



C-570-023

Investigation

PUBLIC DOCUMENT

POI: 01/01/2014 – 12/31/2014

OIII: PT

DATE: January 8, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Countervailing Duty Determination in the Countervailing Duty
Investigation of Certain Uncoated Paper from the People's
Republic of China

I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to the producers and exporters of certain uncoated paper (uncoated paper) from the People's Republic of China (PRC), as provided in section 703 of the Tariff Act of 1930, as amended (the Act). The mandatory respondents in this investigation are: UPM Changshu (UPM); Shandong Sun Paper Industry Joint Stock Co., Ltd. and Sun Paper (Hong Kong) Co., Ltd. (collectively, Sun Paper Companies); Asia Symbol (Guangdong) Paper Co., Ltd. (AS Guangdong), Asia Symbol (Guangdong) Omya Minerals Co., Ltd. (AS Omya), Asia Symbol (Shandong) Pulp & Paper Co. (AS Shandong), and Greenpoint Global Trading (Macao Commercial Offshore) Limited (Greenpoint) (collectively, the Asia Symbol Companies); and the Government of the People's Republic of China (GOC). Petitioners are United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; Domtar Corporation; Finch Paper LLC; P.H. Glatfelter Company; and Packaging Corporation of America (collectively, Petitioners). Below is the complete list of issues in this investigation for which we received comments from interested parties.

- Comment 1: Whether to Reverse the Department's Government "Authorities" Determination
- Comment 2: Whether to Reverse the Department's Specificity Determination for the Provision of Calcium Carbonate and Caustic Soda for Less Than Adequate Remuneration (LTAR)
- Comment 3: Whether to Reverse the Department's Market Distortion Determination
- Comment 4: Whether to Exclude Policy Loan Observation 95 from the Final Determination Calculations



- Comment 5: Whether to Include Surcharges in International Freight Calculations for Calcium Carbonate and Caustic Soda Benchmarks
- Comment 6: Whether to Incorporate the Minor Corrections into the Final Calculations
- Comment 7: Whether to Revise the Provision of Coal for Less Than Adequate Remuneration Benchmark
- Comment 8: Whether the Provision of Water for LTAR Confers a Benefit
- Comment 9: Whether the Provision of Land to State-owned Enterprises (SOEs) for LTAR is Countervailable

II. BACKGROUND

A. Case History

On June 29, and July 9, 2015, we published the Preliminary Determination for this investigation and Notice of Correction, respectively.¹ We conducted verifications of the questionnaire responses submitted by the Asia Symbol Companies, between August 26 and September 8, 2015.² On December 1, 2015, we issued a post-preliminary analysis memorandum.³ We received case briefs from Petitioners, the Asia Symbol Companies, and the GOC on December 8, 2015. We received rebuttal briefs from Petitioners and the Asia Symbol Companies on December 14, 2015. On December 15, 2015, Parties withdrew their requests for a public hearing.⁴

The Department is issuing a scope comments decision memorandum for the final determinations of the antidumping (AD) and countervailing duty (CVD) investigations of certain uncoated paper, which is incorporated by reference in, and hereby adopted, by this final determination.⁵

¹ See Certain Uncoated Paper From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination, 80 FR 36968 (June 29, 2015) (Preliminary Determination) and accompanying Decision Memorandum (Preliminary Determination Memorandum) and Certain Uncoated Paper From the People's Republic of China: Notice of Correction to Preliminary Affirmative Countervailing Duty Determination, 80 FR 39409 (July 9, 2015) (Notice of Correction).

² See Memorandum to the File, "Verification of the Questionnaire Responses of Asia Symbol Companies: Countervailing Duty Investigation of Uncoated Paper from the People's Republic of China," (October 16, 2015) (Asia Symbol Companies Verification Report); "Countervailing Duty Investigation of Uncoated Paper from the People's Republic of China: Verification of [], a U.S. Customer of Greenpoint Global Trading (Macao Commercial Offshore) Ltd.," (October 16, 2015) (U.S. Verification Report).

³ See Memorandum to Christian Marsh, "Countervailing Duty Determination in the Countervailing Duty Investigation of Certain Uncoated Paper from the People's Republic of China: Post-Preliminary Analysis Memorandum," (November 30, 2015) (Post-Preliminary Determination).

⁴ See Letter from Petitioners, "Certain Uncoated Paper From The People's Republic Of China: Petitioners' Withdrawal Of Hearing Request," (December 15, 2015) and Letter from Asia Symbol Companies, "Certain Uncoated Paper from the Peoples Republic of China: Withdraw of Request for Hearing - Asia Symbol," (December 15, 2015).

⁵ See the Department's memorandum to the file titled, "Less-Than-Fair-Value Investigations of Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal; and Countervailing Duty Investigations of Certain Uncoated Paper from the People's Republic of China and Indonesia: Scope Comments Decision Memorandum for the Final Determinations," (January 8, 2016) (Final Scope Decision Memorandum).

B. Period of Investigation

The period of investigation (POI) is January 1, 2014, through December 31, 2014.

III. SCOPE OF THE INVESTIGATION

The merchandise covered by the investigation includes uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white paper with a GE brightness level⁶ of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

Certain Uncoated Paper includes (a) uncoated free sheet paper that meets this scope definition; (b) uncoated ground wood paper produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

Specifically excluded from the scope are (1) paper printed with final content of printed text or graphics and (2) lined paper products, typically school supplies, composed of paper that incorporates straight horizontal and/or vertical lines that would make the paper unsuitable for copying or printing purposes. For purposes of this scope definition, paper shall be considered “printed with final content” where at least one side of the sheet has printed text and/or graphics that cover at least five percent of the surface area of the entire sheet.

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) categories 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

⁶ One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade. “Colored paper” as used in this scope definition means a paper with a hue other than white that reflects one of the primary colors of magenta, yellow, and cyan (red, yellow, and blue) or a combination of such primary colors.

IV. 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.⁷ 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.⁸

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.⁹ 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.¹⁰ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.¹¹ Additionally, for the reasons stated in CWP from the PRC, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of CVD investigations.¹²

V. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.¹³ The Department finds the AUL in this proceeding to be 13-years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.¹⁴ The Department notified the respondents of the 13-year AUL in the initial questionnaire and requested data accordingly.¹⁵ No party in this proceeding disputes this allocation period.

⁷ 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 (IDM) at Comment 6.

⁸ Id.

⁹ See Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008) (CWP from the PRC) and accompanying IDM at Comment 16.

¹⁰ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

¹¹ See Public Law 112-99, 126 Stat. 265 §1(b).

¹² See CWP from the PRC and accompanying IDM at Comment 2.

¹³ See 19 CFR 351.524(b).

¹⁴ See U.S. Internal Revenue Service Publication 946 (2013), "Appendix B – Table of Class Lives and Recovery Periods," submitted in the Petition at Volume VIII, Exhibit VIII-1.

¹⁵ See Letter from the Department to the GOC regarding "Initial Questionnaire" (March 24, 2015) (Department's Initial Questionnaire) at "Section II – Program Specific Questions."

Furthermore, for non-recurring subsidies, we have applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (e.g., total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

Cross Ownership: In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department’s regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The CVD Preamble to the Department’s regulations further clarifies the Department’s cross-ownership standard. According to the CVD Preamble, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.¹⁶

Thus, the Department’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) has upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.¹⁷

¹⁶ See Countervailing Duties, 63 FR 65348, 65401 (November 25, 1998) (CVD Preamble).

¹⁷ See Fabrique de Fer de Charleroi, SA v. United States, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

Asia Symbol Companies

During the POI, AS Guangdong, AS Shandong, and AS Omya were directly or indirectly, partially or wholly owned by the same shareholders. Under 19 CFR 351.525(b)(6)(vi), cross-ownership exists between corporations if one corporation can use or direct the individual assets of the other corporation(s) in essentially the same way it uses its own. This section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. Based on the information supplied by the Asia Symbol Companies that indicated AS Guangdong, AS Shandong, and AS Omya are owned by the same shareholder parent,¹⁸ we determine that AS Guangdong, AS Shandong, and AS Omya are cross-owned under 19 CFR 351.525(b)(6)(vi). AS Guangdong is a producer of the subject merchandise and AS Shandong and AS Omya are input producers. Consequently, the subsidies received by these companies are attributed according to the rules established in 19 CFR 351.525(b)(6)(ii) and (iv), respectively.

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, e.g., to the respondent's export or total sales. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.

In its response, the Asia Symbol Companies reported that, in addition to domestic sales, they produce uncoated paper on a toll basis to a third-country trading company that subsequently sells the merchandise to foreign markets.¹⁹ In our first supplemental questionnaire, we requested the Asia Symbol Companies to provide additional information concerning its tolled sales. In particular, we sought additional information concerning the mark-up charged by the third-country trading company.²⁰ In its response, the Asia Symbol Companies reported the tollee for each respective company did not charge a mark-up on the ultimate export price of merchandise produced by AS Guangdong or AS Shandong because there was no sale between the companies and their tollees.²¹ Based on the information provided by the Asia Symbol Companies, we determine that the third-country trading company did not charge a mark-up on the merchandise produced by the Asia Symbol Companies. As a result, we have determined to calculate the sales denominator used in our subsidy calculation based on the sales values attributable to the Asia Symbol Companies.

¹⁸ See the Asia Symbol Companies' submission, "Certain Uncoated Paper from the People's Republic of China: Reporting Companies, Affiliation Data and Response to Additional Questions - Asia Symbol (Guangdong) Paper Co., Ltd.," (April 24, 2015) (Asia Symbol Companies' Affiliation Response).

¹⁹ See Asia Symbol Companies' initial questionnaire response (IQR) (May 20, 2015) at AS Guangdong IQR at 10 – 12 and AS Guangdong's first supplemental questionnaire response (1SQR) (June 12, 2015) at 1 – 3; see also AS Shandong IQR at 10 – 13 and AS Shandong 1SQR (June 15, 2015) at 1 – 5.

²⁰ See the Department's first supplemental questionnaire to the Asia Symbol Companies (June 1, 2015) (AS 1SQ) at 3 – 4.

²¹ See AS Shandong 1SQR at 4 and AS Guangdong 1SQR at 2 and 3. See also Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 4936 (January 28, 2009) (CWASPP from the PRC) and accompanying IDM at 11 and 12 for a discussion of the criteria to adjust sales denominator.

VI. BENCHMARKS AND DISCOUNT RATES

The Department is investigating loans received by the respondent from PRC policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.²² The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

A. Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, the Department uses comparable commercial loans reported by the company as a benchmark.²³ If the firm did not have any comparable commercial loans during the period, the Department’s regulations provide that we “may use a national average interest rate for comparable commercial loans.”²⁴

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in CFS from the PRC, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.²⁵ Because of this, any loans received by the respondents from private PRC or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a PRC benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department’s practice. For example, in Lumber from Canada, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.²⁶

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in CFS from the PRC²⁷ and more recently updated in Thermal Paper from the PRC.²⁸ Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank’s classification of countries as: low income; lower-middle income; upper-middle income; and high income. As

²² See 19 CFR 351.524(b)(1).

²³ See 19 CFR 351.505(a)(3)(i).

²⁴ See 19 CFR 351.505(a)(3)(ii).

²⁵ See CFS from the PRC and accompanying IDM at Comment 10 pages 62 to 72; see also Memorandum to the File from Patricia Tran, International Trade Compliance Analyst, “Countervailing Duty Investigation of Certain Uncoated Paper from the People’s Republic of China: Banking Memorandum,” dated June 22, 2015 (Banking Memorandum).

²⁶ See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada, 67 FR 15545 (April 2, 2002) (Softwood Lumber from Canada) and accompanying IDM at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

²⁷ See CFS from the PRC and accompanying IDM at Comment 10.

²⁸ See Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008) (Thermal Paper from the PRC) and accompanying IDM at 8-10.

explained in CFS from the PRC, this pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.²⁹ Beginning in 2010, however, the PRC is in the upper-middle income category and remained there from 2011 to 2013.³⁰ Accordingly, as explained further below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2001-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2013. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving PRC merchandise.³¹

After the Department identifies the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation, the strength of governance as reflected in the quality of the countries' institutions.³² The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators.

In each of the years from 2001-2009 and 2011-2013, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group.³³ This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since CFS from the PRC to compute the benchmarks for the years from 2001-2009 and 2011-2013. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries. Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's International Financial Statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010-2013 and "lower middle income" for 2001-2009.³⁴ First, we did not include those economies that the Department considered to be non-market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS

²⁹ See World Bank Country Classification, <http://econ.worldbank.org/> (World Bank Country Classification); see also Memorandum to the File, "Countervailing Duty Investigation on Uncoated Paper from the People's Republic of China: Final Determination Calculations for the Asia Symbol Companies," (January 8, 2016) (Final Calculation Memorandum).

³⁰ See World Bank Country Classification.

³¹ See, e.g., Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination, 78 FR 33346 (June 4, 2013) and accompanying Preliminary Decision Memorandum (DM) at "Benchmarks and Discount Rates," unchanged in Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 78 FR 50391 (August 19, 2013).

³² For this final determination, we have applied the 2013 short-term benchmark rate for situations that require a 2014 short-term benchmark.

³³ See Memorandum to the File from Patricia Tran, International Trade Compliance Analyst, "Countervailing Duty Investigation of Certain Uncoated Paper from the People's Republic of China: Interest Rate Benchmark Memorandum," dated June 22, 2015 (Interest Rate Benchmark Memorandum).

³⁴ Id.

for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign currency-denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L’Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.³⁵ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.³⁶

B. Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.³⁷

In Citric Acid PRC Investigation, the Department revised this methodology by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.³⁸ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.³⁹

C. Foreign Currency-Denominated Loans

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

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

³⁵ Id.

³⁶ Id.

³⁷ See, e.g., Thermal Paper from the PRC, and accompanying IDM at 10.

³⁸ See Citric Acid and Certain Citrate Salts From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 16836 (April 13, 2009) (Citric Acid PRC Investigation) and accompanying IDM at Comment 14.

³⁹ See Final Calculation Memorandum.

the term of the loan in question. The resulting inflation-adjusted benchmark lending rates are provided in our Interest Rate Benchmark Memorandum.⁴⁰

D. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.⁴¹ The interest rate benchmarks and discount rates used in our final calculations are provided in the Final Calculation Memorandum.⁴²

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Tariff Act of 1930, as amended (the Act) provides that, subject to section 782(d) of the Act, the Department shall apply “facts otherwise available” if: (1) necessary information is not on the record; or (2) 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.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.⁴³ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁴⁴

Section 776(b) of the Act provides that the Department may use an adverse inference in applying 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 doing so, and under the TPEA, the

⁴⁰ See Interest Rate Benchmark Memorandum.

⁴¹ See Final Calculation Memorandum.

⁴² Id.

⁴³ See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice). The text of the TPEA may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

⁴⁴ See Applicability Notice, 80 FR at 46794-95.

Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁴⁵ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.⁴⁶

Section 776(c) of the Act provides that, in general, 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.⁴⁷ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁴⁸ Further, and under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.⁴⁹

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.⁵⁰ The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁵¹

A. GOC – Calcium Carbonate and Coal Markets Are Distorted by the Significant Government Presence

The Department requested the GOC to provide information concerning calcium carbonate, caustic soda, and coal in the PRC for the POI and the previous two years. Specifically, we requested the GOC to provide the following information:⁵²

- a. The total number of producers.
- b. The total volume and value of Chinese domestic consumption of {input} and the total volume and value of Chinese domestic production of {input}.
- c. The percentage of domestic consumption accounted for by domestic production.
- d. The total volume and value of imports of {input}.

⁴⁵ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

⁴⁶ See also 19 CFR 351.308(c).

⁴⁷ See also 19 CFR 351.308(d).

⁴⁸ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. No. 103-316, vol. 1 at 870 (1994).

⁴⁹ See section 776(c)(2) of the Act; TPEA, section 502(2).

⁵⁰ See section 776(d)(1) of the Act; TPEA, section 502(3).

⁵¹ See section 776(d)(3) of the Act; TPEA, section 502(3).

⁵² See the Department’s Initial Questionnaire (IQ) at the input producer appendix and 1SQ at 4, 6, and 9.

- e. The total volume and value of domestic production that is accounted for by companies in which the Government maintains an ownership or management interest either directly or through other Government entities.
- f. A discussion of what laws, plans or policies address the pricing of {input}, the levels of production of {input}, the importation or exportation of {input}, or the development of {input} capacity. Please state which, if any, central and sub-central level industrial policies pertain to the {input} industry.

The Department requests such information to determine the government's role in the relevant input market and whether the GOC is the predominant provider of these inputs in the PRC and whether its significant presence in the market distorts all domestic transaction prices. The GOC stated that it does not maintain records on calcium carbonate and coal, rendering the identification of producers in which the GOC maintains an ownership or management interest either directly or through other government entities extremely difficult.⁵³ The GOC, with information from the industry association, provided the total volume and value of domestic consumption and production of calcium carbonate and coal.⁵⁴ The GOC, with information from the General Administration of Customs of the People's Republic of China (Customs) and the National Bureau of Statistics (SSB), provided the total volume and value of domestic consumption, production, and imports of caustic soda.⁵⁵ The Department issued a supplemental questionnaire requesting the GOC to provide the number of input producers in which the Government maintains an ownership or management interest.⁵⁶ The GOC responded that it, "does not maintain information regarding the number or ownership," of calcium carbonate and coal producers.⁵⁷ In a previous investigation,⁵⁸ however, the Department was able to confirm at verification that the GOC maintains two databases at the State Administration of Industry and Commerce (SAIC): one is the business registration database, showing the most up-to-date company information; while a second system, "ARCHIVE," houses electronic copies of documents such as business licenses, annual reports, capital verification reports, etc. See Comment 3. In the instant investigation, the GOC provided ownership information from SAIC for the Asia Symbol Companies' calcium carbonate and coal suppliers.⁵⁹ The GOC is able to utilize the SAIC database which indicates the type of enterprise, e.g., solely-state owned, in conjunction with information from the industry association to determine the number and ownership of calcium carbonate and coal producers in which the government maintains an ownership or management interest either directly or through other government entities.⁶⁰ On this

⁵³ See GOC's initial questionnaire response (May 21, 2015) (GOC IQR) at 57 and 88; GOC's 1st supplemental questionnaire response (June 15, 2015) (GOC 1SQR) at 4, 5, and 16.

⁵⁴ Id., at 56 and 87.

⁵⁵ Id., at 73.

⁵⁶ See the Department's 1SQ to the GOC (June 1, 2015) at 4, 6, and 9.

⁵⁷ See GOC 1SQR at 4 and 16.

⁵⁸ See Memorandum to the File from Patricia M. Tran, "Additional Documents for the Preliminary Determination," (June 22, 2015) (Additional Documents for Prelim Memorandum) at Attachment I, which contains Memorandum to Susan Kuhbach, Director, AD/CVD Operations, Office 1, from Shane Subler and David Neubacher, International Trade Compliance Analysts, "Countervailing Duty Investigation: Certain Oil Country Tubular Goods from the People's Republic of China; Verification Report of the Jiangsu Province State Administration of Industry and Commerce and Tianjin Municipality State Administration of Industry and Commerce," (October 29, 2009) (OCTG PRC Investigation Verification Report).

⁵⁹ See GOC IQR at Exhibits 34 and 40.

