiary {sic} for Low-Rent Lease
- Governmental Support Funds
- Land Transfer Fee of Canvas Factory Returned by Government
- Return of Land Acquisition Costs of the Second Tailing Pond of Nanfen Dressing Plant of Bengang
- Returned Tax
- Reward Fund for Developing International Steel Market
- Special Eco-Friendly Subsidy for Sewage Charges
- Special Environmental Protection Subsidy
- Special Fund for Introducing Overseas Advanced and Applicable Technology into the Province in 2013
- Special Funds of the Municipal Environmental Protection Bureau

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<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> See Wind Towers I&D Memo at “8. Support Funds for Construction of Project Infrastructure Provided by Administration Commission of LETDZ.”

<sup>48</sup> We did not include in our AFA rate analysis those grant programs alleged in the petition which were based on the financial statements of companies other than Hebei Iron & Steel, i.e., Direct Government Grants to Angang Steel, Baosteel, Nanjing Iron & Steel Co., Ltd. (NISCO), Jiangsu Shagang Group, and Wuhan Iron and Steel Co., Ltd. (WISCO).

<sup>49</sup> See Wind Towers I&D Memo at “8. Support Funds for Construction of Project Infrastructure Provided by Administration Commission of LETDZ.” See also, the Post-Preliminary Analysis Memorandum.

- Subsidies for Closing Down Outdated Production Facilities
- Subsidies for Motor Bus (2010)
- Subsidies for the Dry Quenching Project of #6 and #7 Coking Oven
- Subsidy Fund For Cleaner Production Demonstration Project
- Supporting Funds for the Infrastructures of the Finance Bureau of Dandong Border Economic Cooperation Zone
- The 2nd Central Clean Production Demonstration Project

Accordingly, we determine the AFA countervailable subsidy rate for Hebei Iron & Steel to be 178.46 percent ad valorem, and the AFA countervailable subsidy rate for Benxi Steel to be 193.31 percent ad valorem.

### C. Corroboration of Secondary Information

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>50</sup> The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.<sup>51</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>52</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>53</sup> In the absence of verifiable record evidence concerning the alleged programs due to the respondents’ decisions to cease participation, or not participate at all, 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. The relevance of these program rates is that they are actual calculated CVD rates for PRC programs, from which the companies could actually receive a benefit. Due to the lack of verifiable record information concerning these programs resulting from the respondents’ failure to cooperate in this investigation, the Department has corroborated the rates it selected to use as AFA to the extent practicable for this final determination.

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<sup>50</sup> See SAA, at 870.

<sup>51</sup> Id.

<sup>52</sup> Id., at 869-870.

<sup>53</sup> See Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996).

## A. Subsidy Rate Charts

<b>Program</b> <sup>54</sup>	<b>Rate (%)</b>
Policy Loans	10.54
Preferential Loans	10.54
Directed Credit	10.54
Treasury Bond Loans or Grants	10.54
Development of Famous Brands and China World Top Brands Programs	0.55
Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands	0.55
Funds for Outward Expansion of Industries in Guangdong Province	0.55
Provincial Fund for Fiscal and Technological Innovation	0.55
State Specific Fund for Promoting Key Industries and Innovation Technologies	0.55
Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers	0.55
Grants for Antidumping Investigations	0.55
Shandong Province's Award Fund for Industrialization of Key Energy-Saving Technology	0.55
Shandong Province's Environmental Protection Industry R&D Funds	0.55
Shandong Province's Construction Fund for Promotion of Key Industries	0.55
Waste Water Treatment Subsidies	0.55
Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises	0.55
Technology to Improve Trade R&D Fund	0.55
The Provision of Steel Billet for LTAR	15.48
The Provision of Electricity for LTAR	5.34
The Provision of Land-Use to SOEs for LTAR	2.55
Land-Use Rights Extension	2.55
Income Tax Reductions Under Article 28 of the EIT	25.00 <sup>55</sup>
The Two Free/Three Half Program for FIEs	0.00
Income Tax Reductions for Export-Oriented FIEs	0.00
Income Tax Benefits for FIEs Based on Geographic Locations	0.00
Local Income Tax Exemption and Reduction Programs for "Productive" FIEs	0.00
Preferential Tax Programs for FIEs Recognized as HNTEs	0.00
Tax Offsets for R&D Under the EIT	9.71
Tax Offsets for R&D by FIEs	9.71
Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises	9.71
Tax Benefits to Enterprises in the Northeast Region	9.71
Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China	9.71
VAT and Import Duty Exemptions for Use of Imported Equipment	9.71