⁶⁰ Id., at 56, 87 and Exhibit 34.

basis, we determine that the GOC has an electronic system available to it to gather industry specific information the Department requested.⁶¹

Therefore, we determine that the GOC withheld necessary information that was requested of it and, thus, that the Department must rely on “facts available” in making our final determination.⁶² Moreover, we determine that based on this failure to provide us with the requested information, the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available.⁶³ In drawing an adverse inference, we find that PRC prices from actual transactions involving Chinese buyers and sellers are significantly distorted by the involvement of the GOC.⁶⁴ Therefore, we find that the use of an external benchmark is warranted for calculating the benefit for the provision of calcium carbonate and coal for less than adequate remuneration (LTAR).

For details regarding the remaining elements of our analysis, see the “Provision of Calcium Carbonate and Coal for LTAR” section below and Comment 3.

B. GOC – Provision of Calcium Carbonate and Caustic Soda is Specific to the Paper Industry in China

The Department requested the GOC to provide a list of industries in the PRC that purchase calcium carbonate and caustic soda directly and to provide the amounts (volume and value) purchased by each of the industries, including the paper industry.⁶⁵ The Department requests such information for purposes of its de facto specificity analysis. In the narrative section of its questionnaire response, the GOC, citing data from an industry association, submitted information listing the relative consumption, by industry, of calcium carbonate and caustic soda.⁶⁶ In a supplemental questionnaire, the Department requested the GOC to substantiate the information in its narrative response, namely to provide volume and value data corresponding to each of the industries that consumed calcium carbonate and caustic soda.⁶⁷ Rather than provide the requested information, the GOC indicated that it based the industry consumption data in its initial response on the “estimates” of “experienced experts” of each respective industry.⁶⁸ See Comment 2 below for further discussion.

We determine that the “estimated” consumption information submitted by the GOC, which lacks supporting documentation, is not verifiable and therefore is unreliable.⁶⁹ We further determine that the GOC has withheld necessary information with regards to the volume and value data corresponding to each of the industries that consumed calcium carbonate and caustic soda that was requested of it and, thus, that the Department must rely on “facts available” in making our

⁶¹ See Additional Documents for Prelim Memorandum at Attachment II.

⁶² See section 776(a)(2)(A) of the Act.

⁶³ See section 776(b) of the Act.

⁶⁴ See CVD Preamble, 63 FR 65348, 65377.

⁶⁵ See Department’s IQ at II-8, II-10, and II-11.

⁶⁶ See GOC IQR at 59 and 76.

⁶⁷ See Department’s ISQ to the GOC (June 1, 2015) at 3, 4, and 6.

⁶⁸ See GOC ISQR at 2 and 9.

⁶⁹ Id.

final determination.⁷⁰ Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information that corroborates the industry consumption information contained in the narrative section of its initial questionnaire response. Consequently, for purposes of the determination, we find that an adverse inference is warranted in the application of facts available.⁷¹ In drawing an adverse inference, we find that the GOC's provision of calcium carbonate and caustic soda to paper producers is specific within the meaning of section 771(5A) of the Act. The Department's determination that the subsidies under these programs are specific is supported by the Department's determinations regarding the GOC's provision of calcium carbonate and caustic soda for LTAR in 2011 Citric Acid Review⁷² and 2012 Citric Acid Review.⁷³

For details regarding the remaining elements of our analysis, see the "Provision of Calcium Carbonate and Caustic Soda for LTAR" section below and Comment 1.

C. GOC – Certain Input Providers Are GOC Authorities

In the initial questionnaire, we requested ownership information from the GOC about the companies that produced calcium carbonate, caustic soda, and coal purchased by the Asia Symbol Companies.⁷⁴ We notified the GOC that, in accordance with the analysis contained in the Public Body Memorandum placed on the record of this investigation,⁷⁵ the Department generally treats producers that are majority owned by the government or a government entity as controlled by the government and, hence, as "authorities" within the meaning of section 771(5)(B) of the Act. However, with regard to those majority government-owned companies that the GOC argues are not "authorities," and for each producer that is not majority owned by

⁷⁰ See sections 776(a)(1) and 776(a)(2)(A) of the Act.

⁷¹ See section 776(b) of the Act.

⁷² See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011, 79 FR 108 (January 2, 2014) (2011 Citric Acid Review), and accompanying IDM at Comment 4.

⁷³ See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012, 79 FR 78799 (December 31, 2014) (2012 Citric Acid Review), and accompanying IDM at Comment 5A.

⁷⁴ See Department's IQ at II-7, II-10, and II-14.

⁷⁵ See Memorandum to the File from Patricia M. Tran, "Additional Documents for the Preliminary Determination," dated June 22, 2015 (Additional Documents Memorandum), which includes Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS379," dated May 18, 2012 (Public Body Memorandum); and its attachment, Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be 'public bodies' within the context of a countervailing duty investigation," dated May 18, 2012 (CCP Memorandum).

the government, we instructed the GOC to answer all questions in the “Information Regarding Input Producers in the PRC” Appendix (Input Producer Appendix). For each producer that the GOC claimed was privately owned by individuals during the POI, we requested identification of the owners, members of the board of directors, or managers of the producers who were also government or CCP officials or representatives during the POI.

The GOC responded that the Asia Symbol Companies purchased caustic soda from six producers; calcium carbonate from seven producers; and coal from four producers. With regard to eight producers, the GOC did not challenge the Department’s “authority” practice and analysis for enterprises that are majority owned by the government or a government entity.⁷⁶ The GOC attempted to provide ownership information for five producers, wholly or partially owned by Chinese individuals or entities. However, the GOC failed to respond to section B of the Input Producer Appendix regarding the presence of Chinese Communist Party (CCP) officials and organizations within those companies.⁷⁷ Instead, the GOC stated that the Department’s CCP questions are not relevant to the investigation of the LTAR program and that, as a matter of PRC law, the government cannot interfere in the management and operation of the suppliers of raw materials.⁷⁸ The GOC explained its view that the CCP, the People’s Congress, and the Chinese People’s Political Consultative Conference are not governmental bodies.⁷⁹ The GOC also stated that “because the 9 entities are not governmental bodies, the GOC cannot require them to provide the requested information.”⁸⁰ Furthermore, the GOC stated that “{t}here is no central informational database to search for the requested information and the industry and commerce administration does not require companies to provide such information.”⁸¹ In the 1SQ, we asked the GOC to provide a response to those questions in section B of the Input Producer Appendix which it did not answer in the initial questionnaire response.⁸² In its 1SQR, the GOC reiterated its initial questionnaire response, stating that “the nine entities in this question are not governmental bodies.”⁸³

Regarding the GOC’s objection to the Department’s questions about the role of CCP officials and organizations in the management and operations of raw material suppliers, we have explained our understanding of the CCP’s involvement in the PRC’s economic and political structure in a past proceeding.⁸⁴ The Department has previously determined that “available information and record evidence indicates that the CCP meets the definition of the term ‘government’ . . . for the limited purpose of applying the U.S. CVD law to China.”⁸⁵ Additionally, publicly available information indicates that Chinese law requires the establishment of CCP organizations “in all companies, whether state, private, domestic, or foreign-invested” and that such organizations may wield a controlling influence in the

⁷⁶ See GOC IQR at 63 – 66 and 81 – 83.

⁷⁷ See GOC IQR at 47 – 51, and 68.

⁷⁸ Id.

⁷⁹ Id., at 48.

⁸⁰ Id., at 51.

⁸¹ See GOC 1SQR at 5 and 12.

⁸² See Department’s 1SQ at 4 – 5 and 7 – 8.

⁸³ See GOC 1SQR at 5 and 12.

⁸⁴ See Public Body Memorandum and CCP Memorandum.

⁸⁵ Id., at CCP Memorandum at 33.

company's affairs.⁸⁶ With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.⁸⁷ The GOC also claims that government and CCP officials are not eligible to hold positions in enterprises citing to Company Law and the Civil Servant Law.⁸⁸ The GOC's argument, however, is contradicted by past Department findings that CCP officials can, in fact, serve as owners, members of the board of directors, or senior managers of companies.⁸⁹ More broadly, the Department has found that, even in non-state-owned-enterprises, "CCP primary organizations...ensure those entities 'carry out social responsibilities,' {and} maintain and implement the Party's (i.e., the government's) line and principles."⁹⁰

Thus, the Department finds, as it has in other PRC CVD proceedings,⁹¹ that the information requested regarding the role of CCP officials and CCP committees in the management and operations of the calcium carbonate and caustic soda producers, and in the management and operations of the producers' owners, is necessary to our determination of whether the producer is an authority within the meaning of section 771(5)(B) of the Act.

Because the GOC did not respond to the Input Producer Appendix for each producer that is not majority-owned by the government, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in conducting our final analysis of the calcium carbonate and caustic soda producers.⁹² Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our requests for information. By stating that the requested information is not relevant, the GOC has placed itself in the position of the Department, and only the Department can determine what is relevant to this investigation.⁹³ Furthermore, by stating that it

⁸⁶ Id., at Public Body Memorandum at 35-36 and sources cited therein.

⁸⁷ See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Circumstances Determination, 75 FR 57444 (September 21, 2010), and the accompanying IDM at 16.

⁸⁸ See GOC IQR at Exhibit 26 and 27.

⁸⁹ See, e.g., Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010) (PC Strand from the PRC) and accompanying IDM at Comment 8 ("{i}n the instant investigation, the information on the record indicates that certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies."). See also, Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013, 80 FR 77318 (December 14, 2015) (2013 Citric Acid Review), and Drawn Stainless Steel Sinks From the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission in Part; 2012-2013, 80 FR 69638 (November 10, 2015).

⁹⁰ See 2012 Citric Acid Review and accompanying IDM at Comment 1.

⁹¹ See, e.g., 2012 Citric Acid Review.

⁹² See section 776(a)(2)(A) of the Act.

⁹³ See Ansaldo Componenti, S.p.A. v. United States, 628 F. Supp. 198, 205 (CIT 1986) (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided"). The Court in Ansaldo criticized the respondent for refusing to submit information which the respondent alone had determined was not needed, for failing to submit data which the respondent decided could not be a basis for the Department's decision, and for claiming that submitting such information would be "an unreasonable and unnecessary burden on the company." Id. See also Essar Steel Ltd. v. United States, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010) (stating that "{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion" and that "Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin"); NSK, Ltd. v. United States, 919 F. Supp. 442, 447 (CIT 1996) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is

is unable to obtain the information because in its view the CCP is not the government, the GOC is substantially non-responsive. The GOC would have the Department reach its determination on the role of the CCP based solely on the unsupported, conclusory statements of the GOC. The Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be relevant, as documented in the CCP Memorandum placed on the record of this review, because public information suggests that the CCP exerts significant control over the activities of enterprises in the PRC, and that the CCP is part of the governing structure of the PRC.⁹⁴ As this constitutes a failure to cooperate to the best of its ability, we find that an adverse inference is warranted in the application of facts available.⁹⁵ As AFA, we infer that CCP officials are present as managers or directors of these five producers, and, because the CCP is part of the governing structure in the PRC, we find that the GOC uses these five producers as instrumentalities to effectuate its policy goals.⁹⁶ Accordingly, we determine that these five producers (four calcium carbonate producers and one caustic soda producer) are "authorities" within the meaning of section 771(5)(B) of the Act. See also Comment 1.

D. GOC – Other Subsidies

In the initial questionnaire we instructed the Asia Symbol Companies and the GOC to coordinate with each other and to report to the Department any other forms of government assistance provided to the Asia Symbol Companies.⁹⁷ In response, the Asia Symbol Companies, referencing their financial statements, self-reported that they received potentially countervailable subsidies in the form of government provided grants.⁹⁸ Meanwhile, the GOC stated that pursuant to Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures (the SCM) the Department may not initiate an investigation of a subsidy program based on a "simple assertion" that is "unsubstantiated by relevant evidence." It further stated that it was therefore premature to answer questions concerning the bestowal of any additional forms of assistance.⁹⁹ In a supplemental questionnaire, we requested the GOC to provide information pertaining to the grants, i.e., laws and regulations relating to the programs, number of companies that were approved for assistance, and total number of companies that applied for, but were denied, assistance under this program.¹⁰⁰ The GOC's supplemental response lacked the information necessary to conduct an analysis for de jure or de facto specificity under section 771(5A) of the Act. The GOC failed to provide information to determine de jure specificity, i.e., legislation, and de facto specificity, i.e., the total amount of assistance approved for all companies, the total number of companies that applied for assistance, the total number of companies that were approved for assistance, the total number of companies that applied for, but were denied assistance, etc.

Commerce, not the respondent, that determines what information is to be provided for an administrative review."); Nachi-Fujikoshi Corp. v. United States, 890 F. Supp. 1106, 1111 (CIT 1995) ("Respondents have the burden of creating an adequate record to assist Commerce's determinations.").

⁹⁴ See CCP Memorandum.

⁹⁵ See section 776(b) of the Act.

⁹⁶ See, generally, the Public Body Memorandum and CCP Memorandum.

⁹⁷ See IQ at II-20 and III-21.

⁹⁸ See AS Guangdong IQR at Exhibit 29 and AS Shandong IQR at Exhibit 35.

⁹⁹ See GOC IQR at 98.

¹⁰⁰ See Department's 1SQ to GOC at 10.

Consequently, for those grants that were numerically significant (*i.e.*, grants received prior to the POI that were large enough to pass the “0.5 percent test” and those grants received during the POI that exceeded the 0.005 percent threshold for numerically significant subsidies) we sought further information from the companies about these grants, and also asked the GOC to provide information about the programs under which the grants were provided.¹⁰¹

With regard to the Asia Symbol Companies’ grants, the Department normally relies on information from the government to assess program specificity; however, the GOC did not submit such information; nor did it provide an explanation why it was unable to obtain the information.¹⁰² Thus, we relied upon AFA to make our final determination. In particular, for those programs, we determine that the GOC withheld necessary information that was requested of it and, thus, the Department must rely on facts available for this final determination.¹⁰³ Moreover, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information and that an adverse inference is warranted in the application of facts available.¹⁰⁴ Consequently, due to the GOC’s failure to provide the requested information about the programs under which the Asia Symbol Companies received grants, we are relying on an adverse inference that these grants are specific.¹⁰⁵

E. Tax Allowance for Special Equipment for Water and Energy-Saving Purchased by Enterprises

As stated above, we instructed the Asia Symbol Companies and the GOC to coordinate with each other and to report to the Department any other forms of government assistance provided to the Asia Symbol Companies.¹⁰⁶ We requested the Asia Symbol Companies and the GOC to answer the standard questions appendix with regard to a tax program.¹⁰⁷ Although the Asia Symbol Companies provided its response,¹⁰⁸ the GOC stated, “the Department has not initiated the program addressed in its *{sic}* supplemental questionnaire and has not carried out consultations with the GOC regarding this program, the GOC is not in the position to respond to the supplemental questionnaire. For more information regarding this program and the amount received by AS Guangdong under this program, please refer to the company’s questionnaire response.”¹⁰⁹ The GOC’s supplemental response lacked the information necessary to conduct an analysis for specificity, *i.e.*, number of companies that were approved for assistance, and total number of companies that applied for, but were denied, assistance under this program.

The Department normally relies on the government subject to the CVD proceeding to provide the necessary information on financial contribution and specificity. However, with respect to this

¹⁰¹ *Id.*, and 1SQ to the Asia Symbol Companies at 4 and 6.

¹⁰² *See* GOC IQR at 98 and GOC 1SQ at 23.

¹⁰³ *See* section 776(a)(2)(A) of the Act.

¹⁰⁴ *See* section 776(b) of the Act.

¹⁰⁵ *See* section 771(5A) of the Act.

¹⁰⁶ *See* Department’s IQ at II-20 and III-21.

¹⁰⁷ *See* the Department’s 3rd supplemental questionnaire to Asia Symbol Companies (3SQ) (June 22, 2015) at 3, and 3SQ to GOC (August 13, 2015).

¹⁰⁸ *See* Asia Symbol Companies’ 3rd supplemental questionnaire response (3SQR) (August 10, 2015) at 7 – 12 and Exhibits 3A – 3D.

¹⁰⁹ *See* GOC’s 3SQR (August 24, 2015).

program, the GOC did not submit such information, as requested by the Department, nor did it provide an explanation why it was unable to obtain the information.¹¹⁰ As such, we determine that the GOC withheld necessary information that was requested of it and, thus, the Department must rely on facts available for this final determination.¹¹¹ Moreover, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information and that an adverse inference is warranted in the application of facts available.¹¹² Consequently, due to the GOC's failure to provide the requested information about the "Tax Allowance for Special Equipment for Water and Energy-Saving Purchased by Enterprises" program under which the Asia Symbol Companies received benefits, we are relying on an adverse inference to determine that tax benefits under this program are specific.¹¹³

F. Application of AFA with Regard to UPM and the Sun Paper Companies

The Sun Paper Companies and UPM have refused to participate in the investigation. Further, as discussed above, the GOC failed to respond to the Department's CVD questionnaire with respect to these companies, thereby withholding necessary information requested by the Department, and significantly impeding the investigation.¹¹⁴ Therefore, in accordance with sections 776(a)(2)(A) and (C) of the Act, we are relying on facts otherwise available in this final determination.

We find that an adverse inference is warranted, pursuant to section 776(b) of the Act because, by not responding to our questionnaire, Sun Paper Companies, UPM and the GOC failed to cooperate by not acting to the best of their ability. Accordingly, our determination is based on AFA. See attached Appendix.

G. 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."¹¹⁵ The Department's

¹¹⁰ Id.

¹¹¹ See section 776(a)(2)(A) of the Act.

¹¹² See section 776(b) of the Act.

¹¹³ See section 771(5)(D)(i) and section 771(5A) of the Act.

¹¹⁴ See Letter from Sun Paper Companies, "Certain Uncoated Paper from the People's Republic of China - Withdrawal of Participation in Investigation," (April 8, 2015) (Sun Paper Companies Withdrawal Letter) and UPM's submission, "Uncoated Paper From the People's Republic of China (C-570-023) Investigation; UPM (China) Co. Ltd.'s Letter Regarding Questionnaire Responses," (May 6, 2015) (UPM Withdrawal Letter).

¹¹⁵ See, e.g., Certain Frozen Warmwater Shrimp From Ecuador: Final Affirmative Countervailing Duty Determination, 78 FR 50389 (August 19, 2013), and accompanying IDM, at Section IV, "Use of Facts Otherwise Available and Adverse Inferences"; 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).

practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹¹⁶

In this investigation, the Department is examining the programs discussed in the Preliminary Determination and Post-Preliminary Determination. Because Sun Paper Companies, UPM, and the GOC failed to act to the best of their ability in this investigation, as discussed above, we are making an adverse inference that each of the programs examined, including those not used by the participating respondent, provides a financial contribution within the meaning of section 771(5)(D) of the Act, is specific in accordance with section 771(5A) of the Act, and confers a benefit in accordance with section 771(5)(E) of the Act.¹¹⁷

It is the Department’s practice in a CVD investigation to select, as AFA, the highest calculated rate for the identical subsidy program, or if no identical subsidy program with a subsidy rate above zero is available, then a similar program.¹¹⁸ Thus, under this practice, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior PRC CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, 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 zero. If there is no identical program within the investigation where the rate is above zero, the Department looks for an above de minimis rate for the identical program in another proceeding involving the same country. Absent an above de minimis rate for the identical program, the Department uses the highest rate calculated 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 a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified that could conceivably be used by the non-cooperating companies.¹¹⁹ See attached Appendix.

Income tax programs are the exception to the practice described above. Under the standard AFA methodology that has been applied in past CVD investigations,¹²⁰ for the alleged income tax

¹¹⁶ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H. Doc. 316, 103d Cong. 2d Session at 870 (1994).

¹¹⁷ Id.

¹¹⁸ 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) (Laminated Sacks), 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) (Aluminum Extrusions from the PRC), and accompanying IDM at “Application of Adverse Inferences: Non-Cooperative Companies;” Galvanized Steel Wire From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 17418 (March 26, 2012) (Steel Wire from the PRC), and accompanying IDM at “Use of Facts Otherwise Available and Adverse Inferences;” and Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination, 77 FR 64468 (October 22, 2012) (Steel Pipe from India), and accompanying IDM at “Selection of the Adverse Facts Available Rate.”

¹¹⁹ See, e.g., Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008) (Thermal Paper from the PRC) and accompanying IDM at “Selection of the Adverse Facts Available Rate.”

¹²⁰ Id.; see also Steel Pipe from India, and accompanying IDM at “Selection of Adverse Facts Available Rate.”

program pertaining to either the reduction of income tax paid or the payment of no income tax, we applied an adverse inference that Sun Paper Companies and UPM 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.¹²¹ Thus, the highest possible benefit to each respondent for these income tax programs is 25 percent. Accordingly, we are applying 25 percent as the AFA rate. 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.¹²²

Based on this methodology, we determine that the AFA rate for the non-cooperative companies is 176.75 percent ad valorem.¹²³

H. Corroboration of Secondary Information Used to Derive AFA Rates

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.”¹²⁴ The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.¹²⁵ 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.¹²⁶

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. Additionally, as stated above, we are applying subsidy rates which were calculated in this investigation or previous PRC CVD investigations or administrative reviews. Additionally, no information has been presented which calls into question the reliability of these previously calculated subsidy rates that we are applying as AFA. 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

¹²¹ See GOC IQR at 18.

¹²² See, e.g., Aluminum Extrusions Investigation at “Application of Adverse Inferences: Non-Cooperative Companies.”

¹²³ See attached Appendix. We are using a single rate for the programs Policy Loans to the Paper Industry and Preferential Loans to SOEs, because our analysis reveals that these programs would cover the same loans from SOCBs. See Non-Oriented Electrical Steel from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 70 FR 61607 (October 14, 2014) (NOES PRC), and accompanying IDM (NOES PRC IDM).

¹²⁴ See SAA, at 870.

¹²⁵ Id.

¹²⁶ Id., at 869-870.

countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.¹²⁷

In the absence of record evidence concerning the programs under investigation resulting from the non-cooperative companies' decision not to participate in the investigation, we reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs under investigation in this case. For the programs for which there is no program-type match, we selected the highest calculated subsidy rate for any PRC program from which the non-cooperative companies could receive a benefit to use as AFA. The relevance of these rates is that they are actual calculated CVD rates for a PRC program from which the non-cooperative companies could actually receive a benefit. Further, these rates were calculated for periods close to the POI. Moreover, the failure of these companies to respond to the Department's request for information "resulted in an egregious lack of evidence on the record to suggest an alternative rate."¹²⁸ Due to the lack of participation by the non-cooperative companies and the resulting lack of record information concerning their use of programs under investigation, the Department corroborated the rates it selected to the extent practicable.

VIII. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we determine the following.

A. Programs Determined to Be Countervailable

1. Policy Loans to the Paper Industry

In the CVD investigation of CFS from the PRC, the Department found that, "the GOC has a policy in place to encourage and support the growth and development of the paper industry through preferential financing initiatives, as illustrated in the five-year plans and industrial policies on the record."¹²⁹ The Department further determined that, "loans provided by Policy Banks and state-owned commercial banks (SOCBs) in the PRC constitute a direct financial contribution from the government..." In Thermal Paper from the PRC and Coated Paper from the PRC, the Department affirmed its earlier finding and extended it through its period of investigation.¹³⁰ Based on the record of the instant investigation, the Department determines that the five-year plans and industrial policies for the paper-making industry have continued or been renewed. Specifically, we find that the Papermaking Industry Development "12th Five-Year"

¹²⁷ See, e.g., Fresh Cut Flowers From Mexico: Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996).

¹²⁸ See Shanghai Taoen Int'l Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339, 1348 (CIT 2005).

¹²⁹ See CFS from the PRC and accompanying IDM at 9 and 49.

¹³⁰ See Thermal Paper from the PRC and accompanying IDM at 11 and 12; see also Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 59212 (September 27, 2010) (Coated Paper from the PRC) and accompanying IDM at 12.

Plan (12th Five-Year Plan), enacted in December 2011,¹³¹ the Papermaking Industry Development Policy (2007) and the Order of the State Development Planning Commission and the State Economic and Trade Commission on Distributing the List of Industries, Products and Technologies Currently Encouraged by the State for Development (2000) (Order of the State Development),¹³² together indicate that the GOC has in place a policy to promote specifically the pulp and paper industry, including by providing lending to this industry.

For example the stated objective of the 12th Five-Year Plan is to, “{s}trengthen investment and open up financing channels,” by “expanding indirect financing in the papermaking industry, gradually increase the proportion of direct financing. Further increase the scales of loans provided by commercial banks. Encourage and guide financial institutions to lay stress on supporting the projects and enterprises with powerful economic strength and enormous market potential.”¹³³ The Papermaking Industry Development Policy, “{e}ncourage{s} eligible pulping and papermaking enterprises to raise capital through public offering and issuance of corporate bonds. Domestic financial institutions, especially policy banks, should provide financial supports to construction projects by the national large-scale backbone pulping and papermaking enterprises.”¹³⁴ Further, the Order of the State Development urges the papermaking industry to develop towards large bases and on a large scale.¹³⁵

Therefore, given the evidence demonstrating the GOC’s objective of developing the paper-making industry, through preferential loans, we determine there is a program of preferential policy lending specific to paper producers within the meaning of section 771(5A)(D)(i) of the Act. We also find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are “authorities.”¹³⁶ We note that the Asia Symbol Companies received loans from wholly foreign-owned banks located outside of China. We determine these entities are not “authorities” and have excluded these loans from the benefit calculation.¹³⁷ The loans provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.¹³⁸ To calculate the benefit from this program, we used the benchmarks discussed above under the “Subsidy Valuation Information” section.¹³⁹

We attributed benefits under this program to the total consolidated sales of the Asia Symbol Companies (exclusive of intercompany sales), as discussed in the “Attribution of Subsidies” section above. On this basis, we determine a subsidy rate of 0.58 percent ad valorem for the Asia Symbol Companies. See also Comment 4.

¹³¹ See GOC’s IQR at Exhibit 7.

¹³² Id., at Exhibit 8.

¹³³ Id., at Exhibit 7.

¹³⁴ Id.

¹³⁵ Id., at Exhibit 8.

¹³⁶ See, e.g., 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) (OTR Tires from the PRC) and accompanying IDM at Comment E2. See also, Banking Memorandum.

¹³⁷ See Final Determination Calculation Memorandum.

¹³⁸ See section 771(5)(E)(ii) of the Act.

¹³⁹ See also 19 CFR 351.505(c).

2. Provision of Calcium Carbonate for LTAR

The Department is investigating whether GOC authorities provided calcium carbonate to producers of uncoated paper for LTAR. As instructed in the Department's questionnaires, the Asia Symbol Companies identified the suppliers and producers from whom they purchased calcium carbonate during the POI. In addition, they reported the date of payment, quantity, unit of measure, and purchase price for calcium carbonate purchased during the POI.

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine that the provision of calcium carbonate for LTAR is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the industries that used/consumed calcium carbonate and the associated volume data for the years 2012, 2013, and 2014. See Comment 2.

Six producers provided calcium carbonate to the Asia Symbol Companies. Two producers are wholly-foreign owned.¹⁴⁰ There is no evidence on the record indicating that these wholly-foreign owned entities possess, exercise or are vested with governmental authority. Therefore, we determine that these producers are not "authorities." With regard to the remaining four producers, as discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine these producer to be "authorities" and capable of providing a financial contribution.¹⁴¹ See Comment 1.

Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.¹⁴² This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on the hierarchy established above, we must first determine whether there are market prices from actual sales transactions involving Chinese buyers and sellers that can be used to determine whether the GOC authorities sold calcium carbonate to the respondents for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that prices for such goods and services in the country are significantly distorted, they are not an appropriate basis of comparison for determining whether there is a benefit.¹⁴³

¹⁴⁰ See GOC IQR at Exhibit 23E, 23F, 24, and 25. See also Final Determination Calculation Memorandum.

¹⁴¹ See section 771(5)(D)(iii) of the Act.

¹⁴² See also Softwood Lumber from Canada, and accompanying IDM at "Market-Based Benchmark."

¹⁴³ See CVD Preamble, 63 FR 65348, 65377.

Also discussed under “Use of Facts Otherwise Available and Adverse Inferences,” above, we are relying on AFA to determine that actual transaction prices, including any import prices for calcium carbonate in the PRC are significantly distorted by the government’s involvement in the market.

As we explained in Softwood Lumber from Canada:

Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.¹⁴⁴

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

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

The Department, Petitioners and the Asia Symbol Companies placed on the record information to construct a benchmark from GTA.¹⁴⁵ The GTA data contain calcium carbonate volume and value data, by country, on an HTS-specific basis. The Department’s regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Based on the facts of this case, the Department weight-averaged the prices to calculate a single benchmark by month. The Asia Symbol Companies reported their input purchases on an HTS specific basis. Therefore, in order to derive the benchmark, we calculated HTS-specific benchmarks that correspond to the HTS categories of calcium carbonate purchased by the Asia Symbol Companies during the POI. Our approach in this regard is consistent with the Department’s practice of deriving benchmark

¹⁴⁴ See Softwood Lumber from Canada and accompanying IDM at “There are no market-based internal Canadian benchmarks” section.

¹⁴⁵ See Memorandum to File, “Global Trade Atlas Data (GTA),” from Joy Zhang, Analyst, AD/CVD Operations, Office III, (April 1, 2015) (DOC Benchmark Information); Letter from Petitioners regarding “Certain Uncoated Paper From The People’s Republic of China: Response to Department’s April 1 Memorandum,” (April 20, 2015) (Petitioners’ First Benchmark Information); Letter from Asia Symbol Companies regarding “Certain Uncoated Paper from the Peoples Republic of China: Comments on Benchmarks - Asia Symbol (Guangdong) Paper Co. Ltd.,” (June 1, 2015) (Asia Symbol Companies’ Benchmark Information); and Letter from Petitioners, “Certain Uncoated Paper from the People’s Republic of China: Petitioners’ Benchmark Data Factual Information Submission,” (June 1, 2015) (Petitioners’ Second Benchmark Information).

prices by grade when such data are available and when the record evidence indicates that the respondent firm purchases the good in question on a grade specific basis.¹⁴⁶

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we included international freight and inland freight. The international ocean freight rates used are an average of the freight rates submitted on the record by Petitioners, which reflect ocean freight pricing data from Maersk, for the POI.¹⁴⁷ The Asia Symbol Companies also submitted ocean freight pricing data for the route Rotterdam to Shanghai, sourced from Maersk, for the POI.¹⁴⁸ However, we determine that there is sufficient information on the record to conclude that transporting calcium carbonate would incur the “special equipment service” delivery charge.¹⁴⁹ Further, the Asia Symbol Companies did not provide information on the record that it does not incur this fee. See Comment 5. Therefore, we have utilized only Petitioners’ ocean freight data. We averaged the international freight rates to derive the amount included in our benchmark.

The Asia Symbol Companies purchased calcium carbonate from domestic sources; therefore, for inland freight we relied on the Asia Symbol Companies’ reported inland freight expense to transport calcium carbonate from its plant to the port.¹⁵⁰ Additionally, to derive the benchmark, we included import duties and the VAT applicable to imports of calcium carbonate into the PRC as reported by the GOC.¹⁵¹ We did not include marine insurance. In prior CVD investigations involving the PRC, the Department found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges.¹⁵²

To calculate the benefit, we calculated the difference between the delivered world market price and the price that the Asia Symbol Companies paid for calcium carbonate, including delivery charges. We next divided the sum of the price differentials by the total consolidated sales of the Asia Symbol Companies (excluding inter-company sales). Comparing the adjusted benchmark

¹⁴⁶ See Certain Steel Wheels From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 77 FR 17017 (March 23, 2012) (Steel Wheels from the PRC), and accompanying IDM at Comment 15; see also CWASPP from the PRC and accompanying IDM at “Provision of SSC for LTAR” (where the Department compared prices by steel grade); Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008) (Hot Rolled India), and accompanying IDM at “Sale of High-Grade Iron Ore for LTAR” (where the Department conducted the benefit analysis on a lump-to-lump and fine-to-fine basis); and Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 73448 (December 12, 2005) (Softwood Lumber from Canada II), and accompanying IDM at “Calculation of Provincial Benefit” and “Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the GOBC” (where the Department computed species-specific benefits).

¹⁴⁷ See Petitioners’ Second Benchmark Information at Exhibit 1-3.

¹⁴⁸ See the Asia Symbol Companies Benchmark Information at Exhibit 6.

¹⁴⁹ See Petitioners’ Second Benchmark Information at Exhibit 3.

¹⁵⁰ See AS Guangdong IQR at 33 and AS Shandong IQR at 36.

¹⁵¹ See GOC IQR at 58.

¹⁵² See, e.g., PC Strand from the PRC, and accompanying IDM at Comment 13.

prices to the prices paid by the Asia Symbol Companies for calcium carbonate during the POI, we find that the GOC provided calcium carbonate for LTAR, and that a benefit exists in the amount of the difference between the benchmark price and the price that the companies paid.¹⁵³ On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.74 percent ad valorem during the POI.

3. Provision of Caustic Soda for LTAR

The Department is investigating whether GOC authorities provided caustic soda to producers of uncoated paper for LTAR. As instructed in the Department's questionnaires, the Asia Symbol Companies identified the suppliers and producers from whom they purchased caustic soda during the POI. In addition, they reported the date of payment, quantity, unit of measure, and purchase price for caustic soda purchased during the POI.

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine that the provision of caustic soda for LTAR is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the industries that used/consumed caustic soda and the associated volume data for the years 2012, 2013, and 2014. See also Comment 2.

Six producers provide caustic soda to the Asia Symbol Companies. The GOC indicated that four producers are majority government-owned enterprises.¹⁵⁴ As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.¹⁵⁵ The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.¹⁵⁶ Therefore, we determine that these entities constitute "authorities" within the meaning of section 771(5)(B) of the Act and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.¹⁵⁷

One producer is wholly-foreign owned.¹⁵⁸ There is no evidence on the record indicating that this wholly-foreign owned producer possesses, exercises or is vested with governmental authority. We determine that this producer is not an "authority." With respect to the remaining producer, *i.e.*, the Chinese producer that is not majority government-owned, we discussed under "Use of Facts Otherwise Available and Adverse Inferences," above that we are relying on AFA to determine this producer to be an "authority" and capable of providing a financial contribution.¹⁵⁹ See also Comment 1.

¹⁵³ See 19 CFR 351.511(a).

¹⁵⁴ See GOC IQR at 63.

¹⁵⁵ See Public Body Memorandum.

¹⁵⁶ Id.

¹⁵⁷ See Oil Country Tubular Goods from the People's Republic of China; Final Results of Countervailing Duty Administrative Review; 2012, 79 FR 52301 (September 3, 2014) (OCTG from the PRC 2012 Final Results), and accompanying IDM at Comment 6.

¹⁵⁸ Id., at Exhibit 35-A, 36, 37 and GOC 1SQR at Exhibit 57. See also Final Determination Calculation Memorandum.

¹⁵⁹ See section 771(5)(D)(iii) of the Act.

Based on the previously described LTAR benchmark hierarchy, we must first determine whether there are market prices from actual sales transactions involving Chinese buyers and sellers that can be used to determine whether the GOC authorities sold coal to the respondents for LTAR. As noted above, where the Department finds that the government provides the majority, or a substantial portion of the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.¹⁶⁰ For these reasons, prices stemming from private transactions within the PRC cannot give rise to a price that is sufficiently free from the effects of the GOC's actions and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration.

In its IQR, the GOC provided information on the amount of caustic soda production and the percentage of companies in which the government maintains an ownership or management interest either directly or through other government entities.¹⁶¹ The Department requested the GOC to provide supporting documentation to substantiate its claim and provide information for 2012 and 2013. The GOC provided information from the SSB indicating that the government maintains ownership levels of caustic soda producers that account for 56, 53, and 50 percent of domestic production in 2012, 2013, and 2014 respectively.¹⁶² Consequently, because of the government's significant involvement in the caustic soda industry and because import penetration is less than 0.1 percent from 2012 through 2014,¹⁶³ we determine that the private producer prices in the PRC are distorted and not suitable as market benchmarks, such that the use of private producer prices in the PRC would be akin to comparing the benchmark to itself (*i.e.*, a benchmark would reflect the distortions of the government presence).¹⁶⁴ As such, we determine that domestic prices in the PRC cannot serve as viable, tier one benchmark prices. For the same reasons, we determine that import prices into the PRC cannot serve as a benchmark. Accordingly, to determine whether the provision of caustic soda conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, consistent with the 2012 Citric Acid Review,¹⁶⁵ we applied a tier two benchmark, *i.e.*, world market prices available to purchasers in the PRC (see 19 CFR 351.511(a)(2)(ii)).

The Department, Petitioners and the Asia Symbol Companies placed on the record information to construct a benchmark from GTA.¹⁶⁶ The GTA data contain caustic soda volume and value data, by country, on an HTS-specific basis. The Department's regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Based on the facts of this case, the Department weight-averaged the prices to calculate a single benchmark by month. The Asia Symbol Companies reported their input purchases on an HTS-specific basis. Therefore, in

¹⁶⁰ See Countervailing Duties; Final Rule, 63 FR 65348, 65377 (November 25, 1998).

¹⁶¹ See GOC IQR at 74.

¹⁶² See GOC ISQR at 9 and Exhibit 54.

¹⁶³ Id., at 8 and 9 and Exhibits 54 and 55.

¹⁶⁴ See also Softwood Lumber from Canada, and accompanying IDM at "Market-Based Benchmark."

¹⁶⁵ See 2012 Citric Acid Review, and accompanying IDM at 26 through 28.

¹⁶⁶ See DOC Benchmark Information, Petitioners' First Benchmark Information, Asia Symbol Companies' Benchmark Information, Petitioners' Second Benchmark Information, and Petitioners' Rebuttal Benchmark Information.

order to derive the benchmark, we calculated HTS-specific benchmarks that correspond to the HTS categories of caustic soda purchased by the Asia Symbol Companies during the POI. As noted above, our approach in this regard is consistent with the Department's practice of deriving benchmark prices by grade when such data are available and when the record evidence indicates that the respondent firm purchases the good in question on a grade-specific basis.¹⁶⁷

Pursuant to 19 CFR 351.511(a)(2)(iv), in deriving the benchmark prices, we included international freight and inland freight. The international ocean freight rates used are an average of the freight rates submitted on the record by Petitioners. Petitioners placed on the record ocean freight pricing data from Maersk, for the POI.¹⁶⁸ The Asia Symbol Companies also submitted ocean freight pricing data for the route Rotterdam to Shanghai, sourced from Maersk, for the POI.¹⁶⁹ However, as explained in greater detail below we determine that there is sufficient information on the record to conclude that transporting caustic soda would incur the "dangerous cargo service" delivery charge.¹⁷⁰ Further, the Asia Symbol Companies did not provide information on the record that it does not incur this fee. See Comment 5. Therefore, we have utilized only Petitioners' ocean freight data. We averaged the international freight rates to derive the amount included in our benchmark.