<sup>54</sup> See Attachment for program descriptions.

<sup>55</sup> This rate applies to each of the tax programs, otherwise identified by a rate of "0.00".

VAT Rebates on FIE Purchases of Chinese-Made Equipment	9.71
VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund Program	9.71
<b>Total AFA Rate Before Adding Company Specific Subsidy Programs</b>	<b>177.91</b>

<b>Company-specific program (Hebei Iron &amp; Steel)</b>	<b>Rate (%)</b>
Direct Government Grants to Hebei Iron & Steel	0.55
<b>Total AFA Rate for Hebei Iron &amp; Steel</b>	<b>178.46</b>

<b>Company-specific program (Benxi Steel)</b>	<b>Rate (%)</b>
28 Financial Statement Programs listed above (AFA rate of 0.55 assigned to each)	15.40
<b>Total AFA Rate for Benxi Steel</b>	<b>193.31</b>

## V. CRITICAL CIRCUMSTANCES

The Department preliminarily found that, pursuant to section 733(e)(1) of the Act, critical circumstances exist with regard to steel wire rod from the PRC for Hebei Iron & Steel and “all other” exporters of steel wire rod from the PRC, but that critical circumstances did not exist with regard to Benxi Steel. As the facts remain unchanged from the Preliminary Determination with respect to Hebei Iron & Steel and all other exporters, we continue to find that that critical circumstances exist for the reasons explained in the Massive Imports Analysis Memorandum.<sup>56</sup>

As noted above, our final determination with respect to Benxi Steel is to assign a subsidy rate based on AFA under section 776(b) of the Act. Thus, we based our final critical circumstances determination for Benxi Steel on AFA, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308(c).<sup>57</sup> As AFA, we determine that Benxi Steel received countervailable benefits under programs that are contingent upon export performance. Also, as AFA, we determine that imports of subject merchandise from Benxi Steel were massive over a relatively short period of time.

As a result of this affirmative determination of critical circumstances, in accordance with section 703(e)(2)(A) of the Act, we will direct U.S. Customs and Border Protection CBP to suspend, or continue to suspend, liquidation with regard to all exporters of steel wire rod, of any unliquidated entries of subject merchandise from the PRC entered, or withdrawn from warehouse for consumption, 90 days prior to the date of publication of the preliminary determination in the Federal Register.<sup>58</sup>

<sup>56</sup> See the Memorandum to the File, “Massive Imports Analysis for the Final Determination – All Others” (November 12, 2014) (Massive Imports Memorandum). In the Preliminary Determination we adjusted the Global Trade Atlas data to remove an amount equal to the shipments reported by Benxi Steel. As Benxi Steel is no longer participating in this proceeding, we did not make this adjustment for the final determination.

<sup>57</sup> See, e.g., Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People’s Republic of China, 74 FR 2049, 2052–53 (January 14, 2009).

<sup>58</sup> For further details, see the Federal Notice announcing the final determination of this investigation at “Suspension of Liquidation.”

## VI. ANALYSIS OF COMMENTS

### Comment 1: Application of AFA to Benxi Steel and Hebei Iron & Steel

The petitioners assert that the Department properly applied AFA in determining the countervailable subsidy rate for Hebei Iron & Steel in the Preliminary Determination because Hebei Iron & Steel failed to participate in this investigation. While the petitioners maintain that the Department should continue to apply AFA to Hebei Iron & Steel for the final determination, they argue, however, that the Department should adjust the margins for several subsidies derived from the previously cooperative Benxi Steel, so as not to rely on the unverified data of Benxi Steel.

The petitioners also agree that Benxi Steel's sudden withdrawal from the investigation prior to verification warrants the application of total AFA in the final determination. They contend that for the Department to rely on information that was submitted but not verified would violate the statute<sup>59</sup> as well as the Department's practice.<sup>60</sup> The petitioners also agree with the Department's conclusion in the Post-Preliminary Analysis Memorandum<sup>61</sup> that an adverse inference is warranted pursuant to section 776(b) of the Act because the Department has found repeatedly that withdrawal from verification also constitutes a failure to cooperate.<sup>62</sup>

#### Department's Position:

As discussed above in Section IV of this memorandum ("Use of Facts Otherwise Available and Adverse Inferences"), in this final determination we confirm our preliminary determination to apply AFA to Hebei Iron & Steel because it failed to respond to the initial questionnaire, and we apply AFA to Benxi Steel because it withdrew from participation in the investigation.

### Comment 2: AFA Rates for Hebei Iron & Steel and Benxi Steel

The petitioners assert that the Department must recalculate the preliminary AFA rates for Hebei Iron & Steel to replace all unverified information submitted by Benxi Steel with the highest calculated rates for the same or similar programs in a China CVD case. Specifically, they indicate the AFA rates the Department should assign to Hebei Iron & Steel for the following programs: 1) preferential loans to SOEs; 2) the provision of steel billet for LTAR; 3) the provision of electricity for LTAR; 4) the

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<sup>59</sup> See sections 776 (a)(D) and 782(i)(1) of the Act.

<sup>60</sup> The petitioners cite to several cases in which the Department applied total facts available to respondents who withdrew after answering initial questionnaires, but before verification. See, e.g., Galvanized Steel Wire from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 17418 (March 26, 2012), and accompanying I&D Memo (Galvanized Wire I&D Memo) at 3-5; Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value (March 23, 2009), and accompanying I&D Memo at 20-24.

<sup>61</sup> See Post-Preliminary Analysis Memorandum at 2-3.

<sup>62</sup> See Galvanized Wire I&D Memo at 3-5; Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 75973 (Dec. 26, 2012), and accompanying I&D Memo (Garment Hangers I&D Memo) at 8.

provision of land-use rights to SOEs for LTAR; and 5) VAT and import duty exemptions for use of imported equipment.<sup>63</sup>

Nucor separately adds that in the final determination, the Department should apply an AFA rate to each government grant that appears as a line item in Hebei Iron & Steel's 2012 Annual Report, rather than aggregating all of the direct government grants received by the company into one subsidy program, as the Department did in the Preliminary Determination.<sup>64</sup> Nucor argues that, although Hebei Iron & Steel's 2013 financial statements are not on the record of this investigation, ample information contained in the petition<sup>65</sup> (i.e., the 2012 Annual Report) allows the Department to disaggregate properly the direct government grants program into specific programs in the final determination. Nucor proposes that the Department assign the AFA rate of 0.55 percent<sup>66</sup> to each of the 31 government grants listed in the 2012 Annual Report to ensure that Hebei Iron & Steel does not obtain a more favorable result by failing to cooperate than if it had fully cooperated with respect to government grant subsidies. Although Nucor argues that the Department's practice supports calculating a margin on direct government grants received in prior years,<sup>67</sup> Nucor proposes that, alternatively, the Department should simply apply Benxi Steel's AFA rate to Hebei Iron & Steel.