The Asia Symbol Companies purchased caustic soda from domestic sources; therefore, for inland freight we relied on the Asia Symbol Companies' reported inland freight expense to transport caustic soda from its plant to the port.¹⁷¹ Additionally, to derive the benchmark, we included import duties and the VAT applicable to imports of caustic soda into the PRC as reported by the GOC.¹⁷² We did not include marine insurance. In prior CVD investigations involving the PRC, the Department found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges.¹⁷³

To calculate the benefit, we calculated the difference between the delivered world market price and the price that the Asia Symbol Companies paid for caustic soda, including delivery charges. We next divided the sum of the price differentials by the total consolidated sales of the Asia Symbol Companies (excluding inter-company sales). Comparing the adjusted benchmark prices to the prices paid by the Asia Symbol Companies for caustic soda during the POI, we find that the GOC provided caustic soda for LTAR, and that a benefit exists in the amount of the difference between the benchmark price and the price that the companies paid.¹⁷⁴ On this basis,

¹⁶⁷ See Steel Wheels from the PRC, and accompanying IDM at Comment 15; see also CWASPP from the PRC, and accompanying IDM at "Provision of SSC for LTAR" (where the Department compared prices by steel grade); Hot Rolled India, and Hot Rolled India IDM at "Sale of High-Grade Iron Ore for LTAR" (where the Department conducted the benefit analysis on a lump-to-lump and fine-to-fine basis); and Softwood Lumber from Canada II, and accompanying IDM at "Calculation of Provincial Benefit" and "Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the GOBC" (where the Department computed species-specific benefits).

¹⁶⁸ See Petitioners' Second Benchmark Information at Exhibit 5 – 7.

¹⁶⁹ See the Asia Symbol Companies Benchmark Information at Exhibit 6.

¹⁷⁰ See Petitioners' Second Benchmark Information at Exhibit 3.

¹⁷¹ See AS Guangdong IQR at 35 and AS Shandong 1SQR at 15 and Exhibit 11.

¹⁷² See GOC IQR at 75.

¹⁷³ See, e.g., PC Strand from the PRC, and accompanying IDM at Comment 13.

¹⁷⁴ See 19 CFR 351.511(a).

we determine that the Asia Symbol Companies received a countervailable subsidy of 0.37 percent ad valorem during the POI.

4. Provision of Coal for LTAR

The Department is investigating whether the Asia Symbol Companies purchased coal for LTAR during the POI. On the record of this investigation, the GOC reported that the Asia Symbol Companies purchases coal from state-owned enterprises during the POR.¹⁷⁵ As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.¹⁷⁶ The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.¹⁷⁷ Therefore, we determine that the Asia Symbol Companies received a financial contribution from authorities in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

Regarding specificity, the GOC reported that the industry/sector coal consumption statistics published by SSB for 2013 and 2014 were not yet available; however the GOC did submit industry consumption information for 2012.¹⁷⁸ The GOC also submitted the Annual Report on Coal Market Development of China (2014) and the National Coal Industry's 12th Five-Year Plan (Coal Five-Year Plan).¹⁷⁹ In the Initiation Checklist, the Department indicated that there was sufficient evidence to initiate an investigation of the provision of coal on both a de jure and de facto specific basis, i.e., on the basis that power generators are predominant users.¹⁸⁰ Upon examination of the Coal Five-Year Plan, the Department determines that there is insufficient evidence to find the provision of coal is de jure specific to power generators under section 771(5A)(D)(i) of the Act. Therefore, the Department examined the industry consumption information for 2012 published by the SSB.¹⁸¹ Based upon the record information, we find that the power generation industry, which uses 34 percent of the coal in China, is a predominant user of coal.¹⁸² Therefore, we determine the provision of coal to be specific within the meaning of section 771(5A)(D)(iii)(II) of the Act.

AS Shandong's business license indicates that its business scope includes power generation.¹⁸³ Further, in its 1SQR, AS Shandong responded that the company uses coal and water to generate electricity for its own consumption and any surplus electricity is sold to the State's grid.¹⁸⁴ Therefore, we determine that AS Shandong is a power generator whose purchases of coal during the POI fall under the provision of coal for LTAR. In its supplemental questionnaire response, AS Guangdong replied that the coal purchased, "is used for power generation purposes, and the

¹⁷⁵ See GOC IQR at 82.

¹⁷⁶ See Public Body Memorandum.

¹⁷⁷ Id.

¹⁷⁸ See GOC IQR at 90 and Exhibit 46 and GOC 1SQR at Exhibit 60.

¹⁷⁹ See GOC IQR at Exhibit 47 and 48.

¹⁸⁰ See Initiation Checklist at 16.

¹⁸¹ See GOC IQR at Exhibit 60.

¹⁸² Id., see also Non-Oriented Electrical Steel From Taiwan: Final Affirmative Countervailing Duty Determination, 79 FR 61602, (October 14, 2014) (Taiwan NOES) and accompanying IDM at Comment 1.

¹⁸³ See AS Shandong IQR at Exhibit 1.

¹⁸⁴ See the Asia Symbol Companies 1SQR at 1 and Exhibit 1.

generated power and steam is used in the company's operations, including the production of subject merchandise.”¹⁸⁵ For these reasons, we determine AS Shandong and AS Guangdong, members of the Asia Symbol Companies, are power generators during the POI.

As discussed under “Use of Facts Otherwise Available and Adverse Inferences,” above, we are relying on AFA to determine that actual transaction prices for coal in the PRC are significantly distorted by the government's involvement in the market. As such, we determine that domestic prices by coal producers based in the PRC and import prices into the PRC may not serve as viable, tier one benchmark prices.¹⁸⁶ Given that we have determined that no tier one benchmark prices are available, we next evaluated information on the record to determine whether there is a tier two world market price available to producers of subject merchandise in the PRC.

The Department, Petitioners and the Asia Symbol Companies placed on the record information to construct a benchmark from GTA and IMF information.¹⁸⁷ The GTA data contain coal volume and value data, by country, on an HTS-specific basis. The Department's regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Based on the facts of this case, the Department weight-averaged the prices to calculate a single benchmark by month. The Asia Symbol Companies reported their input purchases on an HTS specific basis. Therefore, in order to derive the benchmark, we calculated HTS-specific benchmarks that correspond to the HTS categories of coal purchased by the Asia Symbol Companies during the POI. See Comment 7. As noted above, our approach in this regard is consistent with the Department's practice of deriving benchmark prices by grade when such data are available and when the record evidence indicates that the respondent firm purchases the good in question on a grade specific basis.¹⁸⁸

Pursuant to 19 CFR 351.511(a)(2)(iv), in deriving the benchmark prices, we included international freight and inland freight. The international ocean freight rates used are an average of the freight rates submitted on the record by Petitioners and the Asia Symbol Companies. Petitioners placed on the record ocean freight pricing data from Platts Report, for the POI.¹⁸⁹ The Asia Symbol Companies placed on the record ocean freight pricing data from Maersk and Searates (for distance data), for the POI.¹⁹⁰ We averaged the international freight rates from Petitioners and the Asia Symbol Companies to derive the amount included in our benchmark.

¹⁸⁵ See the Asia Symbol Companies' 2nd supplemental questionnaire response (2SQR) (July 29, 2015) at 3.

¹⁸⁶ See 2010 Citric Acid Review and 2011 Citric Acid Review, and accompanying IDMs at “Provision of Steam Coal for LTAR.”

¹⁸⁷ See DOC Benchmark Information, Petitioners' First Benchmark Information, Asia Symbol Companies' Benchmark Information, Petitioners' Second Benchmark Information, and Petitioners' Rebuttal Benchmark Information.

¹⁸⁸ See Steel Wheels from the PRC, and accompanying IDM at Comment 15; see also CWASPP from the PRC, and accompanying IDM at “Provision of SSC for LTAR” (where the Department compared prices by steel grade); Hot Rolled India, and accompanying IDM at “Sale of High-Grade Iron Ore for LTAR” (where the Department conducted the benefit analysis on a lump-to-lump and fine-to-fine basis); and Softwood Lumber from Canada II, and accompanying IDM at “Calculation of Provincial Benefit” and “Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the GOBC” (where the Department computed species-specific benefits).

¹⁸⁹ See Petitioner's Second Benchmark Information at Exhibits 10 through 13.

¹⁹⁰ See the Asia Symbol Companies' Benchmark Information at Exhibit 6.

The Asia Symbol Companies purchased coal from domestic sources; therefore, for inland freight we relied on the Asia Symbol Companies' reported inland freight expense to transport coal from its plant to the port.¹⁹¹ Additionally, to derive the benchmark, we included import duties and the VAT applicable to imports of coal into the PRC as reported by the GOC.¹⁹² We did not include marine insurance. In prior CVD investigations involving the PRC, the Department found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges.¹⁹³

To calculate the benefit, we calculated the difference between the delivered world market price and the price that the Asia Symbol Companies paid for coal, including delivery charges. We next divided the sum of the price differentials by the total consolidated sales of the Asia Symbol Companies (excluding inter-company sales). Comparing the adjusted benchmark prices to the prices paid by the Asia Symbol Companies for coal during the POI, we find that the GOC provided coal for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark price and the price that the companies paid.¹⁹⁴ On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.98 percent ad valorem during the POI.

5. Preferential Income Tax Program for High or New Technology Enterprises

Article 28 of the Enterprise Income Tax Law (EITL) authorizes a reduced income tax rate of 15 percent for high- and new-technology enterprises (HNTEs).¹⁹⁵ The criteria and procedures for identifying eligible HTNEs are provided in the Measures on Recognition of High and New Technology Enterprises (GUOKEFAHUO {2008} No. 172) (Measures on Recognition of HNTEs) and the Guidance on Administration of Recognizing High and New Technology Enterprises (GUOKEFA HUO {2008} No.362).¹⁹⁶ Article 8 of the Measures on Recognition of HNTEs provides that the science and technology administrative departments of each province, autonomous region, and municipality directly under the central government or cities under separate state planning shall collaborate with the finance and taxation departments at the same level to recognize HTNEs in their respective jurisdictions.¹⁹⁷

The annex of the Measures on Recognition of HNTEs lists eight high- and new-technology areas selected for the State's "primary support": 1) Electronics and Information Technology; 2) Biology and New Medicine Technology; 3) Aerospace Industry; 4) New Materials Technology; 5) High-tech Service Industry; 6) New Energy and Energy-Saving Technology; 7) Resources and Environmental Technology; and 8) High-tech Transformation of Traditional Industries.¹⁹⁸

¹⁹¹ See AS Shandong IQR at 29 and AS Guangdong IQR at 33.

¹⁹² See GOC IQR at 89.

¹⁹³ See, e.g., PC Strand from the PRC, and accompanying IDM at Comment 13.

¹⁹⁴ See 19 CFR 351.511(a).

¹⁹⁵ See GOC IQR at 11 and Exhibit 12 and 13.

¹⁹⁶ Id., at Exhibit 14 and 15.

¹⁹⁷ Id.

¹⁹⁸ Id.

AS Guangdong and AS Shandong reported that they received tax savings under this program on their 2013 income tax return filed during the POI.¹⁹⁹ We determine that the reduced income tax rate paid by AS Guangdong and AS Shandong is a financial contribution in the form of revenue foregone by the GOC, and provides a benefit to the recipient in the amount of the tax savings.²⁰⁰ We also determine, consistent with the 2008/2009 Citric Acid Review,²⁰¹ that the reduction afforded by this program is limited as a matter of law to certain new and high technology companies selected by the government pursuant to legal guidelines specified in Measures on Recognition of HNTES and, hence, is specific under section 771(5A)(D)(i) of the Act. Both the number of targeted industries (eight) and the narrowness of the identified project areas under those industries support a finding that the legislation expressly limits access to the program to a specific group of enterprises or industries.

To calculate the benefit, we compared the income tax rate that the Asia Symbol Companies would have paid in the absence of the program (25 percent) to the income tax rate that the companies actually paid (15 percent). We treated the income tax savings realized by the Asia Symbol Companies as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POI by the total consolidated sales for the Asia Symbol Companies (excluding inter-company sales) for the POI, pursuant to 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c). On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.56 percent ad valorem.

6. Preferential Income Tax for Comprehensive Utilization Entitling Enterprise

The GOC described that Article 33 of the Enterprise Income Tax Law of the PRC provides that incomes generated by an enterprise from using any of the materials as listed in the Catalogue of Resources for Comprehensive Utilization by Enterprises Entitled to Preferential Income Tax Treatment (Catalogue of Resources) as its major raw material may use ten percent of that income to reduce its overall taxable income.²⁰² The GOC indicated that the government agencies or authorities responsible for administering this program are: Shandong Provincial State Administration of Taxation, Shandong Provincial Department of Finance, Shandong Economic and Information Technology Committee, and Shandong Provincial Local Taxation Bureau.²⁰³ AS Shandong stated that it applied to each entity listed above to obtain approval and received the "Certificate of Resources for Comprehensive Utilization." After obtaining the certificate, it was filed with the Rizhao Economic and Technological Development Zone State Administration of Taxation.²⁰⁴ AS Shandong qualified for this program by utilizing industrial waste heat and pressure in the production of electricity. By virtue of this program, AS Shandong reduced its taxable income during the POI.²⁰⁵

¹⁹⁹ See AS Guangdong IQR at 22 – 25 and Exhibit 6, 14, 15, and 16.

²⁰⁰ See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

²⁰¹ 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) (2008/2009 Citric Acid Review), and accompanying IDM.

²⁰² See GOC ISQR at 34 – 44 and Exhibits 63 and 64.

²⁰³ Id., at 35.

²⁰⁴ See AS Shandong IQR at 25 and Exhibit 16 and 17.

²⁰⁵ Id., at 26 – 27 and Exhibit 6.

We determine that the reduction in taxable income is a financial contribution in the form of revenue foregone by the GOC, and provides a benefit to the recipient in the amount of tax savings.²⁰⁶ The Catalogue of Resources sets three categories of raw materials use to be eligible for tax benefits under this program: symbiosis, associated mineral resources; waste (liquid), waste gas and waste residue; and renewable resources; and sixteen resources for revenue. We determine that the tax reduction under this program is de jure specific under section 771(5A)(D)(i) of the Act because the program is limited to certain enterprises that utilize certain raw materials specified by the government.

To calculate the benefit, we compared the taxable income that the Asia Symbol Companies would have claimed in the absence of the program to the taxable income that the companies actually claimed. We treated the income tax savings realized by the Asia Symbol Companies as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POI by the total consolidated sales for the Asia Symbol Companies (excluding inter-company sales) for the POI, pursuant to 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c). On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.09 percent ad valorem.

7. Tax Allowance for Special Equipment for Water and Energy-Saving Purchased by Enterprises

AS Guangdong reported that it reduced its income tax payable because of its purchases of equipment for water and energy-saving.²⁰⁷ We determine that the reduction in income tax under this program is a financial contribution in the form of revenue foregone by the GOC, and provides a benefit to the recipient in the amount of the tax savings pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1), respectively.

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, the Department is relying on AFA to determine that the tax program is specific because the GOC failed to provide information which was requested of it regarding the details of the government assistance.

We treated the income tax savings realized by the Asia Symbol Companies as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POI by the total consolidated sales for the Asia Symbol Companies (excluding inter-company sales) for the POI, pursuant to 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c). On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.02 percent ad valorem.

8. VAT and Import Tariff Exemptions for Imported Equipment

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular 37) exempts both foreign invested enterprises ("FIEs") and certain domestic enterprises from the VAT and tariffs on imported equipment used in their

²⁰⁶ See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1), respectively.

²⁰⁷ See Asia Symbol 3SQR at 8 and AS Guangdong IQR at Exhibit 6.

production so long as the equipment does not fall into prescribed lists of non-eligible items.²⁰⁸ The National Development and Reform Commission (NDRC) and the General Administration of Customs are the government agencies responsible for administering this program. Qualified enterprises receive a certificate either from the NDRC or one of its provincial branches. To receive the exemptions, a qualified enterprise only has to present the certificate to the customs officials upon importation of the equipment. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.²⁰⁹ The Department previously found this program to be countervailable.²¹⁰

Both AS Guangdong and AS Shandong reported receiving VAT and tariff exemptions under this program for imported equipment prior to the POI.²¹¹ We determine that the VAT and duty exemptions received under the program constitute a financial contribution in the form of revenue foregone by the GOC, which provides a benefit to the recipients in the amount of the VAT and tariff savings.²¹² As described above, only FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program; therefore, we further determine that the VAT and tariff exemptions under this program are *de jure* specific under section 771(5A)(D)(i) of the Act because the program is limited to certain enterprises.²¹³

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL.²¹⁴ Therefore, because these exemptions are for capital equipment, we have examined the VAT and tariff exemptions that AS Guangdong and AS Shandong received under the program during the POI and preceding 12 years.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is consistent with the Department's approach in prior cases.²¹⁵ Next, we summed the amount of duty and VAT

²⁰⁸ See the GOC IQR at 23 and Exhibit 16.

²⁰⁹ *Id.*

²¹⁰ See, e.g., Citric Acid PRC Investigation, and accompanying IDM at "H. VAT and Duty Exemptions on Imported Equipment."

²¹¹ See AS Guangdong IQR at 27; see also AS Shandong IQR at 29.

²¹² See sections 771(5)(D)(ii) and 771(5)(E) of the Act, as well as 19 CFR 351.510(a)(1). The VAT portion of this program was abolished beginning January 1, 2009 pursuant to the Announcement of Ministry of Finance, General Administration of Customs and State Administration of Taxation on resumption of VAT on imported equipment and related goods. See the GOC IQR at 23, and Exhibit 17.

²¹³ See CFS from the PRC and accompanying IDM at Comment 16; see also OTR Tires from the PRC at "C. VAT and Import Duty Exemptions on Imported Material."

²¹⁴ See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(1).

²¹⁵ See, e.g., Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008) (Line Pipe from the PRC), and

exemptions received in each year. For each year, we divided the company's total exemptions by its corresponding sales for the year of import. Pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the year of receipt for those years in which the grant amount was less than 0.5 percent of the total consolidated sales of the Asia Symbol Companies (excluding inter-company sales). For the years in which the grant amount for the company was greater than 0.5 percent of its sales, we allocated the benefit over the AUL using the methodology described under 19 CFR 351.524(d). We used the methodology described in the "Subsidies Valuation" section above to determine the amount attributable to the POI. We then divided the POI benefit by the total consolidated POI sales of the Asia Symbol Companies (excluding inter-company sales), to calculate the subsidy rate. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 3.13 percent ad valorem during the POI.

Additionally, the GOC reported that, pursuant to the "Announcement of Ministry of Finance, China Customs, and State Administration of Taxation," No. 43 (2008), the VAT exemption was terminated.²¹⁶ Under 19 CFR 351.526(a)(1) and (2), the Department may take a program-wide change to a subsidy program into account in establishing the cash deposit rate if it determines that subsequent to the POI, but before the final determination, a program-wide change occurred and the Department is able to measure the change in the amount of countervailable subsidies provided under the program in question. Based on a prior investigation with regard to this program, we determined that a program-wide change has not occurred.²¹⁷ Under 351.526(d)(1), the Department will only adjust the cash deposit rate of a possibly terminated program if there are no residual benefits. However, this program still provides for residual benefits because import tariff and VAT exemptions were provided for the importation of capital equipment and, thus, those exemptions are treated as non-recurring subsidies pursuant to 19 CFR 351.524(c)(2)(iii). This decision is consistent with the Department's approach to this program in prior PRC proceedings.²¹⁸

9. VAT Rebates on FIE Purchases of Chinese Made Equipment

According to Trial Regulations on Tax Rebate on Domestically-Manufactured Equipment Purchased by a Foreign-Funded Enterprise (No. 171), the GOC refunds the VAT on purchases of certain Chinese-produced equipment to FIEs if the equipment is used for certain encouraged projects.²¹⁹ AS Shandong reported using this program during the AUL.²²⁰ The Department

accompanying IDM at Comment 8 ("... we agree with Petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties").

²¹⁶ See GOC IQR at 31 and Exhibit 17.

²¹⁷ 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 from the PRC) and accompanying IDM at 19 and 20.

²¹⁸ 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) (Drill Pipe from the PRC), and accompanying IDM at "Import Tariff and

VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries."

²¹⁹ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 63788 (October 17, 2012) (Solar Cells Investigation), and accompanying IDM at 18.

²²⁰ See AS Shandong IQR at 32-33.

previously found this program countervailable.²²¹ We determine that the rebates under this program are a financial contribution in the form of revenue foregone by the GOC, and they provide a benefit to the recipients in the amount of the tax savings.²²² We further find that the VAT rebates are contingent upon the use of domestic over imported equipment and, hence, specific under sections 771(5A)(A) and (C) of the Act.

Since this indirect tax is provided for, or tied to, the capital structure or capital assets of a firm, the Department treated this tax as a non-recurring benefit and allocated the benefit to the firm over the AUL.²²³ To calculate a benefit under this program, for the years in which the rebate amount was less than 0.5 percent of the relevant sales figure, we expensed the rebates in the year of receipt, consistent with 19 CFR 351.524(a). The benefits AS Shandong received in 2008 were less than 0.5 percent of the total consolidated the Asia Symbol Companies' sales (excluding inter-company sales); therefore the benefits were expensed to 2008. However, for 2009 the benefit amount for the company was greater than 0.5 percent of its sales; thus, we allocated the benefit over the AUL using the methodology described under 19 CFR 351.524(d). We used the methodology described in the "Subsidies Valuation" section above to determine the amount attributable to the POI. We then divided the POI benefit by the total consolidated POI sales of the Asia Symbol Companies (excluding inter-company sales), to calculate the subsidy rate. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.07 percent ad valorem during the POI.

10. Subsidies for Energy Efficiency and Environmental Protection

AS Shandong reported that it received assistance in the form of a grant, from the Rizhao City Government for environmental protection.²²⁴ We determine that the grant received by AS Shandong constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, the Department is relying on AFA to determine that the grant program is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.

To calculate the benefit, we divided the grant amount by the Asia Symbol Companies' total consolidated sales (excluding inter-company sales) for the year in which the grant was received and found that the resulting ratio exceeded 0.5 percent. Because the grant is a non-recurring benefit, consistent with 19 CFR 351.524(c)(2)(iii), we allocated the benefit over the 13-year AUL. We then divided the benefit amount by the Asia Symbol Companies' total consolidated sales (excluding inter-company sales) for the POI to obtain the ad valorem subsidy rate. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.10 percent ad valorem.

²²¹ See Solar Cells Investigation and accompanying IDM at 18.

²²² See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

²²³ See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

²²⁴ See AS Shandong 1SQR at 7 and Exhibit 7-a; see also GOC 1SQR at 25.

11. Support Fund for Environmental Protection Project - Rizaho City

AS Shandong reported that it received assistance, in the form of a grant, from the Rizhao City Government.²²⁵ We determine that the grant received by AS Shandong constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

As discussed under “Use of Facts Otherwise Available and Adverse Inferences,” above, the Department is relying on AFA to determine that the grant program is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.

To calculate the benefit, we divided the grant amount by the Asia Symbol Companies’ total consolidated sales (excluding inter-company sales) for the year in which the grant was received and found that the resulting ratio exceeded 0.5 percent. Because the grant is a non-recurring benefit, consistent with 19 CFR 351.524(c)(2)(iii), we allocated the benefit over the 13-year AUL. We then divided the benefit amount by the Asia Symbol Companies’ total consolidated sales (excluding inter-company sales) for the POI to obtain the ad valorem subsidy rate. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.14 percent ad valorem.

12. Support Fund for Environmental Protection Input

AS Shandong reported that it received assistance, in the form of a grant, from the Rizhao Municipal Finance Bureau for environmental protection.²²⁶ We determine that the grant received by AS Shandong constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

As discussed under “Use of Facts Otherwise Available and Adverse Inferences,” above, the Department is relying on AFA to determine that the grant program is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.

The grant that AS Shandong received during the POI was less than 0.5 percent of the total consolidated sales of the Asia Symbol Companies for the POI. Therefore pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount in its entirety to the POI. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.14 percent ad valorem.

13. Support Fund for Environmental Protection Project

AS Shandong reported that it received assistance, in the form of a grant, from the Rizhao Economic and Technological Development Area Government for environmental protection.²²⁷ We determine that the grant received by AS Shandong constitutes a financial contribution and a

²²⁵ See AS Shandong 1SQR at 7 and Exhibit 7-e; see also GOC 1SQR at 25.

²²⁶ See AS Shandong 1SQR at 7 and Exhibit 7-f; see also GOC 1SQR at 25.

²²⁷ See AS Shandong 1SQR at 7 and Exhibit 7-g; see also GOC 1SQR at 25.

benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

As discussed under “Use of Facts Otherwise Available and Adverse Inferences,” above, the Department is relying on AFA to determine that the grant program is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.

The grant that AS Shandong received during the POI was less than 0.5 percent of the total consolidated sales of the Asia Symbol Companies for the POI. Therefore pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount in its entirety to the POI. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.15 percent ad valorem.

14. City Bonus for Export Activity from Finance Bureau

AS Guangdong reported that it received assistance, in the form of a grant, from Jiangmen City for export activities.²²⁸ We determine that the grant received by AS Guangdong constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

As discussed under “Use of Facts Otherwise Available and Adverse Inferences,” above, the Department is relying on AFA to determine that the grant program is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.

The grant that AS Guangdong received during the POI was less than 0.5 percent of the total consolidated sales of the Asia Symbol Companies for the POI.²²⁹ Therefore pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount in its entirety to the POI. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.13 percent ad valorem.

15. Energy Efficiency and Environmental Protection Project

AS Shandong reported that it received assistance, in the form of a grant, from the NDRC for the purpose of encouraging and promoting investments related to environmental protection.²³⁰ The GOC indicates that this is a national program subject to the Interim Measures for the Management of Central Budgetary Investment Subsidy and Interest Discount Project (2005 No. 31).²³¹ We determine that the grant received by AS Shandong constitutes a financial contribution and benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the actual recipients of the grants under this program were limited

²²⁸ See AS Guangdong 1SQR at 5 - 8; see also GOC 1SQR at 18.

²²⁹ Because AS Guangdong and AS Shandong do not have export sales, we utilized the companies’ consolidated processing fees as a denominator. All third country sales of subject merchandise are made by Greenpoint.

²³⁰ See AS Shandong 1SQR (June 15, 2015) at 7 and Exhibit 7G. See also GOC 1SQR (June 15, 2015) at 25 and Exhibits 61 and 62.

²³¹ See GOC 1SQR (June 15, 2015) at Exhibit 61.

in number, i.e., 168 enterprises,²³² we determine that the grant is specific under section 771(5A)(D)(iii)(I) of the Act.

To calculate the benefit, we divided the grant amount by the Asia Symbol Companies' total consolidated sales (excluding inter-company sales) for the year in which the grant was received and found that the resulting ratio exceeded 0.5 percent. Because the grant is a non-recurring benefit, consistent with 19 CFR 351.524(c)(2)(iii), we allocated the benefit over the 13-year AUL. We then divided the benefit amount by the Asia Symbol Companies' total consolidated sales (excluding intercompany sales) for the POI to obtain the ad valorem subsidy rate. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.02 percent ad valorem.

16. Administrative and Industrial Fee Exemptions in Yinzhou Lake Paper Base

AS Guangdong reported that it paid reduced administrative fees pursuant to this program.²³³ The GOC indicates that pursuant to Circular on Printing and Distributing the Supporting Rules for the Development of Yinzhou Lake Paper Base (2010 No.80) the program is for investments into the paper or paper-related industries in Yinzhou Lake Paper Base.²³⁴

We determine that the reduced fees are revenue foregone and constitute a financial contribution and a benefit under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Regarding specificity, because this program is limited to paper or paper-related industries, we determine that this program is de jure specific under section 771(5A)(D)(i) of the Act.

The benefits that AS Guangdong received during the POI were less than 0.5 percent of the total consolidated sales of the Asia Symbol Companies for the POI. Therefore pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts in their entirety to the POI. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.01 percent ad valorem.

Programs Determined Not To Confer a Benefit on the Asia Symbol Companies During the POI

1. Provision of Water for LTAR in Yinzhou Lake Paper Base

Petitioners alleged that the Xinhui District government provides preferential water rates to enterprises within Yinzhou Lake Paper Base, a designated area of Xinhui District.²³⁵ In response to the Department's new subsidy allegation questionnaire, the GOC provided the Water Law of the People's Republic of China and the Regulation on the Administration of the License for Water Drawing and the Levy of Water Resources Fees and Guangdong Water Resources Fee

²³² Id., at 31 and Exhibit 62. See also, e.g., Taiwan NOES and accompanying IDM at 23.

²³³ See Asia Symbol Companies' new subsidy allegation questionnaire response (NSAQR) (June 15, 2015) at 9 and Asia Symbol Companies' Minor Corrections at Verification Exhibit 19: MC9.

²³⁴ See GOC NSAQR (June 22, 2015) at 8 and Exhibit 65.

²³⁵ See the Department's Decision Memorandum on New Subsidy Allegations (May 28, 2015) at 6.

Collection Standards Sheet.²³⁶ At verification, we verified that AS Guangdong and AS Omya, both located within the Yinzhou Lake Paper Base, paid the provincial water tariff rate for power generation and paper production and the Xinhui District water tariff rate for “living water” and did not pay a preferential rate as alleged.²³⁷ Therefore, we determine that this program did not confer a benefit during the POI. See Comment 8.

C. Programs Determined Not To Be Specific to the Asia Symbol Companies during the POI

1. Provision of Land and/or Land-Use Rights to SOEs for LTAR

As explained in the Department’s position for Comment 9, we find there is no evidence of de jure or de facto specificity on the record. However, if this investigation results in a CVD order, we will examine this program in a subsequent administrative review.

D. Programs Determined Not To Be Used by the Asia Symbol Companies

1. Titanium Dioxide for LTAR
2. Provision of Water for LTAR
3. Provision of Electricity for LTAR
4. Land-Use Rights for LTAR in Certain Industrial/Development Zones
5. Export Buyer’s Credit from Export-Import Bank of China
6. Export Seller’s Credit from Export-Import Bank of China
7. Tax Reductions for High and New-Technology Enterprises Involved in Designated Zones
8. Income Tax Exemptions for Forestry Projects
9. Funds for Using Wood Pulp in Forestry-Paper Integration Projects
10. Interest Payments for Forestry-Paper Integration Projects
11. Support for Developing New Paper Products
12. State Key Technology Renovation Fund
13. Grants to Cover Legal Fees in Trade Remedy Cases
14. Grants for Listing Shares
15. Demolition and Relocation Assistance for Shandong Chenming
16. Preferential Loans to SOEs
17. Jiangmen City – Honest Green Card Backbone Enterprises: Tax Refund
18. Jiangmen City – Honest Green Card Backbone Enterprises: Preferential Interest Rates and Guarantee Fees
19. Jiangmen City – Honest Green Card Backbone Enterprises: Grants
20. Tax Refund for Technology Renovation Projects in Xinhui District
21. Infrastructure Fee and Tax Refund for Enterprises in Xinhui District
22. Interest Subsidy for Capital Increase and Production Expansion Projects in Xinhui District
23. Provision of Electricity for LTAR in Yinzhou Lake Paper Base
24. Provision of Steam for LTAR in Yinzhou Lake Paper Base

²³⁶ See GOC’s NSAQR (June 22, 2015) at Exhibits 66 and 67.

²³⁷ See Asia Symbol Companies Verification Report at 8 - 9.

IX. ANALYSIS OF COMMENTS

COMMENT 1: Whether to Reverse the Department's Government "Authorities" Determination

GOC's Arguments

- The Department improperly applied an adverse inference in its governmental authority analysis of four calcium carbonate producers and one caustic soda producer.
- Section 776(b) of the Act allows the Department to apply adverse inferences only to information missing from the record.
- The only information identified by the Department as missing from the record related to these four calcium carbonate producers and one caustic soda producer is whether there are any CCP officials and organizations within these companies.
- The GOC provided business licenses, capital verification reports, Articles of Association, as well as corporate governance information including the names of general managers and directors for the aforementioned entities.
- The Company Law indicates that Chinese law prohibits government officials from participating in or holding positions in a Chinese company.
- The Civil Servant Law stipulates that a civil servant is prohibited from “undertaking or participating in any profit-making activity, or holding a concurrent post in an enterprise or any other profit- making organization.”
- The Department has even acknowledged that these laws indicate a lack of governmental control. For example, within the context of the Separate Rate Analysis, which the Department conducts in antidumping proceedings involving non-market economies (NMEs), the Department has stated that “we have analyzed the Company Law and have found it to establish sufficiently an absence of de jure control over privately owned companies in the PRC.”²³⁸
- The Department's AFA determination that the owners, members of the board of directors, and senior managers of the input producers at issue are CCP officials and that, therefore, these producers are government authorities is unlawful because such a finding disregards the evidence on the record that government officials are prohibited from holding these positions in a company.
- The producers' Articles of Association demonstrate that the Boards of Directors are elected and dismissed by the producers' respective shareholders and not by the government. Further, the Articles of Association do not articulate a way for the GOC to influence or participate in this election process, or how the GOC would otherwise control the directors and managers. Nor is there anything else on the record indicating such government control. Therefore, there is not substantial evidence on the record to support a finding that the presumed CCP membership of the directors and managers of these producers act on behalf of the GOC.

²³⁸ See Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Cut-to-Length Carbon Steel Plate from the People's Republic of China: Issues and Decisions Memorandum for the Final Results of Administrative Review,” (February 16, 2010) at Comment 2, on the record of A-570-849.

- Additionally, the Department improperly determined that majority-government owned caustic soda producers and SOEs that provided coal to respondents, are, by default, “authorities” within the meaning of section 771(5)(B) of the Act.
- The WTO Appellate Body in DS436 held that a public body is “an entity that possesses, exercises or is vested with governmental authority.” In addition, it also clarified that “the mere ownership or control over an entity by a government, without more, is not sufficient to establish that the entity is a public body.” Further, the WTO Appellate Body indicated that an entity should be evaluated on a case-by-case basis and that “the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority.”²³⁹
- The Department’s Public Body Memorandum appears to be essentially the same as the previous “majority ownership” analysis already rejected by the WTO Appellate Body. Namely, it appears that the Department is again applying a broad policy that considers majority government-owned entities to be “public bodies” by default without a case-specific analysis of whether entities “possess, exercise, or are vested with government authority.”

*Asia Symbol Companies’ Rebuttal Briefs*²⁴⁰

- In their rebuttal briefs, the Asia Symbol Companies state their agreement with the GOC’s arguments on this issue.

Petitioners’ Rebuttal Arguments

- Pursuant to section 782(i)(1) of the Act, the Department “shall verify all information relied upon in making a final determination in an investigation.” The Department has explained that it “is unable to rely on { } unverified information” in a final determination.²⁴¹ Pursuant to section 776(a) of the Act, the Department “shall . . . use the facts otherwise available in reaching “its final determination when an interested party “provides such information but the information cannot be verified as provided in section {782(i) of the Act}.” An adverse inference may be used where an “interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.”²⁴²
- In the initial questionnaire response, the Department asked the GOC to provide certain information regarding the presence of CCP officials and organizations within input suppliers that are wholly or partially owned by Chinese individuals or entities.²⁴³ The GOC refused to provide a response to the Department’s questions with respect to five producers.²⁴⁴ The Department gave the GOC a second opportunity to cooperate and

²³⁹ The GOC cites, *inter alia*, to Appellate Body Report, United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India, WT/DS436/AB/R (December 8, 2014) (DS436), paras. 4.10, 4.29, 4.37.

²⁴⁰ See Asia Symbol Companies Rebuttal Brief (December 14, 2015) at 9.

²⁴¹ See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Lined Paper Products from Indonesia, 71 FR 47171 (August 16, 2006) and accompanying IDM at Comment 8.

²⁴² See section 776(b) of the Act.

²⁴³ See GOC IQR at 47-51.

²⁴⁴ *Id.*

provide information regarding the presence of the CCP in certain input suppliers.²⁴⁵ The GOC again refused to submit the requested information and referred the Department to its initial questionnaire response.²⁴⁶

- In Drawn Sinks, as it did here, the GOC argued that the information was not relevant and that Chinese law prohibits the GOC officials from taking positions in private companies.²⁴⁷ The Department rejected the GOC’s arguments, found that it withheld information, and determined that the supplier was an authority as AFA.²⁴⁸ The Department has consistently determined that “the information requested regarding the role of CCP officials and CCP primary organizations in the management and operations of {input suppliers} is necessary to our determination of whether these producers are ‘authorities’ within the meaning of section 771(5)(B) of the Act.”²⁴⁹
- The Department has found that “CCP primary organizations in non-SOEs . . . carry out the Party’s . . . policies and guide and monitor the enterprise to comply with the nation's laws and regulations.”²⁵⁰ The Department has explained that “CCP primary organizations are not mere observers within these enterprises but active participants in the development of strategic and operational objectives of the enterprises with the intent on expanding the CCP’s presence within the enterprise.”²⁵¹ The GOC’s argument also is contradicted by the recent decision of the United States Court of International Trade.²⁵²
- In ADM v. United States, the Court explained that the GOC “failed to provide ownership information for the companies producing and supplying sulfuric acid and steam coal.”²⁵³ The Court explained that the missing information regarding the CCP “would have allowed Commerce to determine whether these producers were ‘authorities’ within the meaning of section 771(5)(B) of the Act.”²⁵⁴ Although the question before the Court in that case was whether, “in a countervailing duty proceeding, the application of AFA to a non-cooperating party may adversely impact a cooperating party” (the Court ruled in the affirmative), ADM v. United States is still instructive. The Court explained the “previously articulated pattern that ‘{t}ypically, foreign governments are in the best position to provide information regarding the administrative of their alleged subsidy program ... {and}’ in cases “{w}here the foreign government fails to act to the best of its ability, Commerce will usually find that the government has provided a financial contribution to a specific industry.”²⁵⁵
- The GOC’s argument that simultaneous service as both a government official and a company senior employee would violate Chinese law is unpersuasive. The Department

²⁴⁵ See GOC 1SQR at 5.

²⁴⁶ Id.

²⁴⁷ See Drawn Stainless Steel Sinks From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission in Part; 2012-2013, 80 FR 69638 (November 10, 2015) (Drawn Sinks) and accompanying IDM at 8.