With respect to Benxi Steel, Nucor argues that the Department should make the adverse inference that Benxi Steel received countervailable subsidies under each of the subsidy programs that the Department included in its initiation. Nucor suggests that the Department assign the highest calculated program-specific CVD rates for the same or similar programs in a China CVD case to each program under investigation, as outlined in the Department's Preliminary Determination and post-preliminary analysis. Specifically, Nucor asserts, the Department should continue to apply as AFA the highest calculated program-specific rate for a similar program in a China CVD case to each of the government grant programs listed in the Post-Preliminary Analysis Memorandum, rather than assigning them an aggregate AFA rate, as the Department did for Hebei Iron & Steel in the Preliminary Determination. Nucor argues that it would be inappropriate to aggregate Benxi Steel's grant programs, as each program is likely administered by different government bodies and has different sets of eligibility criteria.

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

As detailed above in Section IV.B of this memorandum ("Selection of AFA Rates"), we calculated a final subsidy rate for each of the non-cooperative respondents by applying the highest non-de minimis rates calculated in prior China CVD cases for programs which are the same as, or similar to, the programs included in the initiation, in accordance with our normal practice. To calculate Benxi Steel's final subsidy rate, we added AFA rates for the programs we identified in Benxi's financial statements before Benxi Steel withdrew from the investigation, consistent with our post-preliminary analysis.<sup>68</sup>

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<sup>63</sup> See Letter to the Department from Arcelormittal USA et. al (September 11, 2014) at 12-13, and the letter to the Department from Nucor (September 11, 2014) at 14-15.

<sup>64</sup> See Preliminary Decision Memorandum at 37.

<sup>65</sup> See SWR Petition, Vol. I at 53-57, Exhibit CVD-43.

<sup>66</sup> The rate is the highest calculated subsidy rate for a government grant program in a China CVD case. See, Wind Towers I&D Memo at 23.

<sup>67</sup> See Wind Towers. Nucor asserts that, in this case, the Department found that grants received outside the POI were non-recurring benefits, and allocated the benefits over the 12-year AUL in the year in which the grant was received.

<sup>68</sup> See the Post-Preliminary Analysis Memo.

For Hebei Iron & Steel's final subsidy rate, we replaced the program rates that we preliminarily based on Benxi Steel's unverified information with the same final AFA rates we assigned to Benxi for those programs. These rates are the same as those proposed by the petitioners and Nucor. We did not add AFA rates for the government grants listed in Hebei's 2012 Annual Report, as Nucor suggests, because we did not initiate an investigation of each of those programs. Moreover, we did not assign Benxi's AFA subsidy rate to Hebei, as Nucor presented no reasons to deviate from our normal practice of calculating company-specific AFA rates in CVD cases.

### **Comment 3: Calculation of the All-Others Rate**

Nucor argues that the Department should average the AFA net subsidy rates for the mandatory respondents and assign the result as the all-others rate, in accordance with the Department's practice when there is no other information on the record.<sup>69</sup> Nucor asserts that, although the mandatory respondents' final CVD margins account for the individual government grants that each company received, this should not deter the Department from using the averaged rates for the mandatory respondents as the all-others rate. Nucor points out that the petition contains ample evidence that Chinese wire rod producers generally are the recipients of direct government grants.<sup>70</sup> Thus, Nucor argues, it is reasonable to infer that all-other exporters of Chinese wire rod received direct cash infusions from the GOC, and assign the average of the two mandatory respondents' AFA rates to all other producers/exporters in accordance with the Department's practice when there is no other information on the record to determine an all-others rate.

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

Section 705(c)(5)(A)(ii) of the Act provides that, if the countervailable subsidy rates established for all exporters and producers individually investigated 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. As there is no other information on the record, we based the all-others rate on the AFA rates calculated for Benxi Steel and Hebei Iron & Steel, consistent with our past practice.<sup>71</sup> We agree with Nucor that a reasonable method of calculating the all-others rate is to average these rates. The resulting rate incorporates all of the investigated programs as well as several direct government grants that are likely to be provided to the steel wire rod industry; therefore, we find that it is appropriately representative of the industry to serve as the all-others rate in this case. Therefore, for the final determination, we assigned the average of the two non-cooperative respondents' subsidy rates to all other exporters/producers of the subject merchandise.<sup>72</sup>

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<sup>69</sup> See, e.g., Sodium Nitrite from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 38981 (July 8, 2008); Certain Potassium Phosphate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Termination of Critical Circumstances Inquiry, 75 FR 30375 (June 1, 2010).