²⁴⁸ Id.

²⁴⁹ See 2013 Citric Acid Review and accompanying IDM at 8. See also 2012 Citric Acid Review and accompanying IDM at “Use of Facts Otherwise Available and Adverse Inferences” and “GOC - Calcium Carbonate and Caustic Soda are Government ‘Authorities.’”

²⁵⁰ See 2012 Citric Acid Review and accompanying IDM at 39.

²⁵¹ Id., at 39.

²⁵² See Archer Daniels Midland Co. v. United States, 917 F. Supp. 2d 1331 (CIT 2013) (ADM v. United States).

²⁵³ Id., at 1337.

²⁵⁴ Id.

²⁵⁵ Id., citing Essar Steel Ltd v. United States, 721 F. Supp. 2d 1285, 1297 (CIT 2010).

has made clear that this “argument, however, is contradicted by the Department’s finding in a past proceeding that CCP officials can, in fact, serve as owners, members of the board of directors, or senior managers of companies.”²⁵⁶

- The GOC did not report that no CCP primary organizations or CCP officials were present in the five input suppliers.²⁵⁷ As the record stands, there is no evidence demonstrating the lack of CCP presence within the five suppliers. The GOC failed to provide any information about the CCP with respect to the five producers’ individual owners, board members, or senior managers.
- The GOC’s withholding of necessary information that was requested of it led the Department to rely on AFA in conducting its analysis of certain input suppliers.²⁵⁸ The GOC provided incomplete responses to multiple questionnaires and adverse inferences are warranted in the application of AFA. The Department should continue to find that CCP officials are present in the five input suppliers as individual owners, managers, and members of the boards of directors, and that this gives the CCP, as the government, meaningful control over the companies and their resources.²⁵⁹ Because an entity with significant CCP presence on its board or in management or in party committees may be controlled such that it is vested with governmental authority, the Department should continue to find that the five input suppliers are “authorities” within the meaning of section 771(5)(B) of the Act.²⁶⁰
- In its questionnaire, the Department “notified the GOC that the Department generally treats producers that are majority owned by the government or a government entity as controlled by the government and, hence, as ‘authorities’ within the meaning of section 771(5)(B) of the Act.”²⁶¹ The GOC did not challenge the Department’s “authority” practice for enterprises that are majority owned by the government or a government entity in its questionnaire response, and the Department preliminarily determined that such majority government owned suppliers were authorities.²⁶² Contrary to the GOC’s argument, the Department’s preliminary determination to treat majority state-owned input suppliers as authorities is consistent with the Department’s practice. As explained in the Public Body Memorandum, producers in the PRC that are majority-owned by the government possess, exercise, or are vested with governmental authority.²⁶³ The Department has consistently determined that the GOC exercises meaningful control over majority state-owned entities and “uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of

²⁵⁶ See Citric Acid and Certain Citrate Salts from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2011, 78 FR 34648 (June 10, 2013) and accompanying Preliminary Decision Memorandum at 6 (stating that “The GOC’s argument, however, is contradicted by the Department’s finding in a past proceeding that CCP officials can, in fact, serve as owners, members of the board of directors, or senior managers of companies.”) (internal citation omitted).

²⁵⁷ See GOC IQR at 47-51.

²⁵⁸ See Preliminary Determination Memorandum at 8.

²⁵⁹ Id.

²⁶⁰ Id.

²⁶¹ See Preliminary Determination Memorandum at 16.

²⁶² Id.

²⁶³ See Additional Documents for Prelim Memorandum at Attachment II.

the state sector.”²⁶⁴ The Department’s Preliminary Determination should remain unchanged.

Department’s Position: We continue to find companies that supplied the Asia Symbol Companies with inputs, specifically certain calcium carbonate, caustic soda, and coal producers, are “authorities” within the meaning of section 771(5)(B) of the Act.

As explained in the Preliminary Determination, in order to do a complete analysis of whether producers of inputs are “authorities” within the meaning of section 771(5)(B) of the Act, we sought information regarding whether any individual owners, board members, or senior managers were government or CCP officials and the role of any CCP primary organization within the companies.²⁶⁵ Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or otherwise influenced by certain entities, the Department requested information regarding the means by which the GOC may exercise control over company operations and other CCP-related information.²⁶⁶ The Department explained its understanding of the CCP’s involvement in the PRC’s economic and political structure in the current and past PRC CVD proceedings, including why it considers the information regarding the CCP’s involvement in the PRC’s economic and political structure to be relevant.

Despite the importance of the information requested in the Input Producer Appendix, the GOC provided none of the requested information with regard to CCP officials and CCP primary organizations. For certain calcium carbonate and caustic soda producers that are privately owned, the GOC stated that there is no central informational database, and therefore it cannot obtain the information requested by the Department.²⁶⁷ Instead, the GOC argued that pursuant to the Civil Servant Law, government officials cannot serve as owners, members of the board of directors, or managers of the input producer without violating the law. It further stated that the Department’s CCP questions are not relevant “to determining questions regarding ‘public body’ or ‘government control.’”²⁶⁸

Contrary to the GOC’s assertions and objections to our questions, it is the prerogative of the Department, not the GOC, to determine what information is relevant to our analysis.²⁶⁹ As noted, the Department considers information regarding the CCP’s involvement in the PRC’s economic and political structure to be essential because public information demonstrates that the CCP may exert significant control over activities in the PRC.²⁷⁰ The CCP Memorandum and

²⁶⁴ See 2013 Citric Acid Review and accompanying IDM at 17.

²⁶⁵ See Preliminary Determination at 16.

²⁶⁶ See Department’s Initial Questionnaire at the Input Producer Appendix.

²⁶⁷ See GOC IQR at 51 and 68.

²⁶⁸ Id.

²⁶⁹ See NSK, Ltd. v. United States, 919 F. Supp. 442, 447 (CIT 1996) (“NSK’s assertion that the information it submitted to Commerce provided a sufficient representation of NSK’s cost of manufacturing misses the point that ‘it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.’”); see, e.g., Ansaldo Componenti, S.p.A. v. United States, 628 F. Supp. 198, 205 (CIT 1986) (stating that “{i}t is Commerce, not the respondent, that determines what information is to be provided”).

²⁷⁰ See Additional Documents Memorandum, which includes Public Body Memorandum; and its attachment CCP Memorandum.

Public Body Memorandum support the Department’s determination that CCP membership is relevant to companies—including private companies—in the PRC.²⁷¹

Specifically, the Department has determined that “available information and record evidence indicates that the CCP meets the definition of the term ‘government’ for the limited purpose of applying the U.S. CVD law to China.”²⁷² Further, publicly available information indicates that Chinese law requires the establishment of CCP organizations “in all companies, whether state, private, domestic, or foreign-invested” and that such organizations may wield a controlling influence in the company’s affairs.²⁷³

In the 2012 Citric Acid Review, the Department rejected the GOC’s assertion that it cannot obtain information on CCP officials and CCP organization. In that proceeding, the GOC provided official government documentation, i.e., stamped originals of election notification from the CCP Committee of Lijiaxiang Town, that the owner of two input producers did not serve as Secretary for the Party Committee of Liujiadu Village in the PRC during the POR and that the village does not geographically overlap with the locations of the producers’ operations.²⁷⁴ Because in this proceeding the GOC did not provide the information we requested regarding this issue, we have no basis to revise the Department’s AFA finding that certain calcium carbonate and caustic soda producers are “authorities” within the meaning of section 771(5)(B) of the Act.

Similarly, the Department’s evaluation of the Company Law in the context of separate rate analyses in AD proceedings does not evince a lack of state control here. As explained in 2010/12 Aluminum Extrusions from the PRC, AD PRC proceedings are separate and distinct from CVD PRC proceedings with the application of different analyses and methodologies.²⁷⁵ As such, the Department’s finding in an AD review is not germane to this investigation.

Finally, we disagree with the GOC’s assertion that our “authorities” analysis for the majority-government owned caustic soda producers and SOE coal producers was based solely on state ownership. Rather, as explained in the Public Body Memorandum, we found that majority SOEs in the PRC possess, exercise, or are vested with governmental authority.²⁷⁶ Our finding is based on the GOC exercising meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.²⁷⁷ Therefore, we continue to determine that these entities are “authorities” within the meaning of section 771(5)(B) of the Act, and that the respondent companies received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act. Further, the GOC has not placed information on the record that contradicts our findings in the Public Body Memorandum.

²⁷¹ See CCP Memorandum; Public Body Memorandum; Drawn Sinks and accompanying IDM at Comment 1.

²⁷² Id., at CCP Memorandum at 33.

²⁷³ Id., at Public Body Memorandum at 35-36, and sources cited therein.

²⁷⁴ See 2012 Citric Acid Review and accompanying IDM at Comment 2.

²⁷⁵ See Aluminum Extrusions from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12, 79 FR 96 (January 2, 2014) (2010/12 Aluminum Extrusions from the PRC) and accompanying IDM at Comment 4

²⁷⁶ See Public Bodies Memorandum at 11–37.

²⁷⁷ Id.

COMMENT 2: Whether to Reverse the Department’s Specificity Determination for the Provision of Calcium Carbonate and Caustic Soda for LTAR

GOC’s Arguments

- The Department’s application of AFA and conclusion that the provision of calcium carbonate and caustic soda are specific are unlawful because (a) the GOC complied to the best of its abilities and, therefore, an AFA finding is not appropriate, and (b) evidence on the record demonstrates that these alleged programs are not specific and, therefore, the Department cannot apply AFA to find otherwise.
- The GOC reported that SSB does not maintain consumption data for calcium carbonate and the consumption data the GOC placed on the record was “estimated on the base of the best estimates of the attendants at {the China Inorganic Salts Industry Association’s} annual conference and the experts engaged in the calcium carbonate industry.” The China Inorganic Salts Industry Association (CISIA) is an industry association that includes producers of calcium carbonate.
- Similarly for caustic soda, the GOC placed data from the China Chlor-Alkali Industry Association (CCAIA), an association whose members include the caustic soda industry.
- The GOC cannot withhold information that it does not have, and the Department cannot penalize the GOC for not providing it.²⁷⁸
- In its Preliminary Determination, the Department claims its application of AFA to its specificity finding with respect to calcium carbonate and caustic soda for LTAR is supported by its findings in the 2011 Citric Acid Review and 2012 Citric Acid Review. In the 2011 Citric Acid Review, the Department found the GOC failed to act to the best of its ability because it limited its responses to...data collected by the SSB.”²⁷⁹ The Department’s refusal to accept the exact information the Department itself proposed as a cure for a deficient response is punitive.
- Evidence on the record indicates that the paper making industry is not the primary user of either calcium carbonate or caustic soda. The record evidence shows that numerous industries and sectors in China consume calcium carbonate.²⁸⁰ The papermaking industry is not the primary user of calcium carbonate, and the percentage consumption of the paper industry is similar to the usage by other segments.²⁸¹ The evidence that the GOC placed on the record shows that calcium carbonate has a variety of industrial applications, including adhesives and sealants, building products, and water treatment, among many others.²⁸² Further, the industry data on the record demonstrates that caustic soda is

²⁷⁸ See Olympic Adhesives, Inc. v. United States, 899 F.2d 1565, 1572 (Fed. Cir. 1990) (while Commerce has broad discretion in applying an adverse inference, it may not “characterize a party’s failure to list and give details of sales as a ‘refusal’ or ‘inability’ to give an answer where, in fact, there are no sales.”); AK Steel Corp. v. United States, 21 CIT 1204, 1223 (1997) (“Commerce may not, as plaintiffs argue, characterize a party’s failure to provide information that does not exist as a ‘refusal’ to provide data”); NSK Ltd. v. United States, 416 F. Supp. 2d 1334, 1341(CIT 2006) (finding Commerce’s application of facts available unlawful and “punitive” when a party “stated that it is reporting its adjustments to the best of its ability” and there is “no factual showing that {it} is able to produce more specific data on the particular allocation of its billing adjustments”).

²⁷⁹ See 2011 Citric Acid Review and accompanying IDM at Comment 4.

²⁸⁰ See GOC IQR at 59.

²⁸¹ Id.

²⁸² Id., at 58 and Exhibit 30.

widely used in the Chinese economy and that consumption of caustic soda by the papermaking industry is much lower than several other industries.²⁸³

Petitioners' Rebuttal Arguments

- The GOC did not act to the best of its ability because it only provided to the Department estimated calcium carbonate and caustic soda information from non-government entities, which could not be verified.
- Regarding calcium carbonate, the GOC provided the purported percentage of consumption of calcium carbonate by industry during 2012 and 2013, but failed to provide 2014, POI data.²⁸⁴
- For calcium carbonate and caustic soda, the consumption information the GOC provided did not have any documentary support.²⁸⁵ For each input, the Department provided the GOC with a second opportunity to provide the requested information and substantiate the reported information with actual documentation. The GOC responded that the consumption data were estimates based on information from each respective industry association.²⁸⁶ Those estimates were based on the knowledge of persons that chose to attend the CISIA's annual conference and the best estimates of the experienced experts engaged in the caustic soda industry.²⁸⁷
- The GOC failed to provide any documentation to support the estimates of the individuals that chose to attend a conference hosted by the CISIA and the experts engaged in the caustic soda industry.²⁸⁸
- The Department appropriately determined that "the 'estimated' consumption information submitted by the GOC, is not verifiable and therefore unreliable."²⁸⁹ The Department's AFA specificity determination with respect to calcium carbonate and caustic soda is consistent with its past practice. In 2012 Citric Acid Review, the GOC similarly provided estimated data for the caustic soda industry.²⁹⁰ In that case, the Department determined that the provision of caustic soda was specific based on AFA and found that "assertions { } based on data that was not documented and is therefore unverifiable."²⁹¹ In other cases, the Department determined that information based on estimates without supporting documentation is not verifiable.²⁹² The record in this review shows that the GOC failed to put forth anywhere near its maximum effort to respond to the Department's requests. The Department made the GOC aware of this fact and issued supplemental questionnaires. The Department appropriately determined that the GOC "withheld necessary information with regards to the volume and value data corresponding to each of the industries that consumed calcium carbonate and caustic soda that was requested of it and, thus, that the Department must rely on 'facts available' in

²⁸³ See GOC IQR at 76.

²⁸⁴ *Id.*, at 59.

²⁸⁵ *Id.*, and GOC 1SQR at 1-2.

²⁸⁶ See GOC 1SQR at 1 – 2 and 9.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ See Preliminary Determination Memorandum at 15.

²⁹⁰ See 2012 Citric Acid Review and accompanying IDM at Comment 5.

²⁹¹ *Id.*

²⁹² See Certain Forged Stainless Steel Flanges From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 42005 (July 16, 2003) and accompanying IDM at Comment 2.

making our preliminary determination.”²⁹³ The GOC’s conduct shows that the Department correctly determined that “the GOC has failed to cooperate by not acting to the best of its ability to comply with” the Department’s requests for information.²⁹⁴ The consequence for such conduct is that “an adverse inference is warranted in the application of facts available,” and the Department found that “the GOC’s provision of calcium carbonate and caustic soda to paper producers is specific within the meaning of section 771(5A) of the Act.”²⁹⁵ The Department appropriately applied AFA to determine that the provision of calcium carbonate and caustic soda to paper producers for LTAR is specific and should continue to do so in the final determination.

Department’s Position: The GOC indicated that it did not maintain statistics on consumption by the relevant chemical sectors, but in conjunction with the CISIA and CCAIA provided, respectively, calcium carbonate and caustic soda industry consumption information.²⁹⁶ The Department requested supporting documentation for the reported data but the GOC responded that there is “no supporting documentation provided by the CISIA” and “the percentages of caustic soda consumed by each industry sector was estimated based on the best estimates of the experienced experts engaged in the caustic soda industry.”²⁹⁷

The Department requested this information because for verification purposes, the Department must be able to test books and records in order to assess whether the questionnaire responses are complete and accurate, which means that we need to tie information to internal documentation—e.g., surveys, phone records, or databases.²⁹⁸ The CISIA’s Article of Association states it, “conduct{s} deep survey and research on the hot issues of the industrial development;”²⁹⁹ “collect{s}, organize and analyze statistic information for the development and key products of domestic and foreign inorganic products; to conduct industry statistics upon the authorization; and to provide the basis for the government on making industrial policy and service for enterprises on business determination through improving the monitor and analysis of industrial economic operation; ” and “to enhance the construction and management of industrial media like CISIA website, journals, etc., and to hold{ } various technology lectures and training course.”³⁰⁰ The CCAIA’s Article of Association states its business scope is, “{t}o organize and initiate members of researching into the development program, strategies, major technical and economic policies, and issues on production and operation for chlor- alkali industry and suggesting to relevant government departments through analysis on national development policies and international and domestic market trends;” “to conduct industry consulting and examining services, to compose, publish and issue journal of the Association, books and reference materials in accordance with relevant regulations;” and “to establish authoritative information release platform of the industry and to provide high-quality service for the industry and upstream and downstream customers under the fully utilization of {CCAIA} website.”³⁰¹

²⁹³ See Preliminary Determination Memorandum at 15 – 16.

²⁹⁴ Id.

²⁹⁵ Id.

²⁹⁶ See GOC IQR at 59 and 76, GOC 1SQR at 3 and 8.

²⁹⁷ See GOC 1SQR at 2 and 9.

²⁹⁸ See section 782(i)(1) of the Act.

²⁹⁹ See GOC IQR at Exhibit 28 – CISIA’s Article of Association – Chapter II, Article 6

³⁰⁰ Id.

³⁰¹ Id., at Exhibit 38 – CCAIA’s Article of Association – Chapter II, Article 6.

We do not agree with the GOC that AFA is inappropriate here. It was the GOC itself that submitted consumption information from the CISIA and the CCAIA. Further, as noted above, the Articles of Association of the CISIA and the CCAIA state that the two organizations provide statistical analysis for use by the GOC, thereby indicating a level of integration and cooperation between the industry associations and the GOC.

Thus, we disagree with the GOC that the Department's request for information that corroborated the consumption data from the CISIA and CCAIA constituted a demand for information that was not at the disposal of the GOC. Further, because the GOC did not provide the source information we requested, we find that the GOC provided information that we could not verify, within the meaning of section 776(a)(2)(D) of the Act. Moreover, it failed to cooperate by not acting to the best of its ability, because it provided unverifiable information. The Department cannot make its determination on this issue based on unsupported assurances by industry association officials. Therefore, as stated above in the section "Application of Facts Available and Adverse Inferences," the Department determines that AFA is warranted in determining the provision of caustic soda for LTAR is specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

COMMENT 3: Whether to Reverse the Department's Market Distortion Determination

GOC's Arguments

- The GOC stated in its responses that it did not collect the industry volume and value information requested by the Department and did not maintain the ownership information for calcium carbonate, caustic soda, and coal producers required to gather such industry information, yet the Department applied AFA {to calcium carbonate and coal} because it insisted that the GOC collected and maintained additional information that would better respond to the Department's request.³⁰²
- The Department relied on its verification report from "a previous investigation" conducted over six years ago involving a completely different industry and completely different producers. In that proceeding, the Department determined that "{t}he GOC is able to utilize the SAIC database which indicates the type of enterprise, e.g., solely-state owned, in conjunction with information from the industry association to determine the number and ownership of calcium carbonate and coal producers."³⁰³
- This statement is purely speculative and has no relation to this investigation into uncoated paper. The databases at issue in OCTG PRC Investigation, however, involved regional databases maintained and used by the Jiangsu Province and Tianjin Municipality, two regions that have no relation to this proceeding.³⁰⁴ Further, although the Department was able to find certain business records of a few steel companies in those databases, there was no indication in the verification report of that proceeding that records relating to the calcium carbonate, caustic soda, or coal producers were contained in those databases. Therefore, the Department's reliance here on that case to indicate that the GOC collects

³⁰² See Preliminary Determination at 14.

³⁰³ Id.

³⁰⁴ See Additional Documents for Prelim Memorandum at Attachment I containing OCTG PRC Investigation Verification Report at 2 and 4.

and maintains information on the ownership, production, and consumption of these producers and products is unfounded.

- The record evidence in this proceeding does show, however, that the GOC does not know the ownership status of the calcium carbonate producers.³⁰⁵ Therefore, the Department's reliance on the record of another completely unrelated investigation to support an AFA finding is not based on substantial evidence and is unlawful. The Department has no evidence on the record of this proceeding that the GOC maintains such a database. Instead, the only record evidence indicates that the GOC did not maintain this information so could not have provided it. Therefore, as the GOC did not withhold information and did cooperate to the best of its ability, the Department should not rely in its final determination on an AFA finding that PRC prices from actual transactions involving Chinese buyers and sellers are significantly distorted.
- With regard to caustic soda, distortion of the market cannot simply be presumed based on the level of government participation in the market.³⁰⁶ In order to use benchmarks from markets outside the country under evaluation, the SCM requires a finding that the in-country benchmark is too distorted to be reliable: "Article 14(d) requires an analysis of the market in the country of provision to determine whether particular in country prices can be relied upon in arriving at a proper benchmark."³⁰⁷ Further, the WTO Appellate Body has determined that "... the distortion of in country prices must be established on the basis of the particular facts underlying each countervailing duty investigation," and, further, "an investigating authority cannot, based simply on a finding that the government is the predominant supplier of the relevant goods, refuse to consider evidence relating to factors other than government market share."³⁰⁸ The United States has recognized that it must comply with this proceeding.³⁰⁹ In other words, a finding that a market is distorted must be based on an analysis of that the specific market and cannot be based solely on a finding that the government is the predominant supplier in the market. By requesting information only to determine "whether the GOC is the predominant provider of these inputs in the PRC," the focus of the Department's questions avoids an actual evaluation of the market and thus the basic premise of its analysis is unlawful.³¹⁰
- The Department simply cannot resort to a tier-two benchmark under 19 CFR 351.511(a)(2)(ii) solely because of the government's involvement in the industry.³¹¹ Therefore, the Department's application of the tier-two benchmarks is unlawful and its determination is unsubstantiated by the evidence on the record and is counter to its international obligations and U.S. law. In the final determination, the Department should

³⁰⁵ See GOC IQR at 56-57 and GOC ISQR at 4-6.

³⁰⁶ See Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States, 61 F. Supp. 3d 1306, 1331, 1331 fn.24 (CIT 2015) ("The Preamble allows for the possibility of a level of 'minimal' distortion even where there is 'substantial portion' government involvement {S}imply inquiring whether the portion or share of a government's market involvement is 'substantial' would not, necessarily, answer whether that involvement is 'substantially', in the sense of 'substantively', distortive, as the Preamble itself implies.").

³⁰⁷ See Appellate Body Report, United States – Countervailing Measures on Certain Products from China (DS437) at 4.49.

³⁰⁸ Id., at 4.51, 4.95.

³⁰⁹ See Notice of Commencement of Compliance Proceedings Pursuant to Section 129 of the Uruguay Round Agreements Act, 80 FR 23254 ("On February 13, 2015, the United States informed the DSB that the United States intends to implement the DSB's recommendations and rulings in WTOIDS437.").

³¹⁰ See Preliminary Determination Memorandum at 14.

³¹¹ See DS437 at 4.51, 4.95.

conclude that prices for transactions involving private entities are not distorted by GOC involvement in the market and use these prices as a tier-one benchmark.

Petitioners' Rebuttal Arguments

- As recognized by the Department, the GOC maintains databases that include the business registration information for all companies.³¹² Moreover, the Department has recognized that the Law of the People's Republic of China on State-owned Assets of Enterprises, which applies to all enterprises with state investment regardless of the level of ownership, requires that all state-invested enterprises must be in line with state industrial policies.³¹³ The GOC's assertions regarding its knowledge of the Chinese economy and the state-ownership therein are simply not based in fact. The Department appropriately rejected these assertions and correctly determined in the Preliminary Determination that the GOC withheld information.³¹⁴
- The Department's consistent practice is to find domestic prices distorted where the GOC maintains ownership levels at or above 50 percent.³¹⁵ Moreover, even where the government provides "a substantial portion" of the market for a good, prices for such goods may be considered significantly distorted.³¹⁶
- The GOC also supports its arguments with respect to caustic soda by citing WTO decisions.³¹⁷ The Department should reject these arguments, because WTO decisions have no direct and automatic effect under U.S. Law.³¹⁸
- Accordingly, the Department's preliminary determination that domestic prices in China's calcium carbonate, coal, and caustic soda industries are distorted should remain unchanged in the final determination. The Department should continue to use tier-two, out-of-country benchmarks to measure the adequacy of remuneration paid by the Asia Symbol Companies.

Department's Position: We disagree with the GOC's assertion that the Department's application of AFA to find the calcium carbonate and coal markets are distorted is unsupported by the record and unlawful. The GOC asserts the Department's reliance on the OCTG from the PRC Investigation verification report, which is on the record of this investigation,³¹⁹ is speculative and has no relation to the investigation of uncoated paper. Information provided by the GOC contradicts its own statement. The GOC was able to provide the ownership information of the Asia Symbol Companies' calcium carbonate and coal suppliers by submitting printouts from a publicly accessible online database of {a} registering authority, i.e., SAIC.³²⁰ These producers are located in various provinces which indicate that it is a national database and

³¹² See Preliminary Determination Memorandum at 14.

³¹³ See Additional Documents for the Preliminary Determination at Attachment II.

³¹⁴ See Preliminary Determination Memorandum at 14 – 15.

³¹⁵ See Drawn Sinks and accompanying IDM at Comment 4.

³¹⁶ Id., citing CVD Preamble, 63 FR 65348, 65377.

³¹⁷ See GOC Brief at 22 – 24.

³¹⁸ See Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-1349 (Federal Cir. 2005); Corus Staal BV v. Department of Commerce, 502 F.3d 1370, 1375 (Federal Cir. 2007); and NSK Ltd. v. United States, 510F.3d 1375, 1380 (Federal Cir. 2007).

³¹⁹ See Additional Documents for Prelim Memorandum at Attachment I containing OCTG PRC Investigation Verification Report.

³²⁰ See GOC IQR at 43 and 82 and Exhibits 24 and 40.

is not limited to Jiangsu Province and Tianjin Municipality as the GOC suggests.³²¹ As explained above in the “Use of Fact Otherwise Available and Adverse Inferences” section, the GOC is able to utilize the SAIC database which indicates the type of enterprise, e.g., solely-state owned, in conjunction with information from the industry association to determine the number and ownership of calcium carbonate and coal producers in which the government maintains an ownership or management interest either directly or through other government entities.³²² Thus, we determine that the GOC withheld necessary information that was requested of it and, thus, that the Department must rely on “facts available” in making our final determination.³²³ Further, we find that the GOC failed to cooperate to the best of its ability, and therefore an adverse inference is warranted. In drawing an adverse inference, we find that PRC prices from actual transactions involving Chinese buyers and sellers are significantly distorted by the involvement of the GOC.³²⁴

We are continuing to find distortion in the calcium carbonate, caustic soda and coal industry due to the government presence in the market. As discussed in the Preliminary Determination, when identifying the appropriate benchmark for measuring a benefit in an LTAR program, the Department’s preference, as the GOC correctly observes, is to use market prices from actual transactions within the country under investigation (i.e., tier-one benchmarks). As such, the Department’s preference would be to use prices from private producers within the country if information on such prices is available. However, where we find that the government provides the majority, or a substantial portion of the market for a good, prices for such goods in the country may be considered significantly distorted by the government’s presence in that market and may not be an appropriate basis of comparison for measuring the adequacy of remuneration.³²⁵ Therefore, we find that the use of an external benchmark is warranted for calculating the benefit for the provision of calcium carbonate and coal for LTAR.

We continue to find the caustic soda industry with substantial government ownership of domestic production, i.e., 56, 53, and 50 percent for 2012, 2013, and 2014 respectively, and import penetration is less than 0.1 percent in 2014³²⁶ as evidence that the market is distorted by the government’s presence.³²⁷ Given that Chinese state-owned enterprises were responsible for such a large percentage of domestic production volume, as reflected in their share of gross industry revenue, we preliminarily found, and continue to find, that it is reasonable to conclude that actual transaction prices are significantly distorted and thus not suitable as market benchmarks, such that the use of private producer prices in the PRC would be akin to comparing the benchmark to itself (i.e., a benchmark would reflect the distortions of the government presence).³²⁸ As such, there is no basis to apply a tier-one benchmark for caustic soda and we continue to rely on a tier two benchmark for caustic soda for the final determination.

³²¹ Id.

³²² See GOC IQR at 56, 87 and Exhibit 34.

³²³ See section 776(a)(2)(A) of the Act.

³²⁴ See CVD Preamble.

³²⁵ Id., 63 FR at 65377.

³²⁶ See GOC 1SQR at 9 and Exhibit 54.

³²⁷ See also Softwood Lumber from Canada, and accompanying IDM at “Market-Based Benchmark.”

³²⁸ See CVD Preamble, 63 FR at 65377. With respect to the GOC’s arguments relying on the WTO Appellate Body report in DS 437, we agree with Petitioners that this decision has no direct or immediate effect under U.S. law. See, e.g., Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-1349 (Federal Cir. 2005). Furthermore, the

COMMENT 4: Whether to Exclude Policy Loan Observation 95 from the Final Determination Calculations

Asia Symbols Companies' Arguments

- Loan observation 95 should not be included in the calculation for countervailing Policy Loans to the Paper Industry.
- While AS Guangdong prepaid interest on that loan on December 17, 2014, the interest and principal were not due until 2015.
- The Department should not include that interest payment in its calculation because AS Guangdong should not be penalized for pre-paying interest.

Petitioners' Rebuttal Arguments

- The statute provides that a benefit is conferred when there is a difference between amount the recipient pays and the amount the recipient would have paid on a comparable commercial loan.³²⁹ The Asia Symbol Companies received a benefit at the time it paid the interest (during the POI), because it paid interest at a rate lower than the market otherwise required.³³⁰ Accordingly, the Department should continue to include policy loan observation 95 in its final benefit calculations.

Department's Position: We disagree with the Asia Symbol Companies. In the Preliminary Determination, we determined that the Asia Symbol Companies' policy loans from SOCBs to constitute a financial contribution under section 771(5)(D)(i) of the Act.³³¹ Pursuant to 19 CFR 351.505(a)(1) and section 771(5)(E)(ii) of the Act, the benefit conferred is the difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable loan. Therefore, we find that all interest payments made during the POI, regardless of whether it was a prepayment, are countervailable.

COMMENT 5: Whether to Include Surcharges in International Freight Calculations for Calcium Carbonate and Caustic Soda LTAR Benchmarks

Asia Symbols Companies' Arguments

- The record does not support the inclusion of special charges for the shipment of calcium carbonate and caustic soda.
- The Department preliminarily determined that there is sufficient information on the record to conclude that transporting calcium carbonate would incur "special equipment service" delivery charges and that transporting caustic soda would incur a "dangerous cargo service" delivery charge.
- The Department's decision to include additional/extraordinary shipping charges is based on the facts in Exhibit 3 of Petitioners' Second Benchmark submission, which consists of

Department is currently conducting a proceeding to bring the decisions challenged in that WTO dispute into conformity with the WTO Dispute Settlement Body's recommendations and rulings. See Notice of Commencement of Compliance Proceeding Pursuant to Section 129 of the Uruguay Round Agreements Act, 80 FR 23254 (Apr. 27, 2015).

³²⁹ See section 771(5)(E) of the Act.

³³⁰ See Preliminary Determination Memorandum at 12.

³³¹ *Id.*, at 24

three pieces of evidence: (1) a product introduction sheet by a Chinese manufacturer of large plastic bags for calcium carbonate; (2) a one-page document issued by Nutrient Source Specifics related to the production, chemical properties and end-use applications, of calcium carbonate; and (3) the specifications of various types of containers published by Maersk Line.

- None of these sources in Exhibit 3 provide any information regarding the shipment of caustic soda, let alone whether the “dangerous cargo service” delivery charge is incurred. Exhibit 3 does not indicate that shipping calcium carbonate in large plastic bags requires “special equipment service” for loading or transport. Therefore, the Department should not include those extraordinary charges in the benchmark calculation.
- Neither of these special charges is incurred in the shipment of calcium carbonate and caustic soda; therefore, the Department should include the Asia Symbol’s international freight benchmark data in calculating the benchmark for these two inputs.

Petitioners’ Arguments

- The Department should reject the Asia Symbol Companies’ arguments, because the international freight rates suggested by Petitioners are supported by record evidence and Department precedent. Petitioners included freight rates for calcium carbonate that utilize flat-rack containers, which include certain equipment charges.³³² The brochure clearly states that these types of containers are used for “heavy cargo.”³³³ In another proceeding in which the Department examined the calcium carbonate market, it has verified that calcium carbonate is “heavy.”³³⁴ Given that specialized containers are required to ship “heavy cargo,” the use of flat-rack containers in the international freight calculation is justified.
- For caustic soda, Petitioners’ freight rates include a dangerous cargo service charge.³³⁵ Petitioners placed on the record information demonstrating that Maersk assesses a “dangerous cargo service charge” to transport volatile chemicals such as caustic soda (i.e., UN ID Num=UN1823; UN Hazard Class=8).³³⁶ The United Nations Hazard Class 8 means that caustic soda poses a “severe” health hazard. The information provided by Petitioners makes clear that caustic soda is a hazardous material that “may react violently when exposed to water producing extreme heat and spattering.”³³⁷
- Consistent with 19 CFR 351.511(a)(2)(iv) and Department precedent, the Department should continue to use the hazardous shipping charges in calculating the Asia Symbol Companies’ international freight shipping charges for caustic soda.³³⁸

Department’s Position: As explained in 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration using a tier-one or tier-two benchmark pursuant to 19 CFR

³³² See Petitioners’ Second Benchmark Information at Exhibit 3 (first page) showing calcium carbonate being loaded onto a flat-rack container.

³³³ *Id.*, at Exhibit 3 (last page).

³³⁴ See Citric Acid PRC Investigation and accompanying IDM at 19.

³³⁵ See Petitioners’ Second Benchmark Information at Exhibit 5.

³³⁶ *Id.*, at Exhibit 6 and 7.

³³⁷ *Id.*, at Exhibit 7.

³³⁸ See 19 CFR 351.511 (a)(2)(iv) (The Department “. . . will adjust the comparison price to reflect the price a firm actually paid or would pay if it imported the product.”). See also 2012 Citric Acid Review and accompanying IDM at Comment 12.

351.511(a)(2)(i) or (ii), respectively, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. We find that the evidence Petitioners provided leads to a reasonable conclusion that calcium carbonate may be shipped using flat rack containers, which would incur a “special equipment service” charge, and that caustic soda is a hazardous chemical that would incur a “dangerous cargo service” charge.³³⁹ Contrary to the Asia Symbol Companies’ assertion, record evidence indicates that calcium carbonate is the type of “heavy” cargo that requires flat-rack containers,³⁴⁰ and that caustic soda qualifies as a hazardous material that poses “severe” health hazards.³⁴¹

In OCTG from the PRC Investigation, there was information on the record to demonstrate that the respondents did not incur surcharges when shipping the products at issue.³⁴² In contrast, we have no information on the record that the “special equipment service” and “dangerous cargo service” fees included in the submitted benchmark freight data are not required for calcium carbonate or caustic soda, respectively. Therefore, as in prior investigations, we continue to use the international freight pricing data in the Preliminary Determination because it best accurately reflects the Asia Symbol Companies’ purchases.³⁴³

COMMENT 6: Whether to Incorporate the Minor Corrections into the Final Calculations

Asia Symbols Companies’ Arguments

- The minor corrections provided to the Department during the on-site verifications,³⁴⁴ as described in the Asia Symbol Companies Verification Report, should be incorporated in the final determination.

Petitioners did not provide comments on this issue.

Department’s Position: The Department will incorporate the minor correction collected at verification into the calculations for the final determination.³⁴⁵

³³⁹ See Petitioners’ First Benchmark Submission at Exhibits 2 through 7.

³⁴⁰ *Id.*, at Exhibit 3 (last page); see also Citric Acid PRC Investigation and accompanying IDM at 19.

³⁴¹ *Id.*, at Exhibit 7.

³⁴² 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) (OCTG from the PRC Investigation), and accompanying IDM at Comment 13D.

³⁴³ 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) (Seamless Pipe from the PRC), and the accompanying IDM at Comment 20; OCTG from the PRC Investigation and accompanying IDM at Comment 13D; and 2013 Citric Acid Review and accompanying IDM at Comments 6 and 7.

³⁴⁴ See Asia Symbol Companies Verification Report at 2 – 3.

³⁴⁵ See Final Calculations Memorandum.

COMMENT 7: Whether to Revise the Provision of Coal for LTAR Benchmark

Petitioners' Arguments

- The Department should revise the coal benchmark used to calculate the Asia Symbol Companies' subsidy rate. In its initial questionnaire, AS Shandong reported that it consumed coal classifiable under HTS number 2701.19.00;³⁴⁶ however, record evidence demonstrates that AS Shandong and AS Guangdong consume more costly bituminous coal in the production of electricity because it has a higher thermal content.³⁴⁷
- In the Asia Symbol Companies' third questionnaire response, AS Guangdong reported that it “purchased and consumed ‘bituminous coal.’”³⁴⁸ AS Guangdong made clear that “the correct HTS code for coal consumed by AS Guangdong should be 2701.12.00,” covering bituminous coal. Similarly, AS Shandong confirmed that during the POI the company “consumed only the bituminous coal” and clarified that the correct HTS number for the coal it consumed was HTS 2701.12.00.³⁴⁹
- The exhibits collected at verification show that AS Shandong consumed bituminous coal, specifically, a purchase order from a supplier and documents submitted in verification exhibit 22 regarding AS Guangdong's purchases.³⁵⁰
- Therefore, the Department should rely only on HTS number 2701.12.00 covering bituminous coal, as opposed to HTS number 2701.19.00, covering sub-bituminous coal when measuring the adequacy of remuneration paid by AS Shandong and AS Guangdong for coal, because that is the type of coal consumed by the respondents.

Asia Symbol Companies' Rebuttal Arguments

- Asia Symbol does not import the coal it consumes, so it has never had to classify its coal under the HTS. Thus, its statements as to how its coal “should be” classified are not based on actual import transactions. Indeed, this issue of coal classification is one of first impression for the company. As such, for the final determination, the Department should rely on the factual coal information on the record which Asia Symbol submitted that supports the Department's use of HTS 2701.19.00.
- In the Asia Symbol Companies Verification Report, when discussing coal, the Department noted that the Asia Symbol Company officials state that the coal it consumes “should be classified as ‘other’ coal under HTS 2701.19.00.”³⁵¹

Department's Position: In the Preliminary Determination, the Department stated in order to derive the benchmark, we calculated HTS-specific benchmarks that correspond to the HTS categories of coal purchased by the Asia Symbol Companies during the POI. Our approach is consistent with the Department's practice of deriving benchmark prices by grade when such data are available and when the record evidence indicates that the respondent firm purchases the good

³⁴⁶ See AS Shandong IQR at Exhibit 27.