<sup>70</sup> See SWR Petition at 46-73.

<sup>71</sup> See Raw Flexible Magnets from the People's Republic of China: Affirmative Countervailing Duty Determination, 73 FR 39667 (July 10, 2008); Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, 66 FR 37007, 37008 (July 16, 2001); Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand From India, 68 FR 68356, 68357 (December 8, 2003).

<sup>72</sup> See Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 78 FR 13017 (February 26, 2013).

#### Comment 4: Critical Circumstances

The petitioners assert that where the Department finds AFA for a nonmarket economy entity, it is the Department's practice to likewise infer an adverse finding in critical circumstances determinations without conducting a "massive surge" of imports analysis.<sup>74</sup> Therefore, the petitioners contend, the Department must disregard Benxi Steel's shipment data upon which the Department relied for the Preliminary Determination. According to the petitioners, the Department should amend the preliminary finding and conclude under AFA that there was a massive increase in Benxi Steel's shipments of the subject merchandise following the filing of the petition, find critical circumstances to exist for Benxi Steel, and adjust the final instructions to CBP in this regard to cover all imports of the subject merchandise.

#### Department's Position:

As discussed in Section V above ("Critical Circumstances"), in this final determination we made an affirmative determination of critical circumstances with respect to Benxi Steel based on AFA, and we affirm our preliminary determinations of critical circumstances with respect to Hebei Iron & Steel and all other producer/exporters. Therefore, as we have found that critical circumstances exist for both respondents and all other producers/exporters, we will instruct CBP to collect cash deposits for any unliquidated entries 90 days prior to the date of the Preliminary Determination for all producer/exporters of the subject merchandise.<sup>75</sup>

#### VII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish this final determination in the Federal Register.

Agree                       Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

12 NOVEMBER 2014  
Date

<sup>74</sup> See Garment Hangers I&D Memo at 4.  
<sup>75</sup> For further details, see the Federal Register notice announcing the final determination of this investigation at "Suspension of Liquidation."

## **Attachment Description of Programs**

Below is a description of the programs initiated on by the Department as described by the petitioners.<sup>75</sup>

### Preferential Loans, Policy Loans, and Directed Credit

Chinese steel producing companies, including steel wire rod producers, get low-interest loans from state policy banks and state-owned commercial banks (SOCBs) to fund their growth. The petitioners contend that such subsidies are granted pursuant to political directives from the central or provincial governments, rather than creditworthiness or other market-based factors, and benefit state-owned enterprises (SOEs) and industries, such as the steel industry, that are favored by the Government of the PRC (GOC) and in line with its goals.

### Treasury Bond Loans or Grants

The PRC annually announces that certain projects will receive financial support through Treasury bond proceeds.

### Development of Famous Brands and China World Top Brands Programs

In 1992, the GOC initiated the Famous Brands Program to increase exports. According to the Office of the United States Trade Representative (USTR), the Famous Brands and China World Top Brands programs provide grants, loans, and other incentives to enterprises in China, in an effort to implement an industrial policy of promoting the development of global Chinese brand names, and to increase sales of Chinese branded and other Chinese merchandise around the world.

### Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands

In addition to the central government, a number of “sub-central” (i.e., provincial and local) governments in China have promulgated various policies to implement the goals of the Famous Export Brands and Top Brands programs. These programs provide additional financial support to companies with products designated as famous brands in order to increase sales of Chinese branded merchandise around the world.

### Funds for Outward Expansion of Industries in Guangdong Province

This program was established pursuant to the Implementing Measures of Guangdong Province concerning the Support of Development of Outward Privately-Held Enterprises, and aims to provide eligible private enterprises located in the Guangdong Province with special funds to develop their export activities.

### Provincial Fund for Fiscal and Technological Innovation

This program is administered by the Provincial Department of Finance and Economic and Trade Commission of Guangdong Province pursuant to the Provisional Measures on Administration of Exploration and Renovation Provincial Level Fund, and provides grants to firms with the goal of promoting technological and fiscal innovation.

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<sup>75</sup> See Countervailing Duty Investigation Initiation Checklist: Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China (February 20, 2014).

### State Specific Fund for Promoting Key Industries and Innovation Technologies

The National Development and Reform Commission (NDRC) and the Ministry of Industry and Information Technology (MIIT) provide a one-time grant, under a special fund for promoting key industries and innovation technologies, to assist eligible companies, including steel producers, to develop production facilities. To receive the grant, an eligible company must submit an application that includes information regarding its estimated export revenues.

### Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers

The purpose of the fund is to support the establishment of technical centers by key enterprises through providing funds for the purchase of equipment, training, technical cooperation and communication. The legislation pursuant to which this program operates expressly limits access to the program to seven industrial chains and six pillar industries, including metallurgy.

### Grants for Antidumping Investigations

Several sub-central governments, including Shandong Province, Rizhao City, and Nanjing City, all offer grants to companies that made export sales and cooperated in antidumping investigations.

### Shandong Province's Award Fund for Industrialization of Key Energy-Saving Technology

The purpose of this program is to encourage reductions in energy consumption and to accelerate the industrialization of key energy-saving technologies in Shandong Province, because the GOC has directed all levels of the government to support industries with high energy consumption, such as steel, and target those sectors for saving energy and reducing energy consumption.

### Shandong Province's Environmental Protection Industry Research and Development (R&D) Funds

The purpose of this fund is to promote pollution-preventing technologies and environmental product development, and to strengthen the innovation capability and market competitiveness of the environmental protection industry in Shandong Province. The GOC has directed all levels of the government to support industries with high energy consumption, such as steel, and target those sectors for saving energy and reducing energy consumption.

### Shandong Province's Construction Fund for Promotion of Key Industries

A program that provides construction funds to steel wire rod producers in Shandong Province.

### Waste Water Treatment Subsidies

This grant program was offered by provincial governments to address the problem of waste water pollution.

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

Guangdong Province provides grants to support the adoption of e-commerce by foreign trade enterprises. The Commission of Economy and Information Technology of Guangdong Province administers this program, which consists of four separate funds: 1) special fund; 2) fund of provincial strategic new emerging industry; 3) special fund of internet services industry; and 4) special fund for small and medium-enterprises.

#### Technology to Improve Trade R&D Fund

The Jiangsu Treasury Department provides a special fund to companies in an effort to induce R&D activities related to export products. To receive this grant, a company must submit an application that includes information regarding its exports or potential exports.

#### Direct Government Grants to HBIS

Hebei Iron & Steel's 2012 Annual Report indicates that the company receives numerous grants from the GOC.

#### Provision of Steel Billet for Less than Adequate Remuneration (LTAR)

Steel billet is almost exclusively produced and sold by SOEs, which receive extensive subsidies from the GOC. Thus, Chinese steel wire rod producers receive steel billet from SOEs for LTAR.

#### Provision of Electricity for LTAR

Steel wire rod producers receive electricity from the GOC for LTAR.

#### The Provision of Land-Use to SOEs for LTAR

PRC producers of steel wire rod are eligible to benefit from the government provision of land-use rights for LTAR in the form of granted rights to encouraged industries and allocated rights to SOEs.

#### Land-Use Rights Extension

The GOC issues land-use certificates to holders of land-use rights, which effectively extend their land-use rights by additional years without additional consideration. Land-use rights may be extended when a company purchases land-use rights from another entity or a business consolidation such as merger or acquisition takes place.