³⁴⁷ See the Asia Symbol Companies' 3SQR at 17.

³⁴⁸ Id.

³⁴⁹ Id.

³⁵⁰ See the Asia Symbol Companies Verification Report at VE-22.

³⁵¹ Id., at 8.

in question on a grade specific basis.³⁵² In the Preliminary Calculation Memorandum,³⁵³ we inadvertently utilized HTS 2701.19.00 based on the Asia Symbol Companies' initial questionnaire responses.³⁵⁴ However, based on a review of the record evidence, we have revised our approach for the final determination and have utilized HTS 2701.12.00.³⁵⁵

At verification, AS Shandong officials attempted to support its assertion that the company used "other coal" under HTS 2701.19.00 by translating the short text description of its goods receivable ledger to "raw coal" and providing a copy of the HTS schedule.³⁵⁶ However, the record supports revising the benchmark from "other coal" under HTS 2701.19.00 to coal categorized under HTS 2701.12.00.³⁵⁷ Therefore, we revised the benchmark price for the final calculations. See Final Calculation Memorandum for further discussion of business proprietary information.

COMMENT 8: Whether the Provision of Water for LTAR Confers a Benefit

Petitioners' Arguments

- Preferential water rates provided to the papermaking industry are specific and constitute a financial contribution.
- Respondents received water for LTAR through the Yinzhou Lake Paper Base, which provides water to companies within its borders at tiered rates depending on usage. The price of papermaking water is rate A per cubic meter whereas water to produce other products (such as calcium carbonate) is a higher rate B per cubic meter.³⁵⁸ The difference between the two rates per cubic meter is the benefit received by AS Guangdong. The preferential water rates are specific because only enterprises in the Yinzhou Lake Paper Base are eligible to receive papermaking water for LTAR.

Asia Symbol Companies' Rebuttal Arguments

- In its third supplemental response, the Asia Symbol Companies explained that AS Guangdong does not purchase production-ready water from an authority.³⁵⁹ Instead, AS Guangdong pumps raw water from Yinzhou Lake. To be able to use that water to produce paper, the company must then process that raw water. In addition, in the company's NSA response, the Asia Symbol Companies indicate that AS Guangdong pays a "water resources fee" to the local Water Resources Management Bureau for the ability to pump raw water from Yinzhou Lake.³⁶⁰ As such, the record clearly demonstrates (and the Department verified), that AS Guangdong does not purchase useable/treated water

³⁵² See [Steel Wheels from the PRC](#), [CWASPP from the PRC](#), [Hot Rolled India](#), and [Softwood Lumber from Canada II](#).

³⁵³ See Memorandum to the File, "Countervailing Duty (CVD) Investigation on Uncoated Paper from the People's Republic of China (PRC): Preliminary Determination Calculations for the Asia Symbol Companies," (June 22, 2015) (Preliminary Calculation Memorandum).

³⁵⁴ See AS Guangdong IQR at Exhibit 25 and AS Shandong IQR at Exhibit 27.

³⁵⁵ See Final Calculation Memorandum.

³⁵⁶ Id., and Exhibit 93 and 94.

³⁵⁷ See Asia Symbol Companies' 3SQR at 17.

³⁵⁸ Id., at 15 and Exhibits 5 and 6.

³⁵⁹ Id.

³⁶⁰ See Asia Symbol Companies' NSAQR at 11.

from a government authority. Instead, it simply pays a fee for the privilege of pumping raw water from a lake. The raw water has to be treated and processed before it can be used in the manufacturing process.

- Further, as the company reported, AS Omya does not purchase water from any outside third party suppliers or authorities. Instead, it purchases its water from AS Guangdong.³⁶¹ The price paid for that water was a price mutually agreed upon between AS Guangdong and AS Omya. That was not a price paid by AS Omya to an outside party or any government authority. Instead, it was simply a price paid by AS Omya to an affiliate (AS Guangdong).

Department’s Position: AS Guangdong indicated in its NSA questionnaire response and at verification that its water suppliers are the Water Resource Management Bureau of Xin Hui (Xinhui District Local Water Bureau) and Shuangshui Waterworks Plant, Xinhui District (Xinhui District Water Factory).³⁶² In its NSA questionnaire response, the GOC provided the rate schedule for the Guangdong Water Resource Fee Collection Standard Sheet.³⁶³ At verification, AS Guangdong explained that it drew water from Yinzhou Lake and treats the “raw” water before it is used for power generation and paper production.³⁶⁴ It further indicated that meters are placed by the water authority at the water source to measure and monitor intake to measure usage.³⁶⁵

Petitioners alleged that the Xinhui District government provides preferential water rates to enterprises within Yinzhou Lake Paper Base, a designated area in Xinhui District. As stated in the Post-Preliminary Determination³⁶⁶ and as confirmed at verification, AS Guangdong paid the standard provincial rates for production and power generation and district tap water rates to the water authorities.³⁶⁷ As such, we find that there was no government, preferential pricing scheme in place with regard to the water prices paid by AS Guangdong and, thus, there is no basis to conclude that the prices charged by the water authority conferred a benefit upon AS Guangdong under section 771(5A)(E)(iv) of the Act.

During the POI, AS Omya purchased water from AS Guangdong. The record evidence indicates that AS Omya pays AS Guangdong for its water usage at a rate negotiated between the two companies.³⁶⁸ In keeping with our practice concerning transactions between cross-owned affiliates, we did not include prices charged between AS Guangdong and AS Omya in our LTAR analysis.³⁶⁹ Rather, we limited our analysis to the prices AS Guangdong paid to the local water

³⁶¹ See Asia Symbol Companies 3SQR at 15.

³⁶² See Asia Symbol Companies’ NSAQR at 11 and Asia Symbol Companies Verification Report at 9.

³⁶³ See GOC NSAQR at 13 and Exhibit 66 and 67.

³⁶⁴ See Asia Symbol Companies Verification Report at 9.

³⁶⁵ Id.

³⁶⁶ See Post-Preliminary Determination at 10 – 11.

³⁶⁷ Id., at VE-23 page 42-45.

³⁶⁸ Id., at VE-23 page 48-62.

³⁶⁹ See Pre-Stressed Concrete Steel Wire Strand from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010) and accompanying IDM at 7-8, and 23, in which the Department did not include in its benefit analysis the prices for inputs that a respondent paid to its cross-owned affiliate.

utility. Thus, based on this analysis, we find that this program did not confer a benefit on the Asia Symbol Companies during the POI.

COMMENT 9: Whether the Provision of Land to SOEs for LTAR is Countervailable

Petitioners' Arguments

- AS Shandong benefited from the provision of land to SOEs for LTAR.
- AS Shandong's predecessors, Shandong Rizhao Wood Pulp Co., Ltd. or Shandong Asia Pacific SSYMB Pulp & Paper Co., Ltd., were all SOEs and many of AS Shandong's land contracts were signed by those predecessors prior to 2005.³⁷⁰
- AS Shandong received granted land-use rights from the local GOC, the local municipal land bureau and Nanxinhuang Village, therefore, the Department should find that AS Shandong's land use rights were provided by government authorities.³⁷¹
- In prior proceedings, such as OTR Tires Investigation,³⁷² the Department determined that land leases from local village governments are countervailable. These land leases are specific because they are limited to SOEs. In addition, AS Shandong benefited from these land leases to the extent it paid less than the benchmark price for its land.
- No evidence was placed on the record to demonstrate that the benefits received under these contracts were extinguished during the sale of AS Shandong.
- As all land in China is owned by the GOC, Petitioners argued that the Department should follow its established practice and rely on an out-of-country benchmark to measure the adequacy of remuneration.
- Finally, the land leases should be ruled specific based on AFA, as the GOC refused to respond to the Department's two questions regarding the provision of land to SOEs for LTAR. In its response to question 1 in the initial questionnaire, the GOC refused to provide any information on instances in which land and/or land-use rights were granted. Instead, the GOC referred the Department to the mandatory respondent's response.³⁷³ In its response to question 2 in the initial questionnaire, the GOC refused to provide any provincial, county, or municipal land laws relevant to the location of the mandatory respondents in this proceeding.³⁷⁴ Therefore, the Department should calculate a countervailable subsidy rate for the provision of land to AS Shandong for LTAR.
- To the extent the Department does not find the provision of land to AS Shandong for LTAR, the Department should conduct a change-in-ownership analysis to determine whether the land was provided in AS Shandong's SOE reform process.³⁷⁵

³⁷⁰ See AS Shandong IQR at 4-5 and 46. See also AS Shandong English Translation for Land (May 27, 2015).

³⁷¹ See AS Shandong English Translation for Land at Exhibit 33a.

³⁷² See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 40480 (July 15, 2008) (OTR Tires Investigation) and accompanying IDM at 20 and Comment F.12.

³⁷³ See GOC IQR at 97.

³⁷⁴ Id.

³⁷⁵ See OTR Tires Investigation and accompanying IDM at Comment F.11.

Asia Symbols Companies' Rebuttal Arguments

- AS Shandong is a Sino-foreign joint venture that is majority-owned (90 percent) by a foreign entity, and has been since August 17, 2005. The Certificate of Approval and Business License demonstrate that AS Shandong is a Sino-foreign Joint Venture (and thus not an SOE).³⁷⁶
- On August 17, 2005, when the company was formed, it was originally named “Shandong Asia Pacific SSYMB Pulp & Paper Co., Ltd.”³⁷⁷ On March 25, 2013, “Shandong Asia Pacific SSYMB Pulp & Paper Co., Ltd.” {(Shandong Asia Pacific)} changed its name to “Asia Symbol (Shandong) Pulp & Paper Co., Ltd.”³⁷⁸ However, the name change did not change the legal nature of the entity - Sino-foreign joint venture. As such, Petitioners are simply wrong when they state on page 10 of their case brief that Shandong Asia Pacific SSYMB Pulp & Paper Co., Ltd. was an SOE, and the cited Exhibit 33a (footnote 39 of their case brief) does not demonstrate that fact.
- The creation of Shandong Asia Pacific occurred in 2005 when a Singapore-based affiliate of the Asia Symbol Companies purchased the majority of the shares of Shandong Rizhao SSYMB Pulp and Paper Co., Ltd. – an SOE.³⁷⁹ As of the acquisition date (August 17, 2015), the SOE target was extinguished and a new legal entity (Sino-foreign joint venture) was created. The land contracts entered into by Shandong Rizhao Wood Pulp Co., Ltd. have nothing to do with Shandong Asia Pacific (AS Shandong). When the shares were acquired, the SOE was extinguished.
- Land from Nanxinhuang Village is not purchased land but instead a leasing arrangement, whereby AS Shandong has signed a lease agreement with pays annual rent to Nanxinhuang Village. AS Shandong signed the lease agreement on May 2010, after AS Shandong was formed as a Sino-foreign joint venture.
- The record does not establish Nanxinhuang Village as a “local GOC.”
- There has been no allegation in this investigation that the land was provided during any SOE reform process. As such, Petitioners’ request that the Department conduct a “change in ownership analysis” is untimely.

Department’s Position: In the Preliminary Determination, we preliminarily found the Provision of Land and/or Land-Use Rights to SOEs for LTAR not used.³⁸⁰ Further review of the record indicates that Shandong Rizhao SSYMB Pulp & Paper Co., Ltd. extended one of its original land-use rights for a transfer price.³⁸¹ This event occurred during the 13-year AUL and after the December 11, 2001, “cut-off” date. In OTR Tires Investigation, the Department found the program specific because respondent obtained its granted land-use rights as part of a government policy of SOE reform.³⁸² In that investigation, the record demonstrated that the respondent, Hebei Tire (as the SOE entity), received allocated land use rights as an SOE and maintained its allocated land-use rights until 2005 under policies designed for SOE reform. The subsequent

³⁷⁶ See AS Shandong IQR at Exhibits 1 and 7.

³⁷⁷ Id., at 4.

³⁷⁸ Id., at 5; see also Asia Symbol Companies Verification Report at VE-2.

³⁷⁹ See AS Shandong IQR at 4.

³⁸⁰ See Preliminary Determination Memorandum at 39.

³⁸¹ See AS Shandong’s Land Contracts English Translation (May 27, 2015) at Exhibit 33(a).

³⁸² See OTR Tires Investigation and accompanying IDM at “Government Provision of Land to SOES for Less Than Adequate Remuneration – Starbright’s Granted Land Use Rights.”

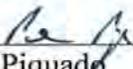
conversion and sale of these land-use rights, i.e., granted land-use rights, to Starbright (foreign invested entity) was the final step in this reform process.³⁸³ The Department found in OTR Tires Investigation that provisions in the Xingtai Reform Implementation Circular were not available to all enterprises within the municipality but specified the exact number of firms who were eligible to take advantage of the regulation. Thus, the Department found Starbright's granted land-use rights specific pursuant to section 771(5A)(D)(i) of the Act.³⁸⁴

In contrast to OTR Tires Investigation, the record evidence in this investigation, i.e., legislation, land contracts, and land-use certificates,³⁸⁵ does not provide a factual basis to conclude that Shandong Rizhao Wood Pulp Co., Ltd., obtained the land-use rights because of preferential policies to SOEs, and the benefits transferred to AS Shandong. For example, the land contracts do not indicate Shandong Rizhao Wood Pulp Co., Ltd., received allocated land-use rights, which are exclusive to SOEs and do not expire.³⁸⁶ Thus there is no record basis to conclude that any potential benefit is de jure or de facto specific pursuant to sections 771(5A)(D)(i) and (iii)(I) of the Act. If this investigation results in a CVD order, we will continue to examine this program in a subsequent administrative review, including any potential change in ownership analysis.

X. RECOMMENDATION

We recommend that you approve the final findings described above.

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

8 JANUARY 2016

(Date)

³⁸³ Id., at Comment F.11.

³⁸⁴ Id.

³⁸⁵ See GOC IQR at Exhibit 49, AS Shandong IQR at Exhibits 31, 32 and 33, and AS Shandong's English Translation of Land Contracts (May 27, 2015) at Exhibits 33a through 33k.

³⁸⁶ See AS Shandong's English Translation of Land Contracts (May 27, 2015) at Exhibit 33a.

APPENDIX

C-570-023: UNCOATED PAPER FROM PRC - AFA RATE (Public Information)					
		PROGRAM	Rate Used	Description	Source
	I	Loan Programs			
1	1	Policy Loans for Papermaking Industry	0.58%	Calculated	Asia Symbol
2	2	Preferential Loans for SOES			
3	3	Export Seller's Credit	1.13%	Identical Program	53-Foot Domestic Dry Containers 80 FR 21209
4	4	Export Buyer's Credit	10.54%	Highest Rate for Similar Program Based on Benefit Type	Solar Cells Investigation 77 FR 63788
	II	Inputs for LTAR			
5	1	Calcium Carbonate for LTAR	0.74%	Calculated	Asia Symbol
6	2	Caustic Soda for LTAR	0.37%	Calculated	Asia Symbol
7	3	Titanium Dioxide for LTAR	22.32%	Highest Rate for Similar Program Based on Benefit Type	Citric Acid and Certain Citrate Salts 79 FR 108
8	4	Provision of Water for LTAR	20.06%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 79 FR 56560
9	5	Provision of Electricity for LTAR	20.06%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 79 FR 56560
10	6	Provision of Coal for LTAR	0.98%	Calculated	Asia Symbol
11	7	Provision of Electricity for LTAR in Yinzhou Lake Paper Base	20.06%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 79 FR 56560
12	8	Provision of Steam for LTAR in Yinzhou Lake Paper Base	20.06%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 79 FR 56560
13	9	Provision of Water for LTAR in Yinzhou Lake Paper Base	20.06%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 79 FR 56560
	III	Provisions of Land for LTAR			
14	1	Land-Use Rights for LTAR in Certain Industrial/Development Zones	2.55%	Highest Rate for Similar Program Based on Benefit Type	OCTG from PRC 74 FR 64045
15	2	Land to SOEs for LTAR	2.55%	Highest Rate for Similar Program Based on Benefit Type	OCTG from PRC 74 FR 64045
	IV	Tax Benefit Programs			
16	1	Preferential Income Tax Program for High or New Technology Enterprises	25.00%		
17	2	Tax Reductions for High and New-Technology Enterprises Involved in Designated Zones			
18	3	Income Tax Exemptions for Forestry Projects			
19	4	Preferential Income Tax for Comprehensive Utilization Entitling Enterprise			
20	5	Tax Allowance for Special Equipment for Water and Energy Savings Purchased by Enterprises			
21	6	Tax Refund for Technology Renovation Projects in Xinhui District			
22	7	Jiangmen City – Honest Green Card Backbone Enterprises: Tax Refund			
23	8	Infrastructure Fee and Tax Refund for Enterprises in Xinhui District			

	V	Other Tax Programs				
24	1	VAT and Tariff Exemptions for Use of Imported Equipment	3.13%	Calculated	Asia Symbol	
25	2	VAT Rebates on FIE Purchases of Chinese Made Equipment	0.07%	Calculated	Asia Symbol	
26	3	Administrative and Industrial Fee Exemptions in Yinzhou Lake Paper Base	0.01%	Calculated	Asia Symbol	
	VI	Grant Programs				
27	1	Funds for Using Wood Pulp in Forestry-Paper Integration Projects	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates	79 FR 56560
28	2	Interest Payments for Forestry-Paper Integration Projects	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates	79 FR 56560
29	3	Support for Developing New Paper Products	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates	79 FR 56560
30	4	State key Technology Renovation Fund	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates	79 FR 56560
31	5	Grants to Cover Legal Fees in Trade Remedy Cases	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates	79 FR 56560
32	6	Grants for Listing Shares	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates	79 FR 56560
33	7	Demolition and Relocation Assistance for Shandong Chenming	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates	79 FR 56560
34	8	Jiangmen City – Honest Green Card Backbone Enterprises: Preferential Interest Rates and Guarantee Fees	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates	79 FR 56560
35	9	Jiangmen City – Honest Green Card Backbone Enterprises: Grants	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates	79 FR 56560
36	10	Interest Subsidy for Capital Increase and Production Expansion Projects in Xinhui District	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates	79 FR 56560
		<i>Asia Symbol Grant Programs</i>				
37	11	AS Shandong Grant 3 - Governmental subsidies for energy efficiency and environmental protection	0.10%	Calculated	Asia Symbol	
38	12	AS Shandong Grant 5 - Support Fund for Energy Efficiency and Environmental Protection Project	0.02%	Calculated	Asia Symbol	
39	13	AS Shandong Grant 17 - Support fund for environmental protection project	0.14%	Calculated	Asia Symbol	
40	14	AS Shandong 19 - Support fund for environmental protection input	0.14%	Calculated	Asia Symbol	
41	15	AS Shandong Grant 21 - Support fund for environmental protection project	0.15%	Calculated	Asia Symbol	
42	16	AS Guangdong Grant 22 - City bonus for export activity from finance bureau	0.13%	Calculated	Asia Symbol	
		TOTAL FINAL AD VALOREM RATE:	176.75%			