#### Income Tax Reductions Under Article 28 of the Enterprise Income Tax Law (EIT)

Enterprises that are designated as high and new technology enterprises (HNTEs) are entitled to pay a reduced tax rate of 15 percent instead of the standard corporate tax rate of 25 percent, according to Article 28 of the EIT.

#### Tax Offsets for R&D Under the EIT

Article 30.1 of the EIT created a new program which allows enterprises to deduct research expenditures incurred in the development of new technologies, products, and processes.

#### The Two Free/Three Half Program for Foreign-Invested Enterprises (FIEs)

Article 8 of the FIE Tax Law exempts FIEs that are profitable and scheduled to operate for not less than ten years from income tax in their first two profitable years, and allows such companies to pay only half of the applicable tax rate for the following three years.

#### Income Tax Reductions for Export-Oriented FIEs

FIEs may continue to pay half of its applicable income tax rate following the expiration of the "Two Free/Three Half Program" if exports constitute 70 percent of the company's sales. Additionally, export-oriented enterprises in specially-designated zones, already eligible to pay half the standard income tax rate, may receive a further rate reduction through this program.

### Income Tax Benefits for FIEs Based on Geographic Locations

“Productive” FIEs located in a coastal economic development zone, special economic zone or economic technology development zone receive preferential tax rates of either 15 or 24 percent, as opposed to the standard 25 percent rate.

### Local Income Tax Exemption and Reduction Programs for “Productive” FIEs

Local provinces can establish eligibility criteria and administer the application process for local income tax reductions or exemptions for FIEs, effectively extending the tax exemptions or reductions that are allowed to FIEs by the national “Two Free, Three Half program.”

### Tax Offsets for R&D by FIEs

The GOC encourages R&D by FIEs by allowing tax offsets that permit the actual R&D expenses incurred in China which have increased ten percent or more from the previous year to be offset by 150 percent from the taxable income of the year.

### Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises

FIEs that use profits to establish another FIE (or high technology company), or that reinvest those profits into the same FIE, can receive complete refunds of the corporate income tax already paid on the invested amount. The recipient of the investment must be export-oriented and scheduled to operate for at least five years to be eligible for the refund.

### Preferential Tax Programs for FIEs Recognized as HNTEs

The GOC provides preferential tax benefits to enterprises with foreign investment that are recognized as HNTEs, and for enterprises that are established in high or new technology industrial development zones. These benefits include a reduced income tax rate of 15 percent.

### Tax Benefits to Enterprises in the Northeast Region

Enterprises located in the Northeast Region (i.e., Liaoning, Jilin and Heilongjiang provinces) may: (1) reduce the depreciation life of fixed assets by up to 40 percent for tax purposes, thereby increasing the annual amount of depreciation expense that may be deducted from the company’s income tax; and (2) lessen the period of amortization of intangible assets by up to 40 percent for tax purposes, resulting in a larger annual tax deduction for amortization expense.

### Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China

This program forgives all tax liabilities incurred prior to December 31, 1997, that have not been paid by enterprises located in the Liaoning, Jilin, and Heilongjiang provinces. The scope of the tax forgiveness includes surcharges for overdue tax payments, such as interest and penalties on the overdue taxes, and applies to both state-owned and private enterprises.

### VAT and Import Duty Exemptions for Use of Imported Equipment

The GOC exempts FIEs and certain domestic enterprises in encouraged industries, such as iron and steel, from paying VAT and tariffs on imported equipment that is used in production, but not resold.

### VAT Rebates on FIE Purchases of Chinese-Made Equipment

The GOC refunds the VAT on FIE purchases of certain domestically-produced equipment, such as equipment falling under the “Encouraged” and “Restricted B” categories listed in the Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment, and equipment

for projects listed in the Current Catalogue of Key Industries, Products and Technologies the Development of Which Is Encouraged by the State.

VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund Program

The GOC allows businesses in northeast China in the high-tech, equipment manufacturing, petrochemical, metallurgical, and selected other industries to deduct VAT for purchases of fixed assets from the VAT for sales of finished goods.